
Moving Forward Despite Roadblocks

*Advocates' work in 2012 prepares for
consumer-friendly Exchanges*



*Quynh Chi Nguyen,
Policy and Program Associate*

Community Catalyst, Inc.
30 Winter St. 10th Floor
Boston, MA 02108
617.338.6035
Fax: 617.451.5838
www.communitycatalyst.org

Introduction

A health insurance Exchange, an online competitive marketplace where people can buy health insurance, is an important way to increase access to quality, affordable health coverage. The Affordable Care Act (ACA) requires states to either create a state-run Exchange by 2014 or participate in a federal Exchange.

Exchange implementation in most states has progressed slowly in 2012. While in 2011, 11 states, plus the District of Columbia, passed legislation to establish Exchanges, no states have yet enacted legislation in 2012. While passing laws has been difficult, the governors of New York and Kentucky established state Exchanges through executive orders this year.

Although on the surface states appear to be deadlocked, consumer advocates across the country have been actively involved in the process of building Exchanges in their states. There are multiple engagement points that are critical to Exchange implementation, including framing the debate by educating policymakers, state officials, the media and consumers about the goals of a consumer-friendly Exchange.

By building expertise and working closely with other stakeholders, state consumer advocates have played important roles in design decisions outside of legislation. This paper provides insight on how consumer advocates in states that have not yet passed Exchange legislation have continued to move implementation forward, and are working to ensure Exchanges are responsive to the needs of diverse consumers. This work will be valuable in any type of Exchange—a state-based Exchange, a partner Exchange with the federal government or a federally facilitated Exchange—in providing a base of consumer involvement in key decisions.

Building Consumer-Friendly Exchanges

The Affordable Care Act (ACA) takes important steps toward expanding coverage, reducing costs and improving the quality of health care. Under one of the ACA's reforms, in 2014, 16 million Americans will gain access to quality, affordable coverage through online marketplaces, called health insurance Exchanges. Exchanges will offer consumers:

- Federal subsidies to help people who earn between 133 percent and 400 percent of the federal poverty level afford health insurance
- Access to simplified application forms and reliable information about health plan quality through consumer-friendly websites
- One-on-one, culturally and linguistically appropriate assistance to help consumers choose quality, affordable health insurance plans that suit their individual and families' needs

While no new legislation was adopted and signed during 2012 state legislative sessions, two states did create Exchanges through executive orders, and state advocates used a number of approaches to advance consumer interests in building Exchanges in other states across the country. Advocates took advantage of key engagement points, either in the legislative process or through their state administration, to help their state make key decisions about Exchange design and governance. These strategies include:

1. **Building relationships and educating policymakers** and state officials to create a climate for consumer-friendly Exchanges
2. **Providing policy expertise** on key issues to strengthen Exchange design

3. **Participating in Exchange workgroups** to highlight consumer needs
4. **Framing messages** that resonate with the public, especially vulnerable populations who will use Exchanges
5. **Building broad editorial support** and obtaining media coverage at critical junctures

Despite the slow pace of Exchange implementation, the strategies state consumer advocates have employed during the 2012 legislative session helped to ensure the Exchange planning and design processes are inclusive, reflect consumer voices, and increase public awareness about benefits. Consumer advocates have also proven themselves as experts and gained seats at state planning tables as critical Exchange decisions are made. Regardless of which type of Exchange the state will run—state-based, a partnership with the federal government or federally facilitated—consumer advocacy over the past year has laid an essential foundation for strong, consumer-friendly Exchanges.

Successful Advocacy Strategies

1. Build Relationships with Policymakers and State Officials to Create a Climate for Consumer-Friendly Exchanges

In many states, policymakers operate within a challenging political environment with competing interests, including powerful voices that promote industry priorities. Many policymakers and state officials may be inclined to listen to the health insurance industry or other interests rather than act on behalf of consumers. Therefore, creating a climate for consumer-friendly Exchange discussions requires advocates to influence key policymakers and state officials.

Throughout the 2012 legislative session, consumer advocates leveraged their technical expertise on Exchange issues to build strong relationships with government officials and foster constructive dialogues about Exchange issues reflecting consumer interests.

On the Ground: New York advocates use their expertise and strengthen relationships

In New York, advocates' strong relationships with Governor Cuomo's administration led to an executive order to establish an Exchange.¹ During the 2012 legislative session, while their state legislators and governor were distracted by the state budget deficit and Medicaid redesign, the Health Care For All New York (HCFANY) coalition was actively urging stakeholders to start thinking about a New York Exchange. The coalition made policy recommendations in a variety of ways such as conducting in-depth policy analysis on different aspects of Exchange planning, writing blogs, testifying at a state senate roundtable and providing input at public hearings. After the release of draft proposals for Exchange design, HCFANY analyzed how these would impact consumers and made recommendations based on the coalition's five standards for a consumer-friendly Exchange.² Meanwhile, advocates continued to meet with Governor Cuomo and legislators to discuss their role in creating an Exchange.

When it became clear the state senate would not vote on an Exchange establishment bill by the end of the legislative session, HCFANY worked with and educated allies (including senior groups, labor unions, consumer advocacy groups and organizations working on health equity) to urge the governor to issue an executive order. HCFANY used email blasts to activate the grassroots to call on Governor Cuomo to "stand strong" and create an Exchange.³ As a result of public pressure,

Governor Cuomo ultimately ordered the establishment of an Exchange within the State Department of Health.

2. Provide Policy Expertise to Strengthen Exchange Design

State consumer advocates have become experts on different aspects of Exchanges to ensure consumer priorities are met. In some states, advocates have drawn upon their policy expertise to improve legislation. Even when bills did not become law, this work laid the groundwork for design of a future Exchange.

On the Ground: Alabama advocates improve the Exchange study commission and uses their policy expertise to strengthen Exchange legislation

Advocates in Alabama took a two-pronged approach to making the state's Exchange planning and legislation consumer-friendly. The advocates won two of 15 seats on the Alabama health insurance Exchange study commission, which was established by Governor Bentley's executive order.⁴ Consumer representation ensured the Exchange study commission offered Governor Bentley consumer-oriented recommendations about redesigning Alabama's health insurance market.

Then during the 2012 legislative session, a bill was introduced to create an Exchange in Alabama. Though the bill echoed the study commission's recommendations for a transparent, consumer-driven marketplace, it did not meet all of the advocates' priorities. For example, the bill proposed a board of 20 members that included two representatives of insurance companies and two insurance brokers, who are likely to have conflicts of interest. Consumer representation in governance was excluded from the proposed bill, and it did not have provisions for seamless enrollment between Medicaid, the Children's Health Insurance Program (All Kids) and the Exchange.

To make the bill more consumer-friendly, advocates from Alabama Arise Citizens' Policy Project and Alabama Appleseed analyzed the bill and submitted detailed comments emphasizing the importance of accountability, consumer representation and a seamless enrollment system. As a result, the final version of the bill required two members of the Exchange board to represent consumer advocacy organizations. It also required Exchange board meetings to be open to the public. The bill passed unanimously in the state House of Representatives, but died in the Senate just before the end of the legislative session.

While the legislation did not become law, Alabama advocates successfully educated policymakers and state officials, and positioned themselves as experts as they move into the next phase of Exchange implementation.

3. Actively Participate in Exchange Workgroups to Highlight Consumer Needs

Since the ACA passed, consumer advocates have continually worked to build consumer representation in the development and implementation of Exchanges. Many states have formed workgroups to collect stakeholder input on Exchange policy issues such as plan management, Navigators (entities that help inform people about their insurance options), benefits, financing and sustainability, and outreach and enrollment. Consumer advocates in some states have sat on these formal taskforces and subcommittees due to their expertise.

Advocates in Michigan have participated in Exchange workgroups on governance, business operations, finance, and technology. In New Mexico, consumer advocates were appointed to the state's Exchange advisory taskforce and other workgroups to work on outreach, education, enrollment, and market regulation. Advocates' participation in these formal and informal taskforces and workgroups influenced policy discussions across the country, even in states with difficult political environments.

On the Ground: Minnesota advocates keep task forces on task

TakeAction Minnesota and its partners have been at the center of Exchange implementation to build a strong, effective infrastructure that puts the needs of consumers at the forefront. They have been engaged in every Exchange stakeholder body, including the Exchange advisory task force and the Navigator, eligibility, outreach, and small employer workgroups. In less than two months, they successfully convened key advocacy stakeholders to develop positions on many Exchange issues including strategies to advance health equity. Advocates authored five sign-on letters, each with 40 signatories, to submit to the Departments of Health and Human Services and Commerce, addressing key consumer principles, including active purchasing, outreach and enrollment efforts, governance, and benefits. Although the Exchange advisory task force has not yet finalized policy decisions, Minnesota advocates have worked to ensure key consumer issues are active parts of the discussion.

4. Frame Messages that Resonate with the Public, Especially Vulnerable Populations

Consumers are more likely to actively understand policy issues when information fits their specific concerns. Unfortunately, the ACA largely uses terms (including Exchanges) that are unfamiliar to the general public. For this reason, advocates have tried to reframe the conversation to build consumer support and momentum to create consumer-friendly Exchanges.

On the Ground: State advocates target specific constituencies and translate complex Exchange issues into simple concepts

In New York, Raising Women's Voices identified specific health concerns for certain populations and used these as entry points for a discussion about Exchanges. For example, they emphasized the non-discrimination provisions when explaining how Exchanges benefit lesbian, gay, bisexual and transgender people, and highlighted the expansion of preventive care and contraceptive services when talking with women.⁵

Advocates in New Hampshire, New Jersey and Ohio presented Exchanges to focus group participants by comparing an Exchange to popular travel websites Travelocity and Expedia, thereby demonstrating how consumers will be able to easily compare the prices and quality of different health insurance plans. Once participants fully understood the comparative shopping nature of Exchanges, the majority were pleased with the prospect of a new way to access health insurance.

Advocates have also written educational materials and given public presentations on Exchanges in plain language and in a culturally and linguistically appropriate manner to ensure consumers can understand the Exchange. For instance, Asian Service in Action in Ohio developed an ACA/Health Insurance Exchange fact sheet and translated it into easy-to-understand English, Chinese, Korean, Laotian, Cambodian and Vietnamese.⁶

5. Build Broad Editorial Support and Obtain Media Coverage at Critical Junctures

Effective media communication is essential for building timely public and political support and for countering opposition to Exchanges. Journalists often do not have sufficient resources to fully understand every aspect of health policy or Exchanges. In addition, powerful industry stakeholders' well-funded media campaigns may confuse journalists. Often the ability to educate the press about consumer issues is as important as educating policymakers and state officials.

On the Ground: Advocates in Ohio get effective media coverage

Recently, the Lieutenant Governor of Ohio misused data in an assessment conducted by a consulting firm to attack the ACA and claim Ohioans would experience up to an 85 percent increase in health premium rates. Advocates from the Ohio Consumers for Health Coverage coalition (OCHC) released a report responding to this misleading claim.⁷ OCHC's report led to news coverage in *The Columbus Dispatch*⁸ and the *Columbus Business First*⁹ highlighting how the ACA and Exchanges will reduce their costs for low-income people.

Putting it All Together: A Closer Look at New Jersey's Advocacy Tactics

Advocates in New Jersey built statewide legislative support for a consumer-friendly Exchange through a campaign supporting the New Jersey Health Benefit Exchange Act.¹⁰ Ultimately, Governor Christie vetoed the bill, but the advocates' policy expertise, effective public education and media outreach yielded a well-educated legislature and public better able to understand the issues at stake in creating an Exchange.

In early 2012, the New Jersey For Health Care Coalition developed a proactive plan to advance Exchange legislation. Coalition members identified champions in both chambers of the legislature, began to educate them about the need for a consumer-friendly Exchange in New Jersey, and promoted the coalition's principles on Exchanges.¹¹ Advocates provided legislators with data and analyses of different Exchange governance models and best practices from other states. As a result of constructive dialogue between advocates and policymakers, two Exchange bills supported by advocates were introduced and passed, one in the Senate and one in the House. These bills had strong active purchasing language, conflict of interest policies and guarantees for community groups to be part of the Navigator program. Ultimately, the two bills were combined into the New Jersey Health Benefit Exchange Act that went to Governor Christie for signature.

The coalition also carried out a 12-month field plan to build public support. This included regular e-updates to grassroots supporters, door-to-door field canvassing, and public forums and presentations.¹² After a series of public meetings, the coalition pulled together more than 1,000 signatures supporting the New Jersey Exchange. Eight hundred supporters called on Governor Christie to sign the New Jersey Health Benefit Exchange Act. According to a survey conducted by AARP in early 2012, three in five registered New Jersey voters believed the state should pass the Exchange legislation.¹³

As advocates faced Governor Christie's potential veto, the coalition organized an aggressive media campaign across the state to garner additional support to pressure Governor Christie to act in favor of New Jersey consumers' interests. Press conferences featured small business owners and part-time teachers who couldn't afford private insurance.¹⁴ Advocates pitched stories to various media outlets. Approximately 15 letters to the editor, op-eds and blogs were posted online and appeared in major

state media outlets. Advocates highlighted more than 100 compelling consumer stories from Citizen Action's Consumer Health Helpline about how low- and moderate-income individuals would be helped by the Exchange.

Although the New Jersey Health Benefit Exchange Act was ultimately vetoed by Governor Christie, advocates successfully established a strong base of support from individuals and small businesses, and created constructive dialogue with policymakers and members of the media on consumer interests on the Exchange. These successes are the foundation for future advocacy on creating a New Jersey Exchange.

Ready! Advocates Are Continuing to Move Forward

With open enrollment in Exchanges beginning in October 2013 and full implementation in January 2014, policymakers have enormous tasks ahead of them to build Exchanges. But to create successful Exchanges that truly work for consumers, advocates need to be at the table to make Exchange design decisions.

The examples in this paper highlight the impact of well-organized and knowledgeable state advocates in shaping consumer-oriented Exchanges, even in difficult environments. While it is likely too late for some states to establish state-based Exchanges for 2014, advocates' work to ensure a strong consumer focus has built a foundation for Exchanges of all kinds moving forward. The relationships built by advocates during the 2012 legislative session will be crucial to future policy work. There are future opportunities to ensure consumer voices are represented effectively in federally-facilitated and partnership Exchanges and in transitions to state-based Exchanges in subsequent years. Advocacy efforts in 2012 made a key difference, providing lessons across the nation, laying the groundwork for the future, and moving ACA implementation forward.

¹ Governor's Press Office (April 2012). Governor Cuomo Issues Executive Order Establishing Statewide Health Exchange. <http://www.governor.ny.gov/press/04122012-EO-42>

² Health Care For All New York (January 2010). Five Standards For The New York State Insurance Exchange. http://hcfany.files.wordpress.com/2010/01/hcfany-standards-for-the-ny-state-insurance-exchange_final_v21.pdf

³ Health Care For All New York (March 2012). Action Alert: Sounds like someone needs some encouragement! <http://hcfany.org/2012/03/16/action-alert-sounds-like-someone-needs-some-encouragement/>

⁴ Alabama Department of Insurance (December 2011). Alabama Health Insurance Exchange Study Commission Recommendations <http://www.aldoi.gov/PDF/Consumers/StakeholderReport.pdf>

⁵ Countdown to Coverage. The Affordable Care Act is helping LGBT People get the health care we need. <http://countdowntocoverage.org/storage/countdown-resources/CtC%20checklist%20-%20Affordable%20Prevention%20Care%20-%20FINAL.pdf>

⁶ Asian Service in Action, Inc. Ohio (January 2012). ACA & Exchange Facts Sheet. <http://www.asiainc-ohio.org/resources/health-care-health-policy/>

⁷ Ohio Consumers for Health Coverage (March 2012). Ohio Consumers for Health Coverage Response to the Milliman Report on Planning a Health Exchange. http://ohioconsumersforhealth.org/files/Mlliman%20response%203-13-12-FINAL_1.pdf

⁸ Catherine Candisky (March 2012). Advocates Say Taylor Misuses Data To Attack Obama Health-Care Law. *The Columbus Dispatch*. <http://www.dispatch.com/content/stories/local/2012/03/14/advocates-say-state-official-misuses-data-to-attack-health-care-plan.html>

⁹ Carrie Ghose (March 2012). Health-Reform Backers Question Cost Assumptions Holding Ohio Back. *Business First*. <http://www.bizjournals.com/columbus/blog/2012/03/health-reform-backers-question-cost.html>

¹⁰ As of this writing, the New Jersey Assembly sent another version of Exchange legislation to Governor Christie, who has said he will wait until after the November 6 election to make a decision. http://www.philly.com/philly/news/20121019_Christie_faces_decision_on_health-care_exchange.html

¹¹ New Jersey For Health Care. Principles for Establishing a Pro-Consumer NJ Health Insurance Exchange. <http://www.acnj.org/admin.asp?uri=2081&action=15&di=2044&ext=pdf&view=yes>

¹² Vanessa Roman (September 2011). Taking the First Steps toward a New Jersey Health Exchange. *NJ Spotlight*. <http://njcitizenaction.org/news/hc410.html>

¹³ AARP (2012). 2012 AARP Survey of New Jersey Survey Registered Voters Ages 18-84 on the Development of a State Health Insurance Exchange. http://www.aarp.org/content/dam/aarp/research/surveys_statistics/general/2012/2012-AARP-Survey-of-New-Jersey-Registered-Voters-Ages-18-64-on-the-Development-of-a-State-Health-Insurance-Exchange-AARP.pdf

¹⁴ New Jersey News Room (May, 2012). Call for Gov. Christie to sign the NJ Health Benefit Exchange Act. <http://www.newjerseynewsroom.com/state/call-for-gov-christie-to-sign-the-nj-health-benefit-exchange-act-by-small-business-owners-consumers>