



## Best Practices in Creating Consumer-Oriented Exchanges: Strategies for 2012

Health insurance Exchanges are one important way the Affordable Care Act (ACA) increases consumers' access to affordable, high-quality health care. An Exchange is a competitive health insurance marketplace to give consumers more control, quality choices and better protections when buying insurance. Most Americans will keep the insurance they currently have, but many who will be newly insured, buy insurance on their own or are small businesses will use their state Exchange to find coverage. As of September, twelve state legislatures passed bills to create Exchanges.<sup>1</sup> Remaining states either need to create their own Exchanges in the near future or will be required participate in the federal Exchange.

In working closely with consumer advocates in states that passed – or are working to pass – Exchange legislation, Community Catalyst found common strategies that helped to advance consumer priorities. This paper highlights five approaches: 1) getting engaged early; 2) becoming the expert; 3) framing the issue; 4) encouraging decision makers to conduct consumer outreach; and 5) building coalitions. Building upon Community Catalyst's [\*Exchanges: Top Ten Priorities for Consumer Advocates\*](#), we outline ways to achieve consumer protections and to hold Exchanges accountable.

### Legislation is Possible Across Diverse Political Climates

Advocates work in a range of political climates. A one-size-fits-all strategy is not a meaningful approach to passing Exchange legislation. Some states had near-unanimous support for a consumer-friendly bill. In others, elected and appointed leaders were hostile toward an Exchange because of its connection to the ACA. Some states witnessed strong disagreement between elected leaders about the best path forward for health reform. For example:

- In many ways, Maryland had the path of least resistance to creating a pro-consumer Exchange. Benefiting from a supportive governor and state legislature, the Maryland law was enacted early and will be governed by a board of independent, consumer-oriented health policy experts.
- In Oregon, there was both support and opposition to health reform. Despite Colorado's and Washington's attorneys general signing on to a multi-state lawsuit challenging the legality of the ACA's individual mandate, advocates built support for Exchanges. In these three states, negotiations with state legislatures led to compromises on consumer priorities like conflicts of interest and active purchasing. Failure to negotiate on these issues would have likely caused the bills to die in legislative committees. Advocates in these states hope to improve their Exchanges next year through additional legislation and the implementation process.
- North Carolina's legislature was not committed to creating a consumer-oriented Exchange. Earlier this year, it passed a bill to override the ACA's individual mandate. Although the governor vetoed the bill, advocates recognized the challenges of this political climate. The North Carolina legislature began to go through the motions of

passing Exchange legislation, but the proposed bills heavily favored industry and had few consumer protections. A broad coalition of advocates opposed the bills; they were too harmful to consumers to merit support (see the group's [webpage](#)).

## **Five Winning Strategies to Create Consumer-Oriented Exchanges**

Regardless of their political environment, advocates have used five similar strategies to ensure the passage of consumer-oriented Exchanges.

### **1. Get Engaged Early**

Insurers, providers, and state officials often prefer to hash out decisions behind closed doors. Deals are struck quickly and there may be few opportunities for consumers to be involved in the process. Advocates must become engaged early to make their presence known and insist on consumer representation in the Exchanges.

#### **Participate in Commissions, Task Forces and Panels**

States like Colorado, Maryland, Oregon and Washington had early gubernatorial support for health reform. Governors in those states appointed commissions, task forces, and panels to explore strategies, including the enactment of Exchanges. Nonetheless, consumer involvement in these activities varied. Advocates in some of these states participated in sub-committees and spoke at public hearings. In other states, it was more challenging to participate because state agencies did not consult with consumers. Advocates were frequently outnumbered by industry insiders.

Regardless of the level of interest that states had for consumer representation, advocates were able to build relationships with other stakeholders and government officials through early participation in reform efforts. Their participation was noticed and ensured that consumers were represented throughout the Exchange development and implementation process.

#### **Find Legislative Champions**

Some states are not moving forward to develop Exchanges. Others may be working behind closed doors and leaving consumers out of the process. Advocates can still attempt to keep the process moving forward. In some states, advocates are drafting model legislation and finding legislators willing to support a pro-consumer Exchange. This tactic allows advocates to be a resource to supportive legislators and creates a platform to raise important policy questions.

### **2. Become the Expert**

Advocates need to make the case that they have policy expertise on Exchange issues and adequately represent consumers (See resources on the last page for more information.) Without advocates at the table making clear policy arguments, it is easy for decision makers to bow to industry interests and leave consumers out of discussions.

#### **Advising Policymakers**

Through their early involvement, some advocates were able to position themselves as technical experts on Exchange issues. By drafting white papers and educating key decision-makers, advocates were able to present expert opinions and educate others on best practices

(see examples from [Colorado](#) and [Illinois](#)). For example, the Maryland Citizens Health Initiative convened a technical advisory committee to access policy expertise and guide its advocacy. The technical committee drafted a white paper on active purchasing and at least one member of the technical committee is now on the Exchange board. Similarly, a staff member from Oregon State Public Interest Research Group (OSPIRG) served on a sub-committee of the state's health reform committee, and the organization gained credibility for its policy analysis and negotiation skills.

### **Communicating with the Media**

Educating the press about consumer issues is as important as educating decision makers. Journalists often have insufficient resources to fully research aspects of the Exchange, while insurers and others can afford to hire communications teams to get their messages out to the press. Advocates who are well-versed on policy can position themselves as experts and can educate journalists about important consumer issues (for example, this [Maryland letter to the editor](#)).

## **3. Frame the Issue**

A successful communications strategy is critical to winning consumer protections in Exchanges. Decision makers need to hear advocates' concerns loud and clear. Sending the right message to legislators and other decision makers can frame issues in ways that they can understand and support.

### **Messaging Strategies**

In each state that passed legislation, advocates learned that it was important to frame the Exchange as a state-specific strategy for health care reform (for example, [this fact sheet from Pennsylvania](#) and [Exchange messaging](#) from the Herndon Alliance). Some advocates refrained from mentioning the ACA or federal health reform efforts at all. These messaging strategies acknowledged the pre-ACA interest of governors and state legislators in state-based health reform solutions, and also helped diffuse tensions in states where federal involvement is unpopular with state legislators.

### **Finding the Right Messenger**

Advocates should consider how to use different messengers to talk about Exchange issues. Coalition members, such as small business leaders, can share their perspective with decision makers and the media (see an [example from New Hampshire](#)). Advocates need to define their key audiences, and then determine who can best reach them.

### **Keep the Public Informed**

Consumers need to know what is at stake, yet they are rarely equipped to follow legislative proceedings. Advocates need to consider how to educate individual consumers about the process and engage them in protecting consumer interests when key Exchange decisions are made. Advocates in some states have used blogs, newsletters, postcards and other materials to keep consumers up to date with the latest developments (see this [postcard from Ohio](#)).

### **Framing Difficult Issues**

Advocates are experimenting with ways to communicate the importance of active purchasing, a wide range of activities to leverage higher-quality, more affordable insurance for individuals and small businesses. This issue deserves consideration at the state level, but the insurance industry has been successful in convincing decision makers to oppose many forms of active purchasing. To advance this issue, OSPIRG and California Health Access explained the importance of allowing Exchanges to leverage lower costs for consumers and to act like other large businesses that negotiate for services.

#### **4. Encourage Decision Makers to Conduct Consumer Outreach**

While some legislatures and administrations are proactive in reaching out to consumers, others are reluctant to seek consumer input.

### **Holding Exchanges Accountable**

The ACA requires Exchanges to consult with stakeholders, including consumers, but advocates must hold them accountable. Through attendance at public meetings, phone calls and letters, consumers can make their voices heard. If Exchanges are reluctant to hold public meetings or meet with consumers, advocates should let the public – and the U.S. Department of Health and Human Services (HHS) – know they are not meeting their legal obligation to solicit stakeholder input.

### **Consumer Outreach Requirements in HHS-funded Grant Activities**

In addition, decision makers are required to conduct consumer outreach as a part of their federally-funded grant activities. Many states are applying for [Level 1 and 2 Establishment Grants](#), which have stakeholder outreach requirements:

*Stakeholder input should be considered in the development of legislative options and drafts of enabling legislation, Exchange design and approach, and Exchange operational issues, among numerous other topics, including coordination with State health information exchanges. Successful Exchanges will undertake multi-faceted outreach to inform the public of their services and coverage options and will work closely with a variety of stakeholders including, but not limited to advocates for consumers ...*<sup>2</sup>

### **Set the Standard for Stakeholder Engagement**

HHS has not defined standards for meaningful stakeholder engagement, but advocates should set the bar high. Advocates can push decision makers to be thorough in soliciting input from consumers through open forums, stakeholder meetings and other public activities. They should press the state to create evaluation tools that enable them to receive on-going feedback from enrollees and track consumer satisfaction. Some state officials, like in Maryland, have been genuinely proactive about reaching out to consumers. In other states, there has been only a token effort. Regardless of the political environment, advocates should define sufficient stakeholder engagement in Exchange legislation and operating rules, and hold them to that standard.

## 5. Build Consumer Coalitions

In many states, there was strong and well-organized opposition to the Exchange. The insurance industry was vested in fighting certain consumer protections and was well-represented by lobbyists. Additionally, Tea Party members were vocal about their absolute opposition to government-run programs, including the Exchanges. These contributed to a political climate in which few advocates had sufficient power to win strong consumer protections. Fortunately, in several states, advocates were able to build or participate in broader coalitions to support important consumer issues. These coalitions included new allies that had not previously worked on consumer health care issues.

### Identifying Key Stakeholders

In building a new coalition, it is important to identify all key stakeholders and determine organizations that could be allies and likely opponents. In addition to health care advocates, there may be unusual allies willing to work on Exchanges. For example, small business constituencies proved to be important allies in many states. In a different vein, North Carolina advocates' concerns coincided with Tea Party interests when an anti-consumer Exchange bill moved through the legislature, drawing opposition from across the political spectrum. Other potential allies could include faith groups, women and minority business associations, freelance and artist associations, and other organizations that represent professionals who are typically uninsured or underinsured. In addition to increasing the range of voices, participation from the small business community and other organizations provided good messengers and political cover for politicians to support consumer-friendly provisions (see this [fact sheet from Oregon](#)).

Coalitions will look different in each state. Moreover, organizations that are helpful in one state may be opponents in another. For example, the National Federation of Independent Business (NFIB) was allied with the Colorado Consumer Health Initiative to pass Exchange legislation, but at the national level it has signed on to a lawsuit challenging the ACA. In North Carolina, the NFIB was at odds with the North Carolina Justice Center on the principles for a consumer-friendly bill.

### Tough Strategic Decisions: When to Oppose Exchange Legislation

Insurers, providers and other industry insiders have a lot at stake in the Exchanges and have resources to protect their interests. As a result of this influence, advocates have had difficulty convincing legislators to include important consumer protections.

In some situations, advocates must decide whether to support a less-than-ideal Exchange bill or oppose it and try to secure better consumer protections. In some cases, a bill may be so harmful to consumers that there is little to lose by opposing it. In other cases, failure to enact an Exchange in a timely manner may create challenges for states to access federal grant monies, or may hinder the ability to create a state program at all.

Advocates may need to decide if they support a state-based Exchange or if consumers would be better served in a federal Exchange. To date, there are few details on the federal Exchange and the consequences of opting for it. The recent proposed regulations from HHS raise the option of a "federal partnership," in which states would run certain components of the Exchange while the

federal government operates others. If HHS releases further information about the federal Exchange, advocates may be better positioned to evaluate their options. Unfortunately, we do not know when additional guidance will be released.

### **Advocating for Consumers in States Through the Executive Order Process**

In some states, Exchanges will be created through executive orders and bypass the legislative process. Many of the strategies discussed here also apply to a state that uses an executive order. Instead of targeting legislators, advocates will need to focus advocacy on the governor and other decision makers, or find other opportunities to provide consumer input (see this [letter to Alabama's governor](#) as an example).

### **Next Steps: What Happens After Exchange Legislation Passes?**

Although enacting Exchange legislation continues to be a struggle in many states, this is only the first step to ensure that consumers have access to affordable, quality health care. Advocates need to develop a plan to stay engaged and ensure that consumers' needs are met throughout all stages of planning and implementation:

#### **Advocate for Consumer Representation**

All the Exchange bills enacted to date delegate important decisions to boards or advisory committees. Advocates need to urge decision makers with appointing powers to place a majority of consumer representatives on these committees, educate those individuals on key issues, and hold those members accountable.

#### **Educate Exchange Board Staff and Members**

Exchanges will make many decisions that affect consumers, some by board members and others delegated to staff. Advocates should regularly meet with staff and *all* board members to educate them about important consumer priorities. In addition, advocates should attend and report on public meetings or hearings held by the Exchange. For example, in Massachusetts, advocates meet with all of the board members, not just the consumer representatives, and they attend and blog on each meeting (see [here](#)).

#### **Communicate Key Issues to the Public**

While Exchanges have a duty to educate the public about their activities, advocates can provide their own analysis of key issues in an easily accessible format. Advocates can help consumers stay informed and engaged through blogs, Twitter, email alerts and other outreach activities.

#### **Plan for Exchange Implementation and the Next Legislative Session**

Advocates in Colorado and Oregon accepted some compromises in their legislation, but they believe there is room to improve consumer protections in the future. They plan to strengthen provisions in the next legislative session and in the implementation process. Making progress one step at a time is a viable model for states that do not have early or unanimous support for strong consumer protections.

### **Get Involved with Exchange Establishment Grant Proposals**

To help states establish Exchanges, HHS is offering significant funding through a series of grants. States may apply for [Level 1 and Level 2 Establishment Grants](#). The grants list 11 core areas, including stakeholder consultation and outreach to the public. Advocates should encourage states to highlight consumer needs in these Establishment grants by advocating for continued consumer engagement in the implementation process.

### **Reframe Active Purchasing Strategies**

Active purchasing is an umbrella term for many strategies to provide affordable and high quality plans in Exchanges. Advocates are concerned that some legislatures have, or may in the future, limit active purchasing in Exchanges. Because this term covers a wide array of strategies, advocates should explore all possible options to ensure health plans require good value and quality.

## **Additional Resources**

### **Community Catalyst**

- [Assessing Consumer Protections in the July 2011 HHS Exchange Regulation](#)
- [Exchanges: Top Ten Priorities for Consumer Advocates](#)
- [Leveling the Playing Field: Private Insurance Oversight in the Exchanges](#)
- [Health Policy Hub](#)

### **Georgetown Health Policy Institute**

- [Active Purchasing for Health Insurance Exchanges: An Analysis of the Options](#)
- [The Massachusetts and Utah Insurance Exchanges: Lessons Learned](#)

### **National Academy for State Health Policy (NASHP)**

- [State Refor\(u\)m Website](#)

### **Kaiser Family Foundation**

- [Establishing Health Insurance Exchanges: An Update on State Efforts](#)
- [Explaining Health Reform: Building Enrollment Systems that Meet the Expectations of the Affordable Care Act](#)

### **Center on Budget and Policy Priorities**

- [States Should Take Additional Steps to Limit Adverse Selection among Health Plans in an Exchange](#)

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<sup>1</sup> California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, Washington, and West Virginia have all enacted Exchange legislation. The Notice of Proposal Rulemaking from the US Department of Health and Human Services dated July 11, 2011 suggests that Massachusetts' existing Exchange will be in compliance with the ACA.

<sup>2</sup> "Cooperative Agreement to Support Establishment of State-Operated Health Insurance Exchanges, CFDA: 93.525," US Department of Health and Human Services, Office of Consumer Information and Insurance Oversight, January 20, 2011, p. 46.