



**Recommendations Regarding the  
Design and Development of the New York State SHOP Exchange  
and its Potential to Serve New York State's Small Businesses**

**Vincent C. Ashton  
Executive Director, HealthPass New York**

**Submitted before a Public Forum on the  
Establishment of a Health Insurance Exchange in New York State**

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Honorable Officials of New York State:

On behalf of HealthPass New York (HealthPass), thank you for the opportunity to submit these comments to New York State as it addresses the many challenges implicit in the design and implementation of the state's health insurance exchanges.

The purpose of this statement is to provide observations and recommendations for the design and development of a viable and successful New York State Small Business Health Options Program (SHOP) Exchange that effectively serves the state's small businesses while also contributing to the state's broader economic development strategy. These recommendations are informed by over 11 years of experience operating as an independent, commercial health insurance exchange.

**ABOUT HEALTHPASS NEW YORK**

HealthPass New York (HealthPass) is an independent, not-for-profit commercial health insurance exchange offering small businesses and sole proprietors in the New York City metropolitan area quality, affordable, and flexible health care coverage. The Commonwealth Fund, a health policy research foundation, cites HealthPass as one of no more than a dozen health benefit exchanges that are currently functioning across the country. Since 1999, the HealthPass choice model has empowered employees of small businesses to choose comprehensive health care coverage that fits their unique medical needs and budget. These employees are able to choose from more than 20 different benefit options from four leading carriers including two dental plans and a bundled security product.

One of the only a handful of successful small business exchanges still in operation today, HealthPass' dual missions are to help stem the tide of the working uninsured and enhance access to health care for small businesses. Illustrating the power that a SHOP Exchange can have in expanding health care coverage, nearly half of the small businesses enrolled in HealthPass did not offer their employees health care coverage prior to joining HealthPass. And more than a quarter of employees participating in HealthPass were uninsured prior to their employer offering coverage through HealthPass.

**BACKGROUND**

The SHOP Exchanges mandated by the Patient Protection and Affordable Care Act (PPACA) represent a once-in-a-lifetime opportunity to bring order, simplicity and value-based products to at least a portion of New York State's (NYS) dysfunctional small group market. If designed correctly, the NYS

SHOP Exchange can allow significantly more small businesses to provide health benefits to their employees in new, more efficient ways that better serve the needs of small business employers and their employees.

The promise of a SHOP Exchange certainly extends beyond strengthening local and state health insurance markets. In addition to providing small businesses with a flexible health care arrangement and the ability to offer employees choice among competing options, a SHOP Exchange can be designed to help small businesses devote more time to achieving their business goals rather than navigating the complex health care system. In that same vein, a small business-centric NYS SHOP Exchange can strengthen the ability of the small business community to help return the NYS economy to a period of growth and prosperity. **By serving an economic development function, it can help to make NYS an attractive place to start, relocate or operate a small business while also making small businesses “employers of choice”, thus generating new and better jobs in companies that redistribute their revenue throughout their local economies.**

The missions of such a NYS SHOP Exchange would be twofold; first, to identify and enroll as many small businesses not currently offering health benefits to their employees as possible. Second, it would compete aggressively in the commercial market so that small businesses currently offering health benefits can offer higher value choices to their employees while reducing the time and effort it takes to do so. As noted above, HealthPass has been remarkably successful at expanding access to health care for thousands of small businesses, their employees and dependents. SHOP Exchanges, as outlined in PPACA, are expected to realize similar results, but on a decidedly larger basis. According to a RAND Corporation report that modeled the effects of health insurance exchanges on the nation’s health care system, 31 million covered lives, associated with 2.9 million small businesses, are expected to obtain health care coverage through SHOP Exchanges. Of those 2.9 million employers, 1.0 million will not have previously offered health care coverage to their workforce.<sup>1</sup> And our rough calculations project that up to 1.2 million New Yorkers may access quality and affordable health care coverage through the NYS SHOP Exchange.

Significant enrollment through the NYS SHOP Exchange will have far-reaching implications for both the state’s health insurance markets as well as for small businesses. Most notably, it will provide participating small businesses with a better return on their health benefits investment. Moreover, it will likely help balance the risk profile within the SHOP Exchange, making participation more attractive to health insurance carriers and mitigating premium increases for small businesses both inside and outside the SHOP Exchange.

Before addressing the specific questions posed for this public forum, we would like to establish some historical context for this discussion. Exchange-like entities are not new. Since the 1980’s, various models to improve dysfunctional small group health insurance markets throughout the country have been tested. Three-Pay models (whereby small group premiums were reduced by direct premium subsidies from state and local governments in addition to employer and, sometimes, employee contributions) were tested in many states. Innovative premium reduction models, such as Healthy New York and its reinsurance corridor, have been tested many times as well. Health Purchasing Cooperatives, such as HealthPass and the successful Connecticut Business & Industry Association’s

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<sup>1</sup> Eibner C, Girosi F, Price CC, Cordova A, Hussey PS, Beckman A, McGlynn EA. (2010). *Establishing State Health Insurance Exchanges: Implications for Health Insurance Enrollment, Spending, and Small Businesses*. Washington, DC: RAND Corporation

(CBIA) Health Connections program have attempted to pool small business' purchasing power in the same manner proposed by Exchange proponents.

These are only a few examples of the experimentation that has spanned three decades. And the simple facts are:

- ◆ Many of these Exchange-like initiatives have *failed*. Overwhelmingly, they have fallen victim to the adverse selection/premium inflation "death spiral". With the best of intentions, these initiatives have been designed to attract the populations most in need of assistance – uninsured workers with expensive health needs. This bad risk drives up premiums, making the initiative unattractive to healthier workers while more sick people are enrolled, driving premiums higher and higher until no one can afford them.
- ◆ The few successful Exchange-like small group initiatives all share one thing in common: they are free-standing organizations that are either mission-driven not-for-profit entities themselves or a revenue-generating entity associated with a not-for-profit parent organization. They are all agile and flexible enough to adjust to changing market dynamics. This agility and flexibility allows them to compete aggressively in the commercial market to provide coverage to healthy business in order to offset the bad risk that must be served by the same entity.

History shows us that developing Exchange-like entities is an extremely risky, but necessary enterprise. This would suggest that the NYS SHOP Exchange be initially designed like most new businesses: first and foremost to *succeed* on a limited basis, and then as the enterprise grows stronger and more stable, to leverage that success into the ability to accomplish broader, more ambitious goals.

One additional contextual observation is that Exchanges must offer affordable products in order to succeed. In the small group market, the cost of health benefits has two components: 1) premiums, and 2) the cost of administering these benefits – in dollars and, an equally valuable commodity to small business owners, *time*. Initially, with literally no enrollment (leverage), it will be difficult to negotiate significantly lower premiums in the face of annual double-digit inflation in the underlying cost of the delivery of health care. However, as you will see, the Exchanges, if designed to function as the health benefit manager for the small businesses they serve, can significantly cut the cost (in dollars and time) of administering these benefits while at the same time providing similar benefits and services to those now only provided by much larger employers: employee choice, excellent customer service, and access to a robust set of ancillary services and products at no additional cost.

#### **RESPONSES TO SPECIFIC QUESTIONS POSED FOR THIS PUBLIC FORUM**

The following recommendations are related to the broader public policy and Exchange design questions that are being asked at today's public forum:

##### ◆ **One NYS Exchange or two separate Exchanges (individual and small business)?**

In terms of policy, regulation, infrastructure, operating, business and member services practices and statewide coordination, we agree with the recommendation that there be a single NYS Health Benefits Exchange. However, given the significant differences in the outreach, consumer education, marketing and distribution between the individual and small group markets, these operations need to be separate, distinct and regionally administered. Moreover, since we anticipate frequent

movement of individuals between the Medicaid, commercial individual and group products, they should be co-located and each should be able to enroll qualified individuals or groups into any product offered by either Exchange or in public health insurance options for which they may qualify.

● **Governance: State Agency, Public Authority or Not-for-Profit?**

Discussion of this issue does not have to be framed in a zero-sum context. It makes sense to house the main NYS Exchange entity in a Public Authority that will set policy and design and manage infrastructure. It will ensure that the entire Exchange shares the same set of basic operating, business and member service practices. This will ensure that the same set of services, executed at the same level of quality, are provided to both individuals and small businesses regardless of where they are served.

However, we are concerned about adding yet another regulator to both markets. The Departments of Health and Insurance already bear regulatory responsibility for these markets. Introducing a third, independent regulator invites contradictory regulation undermining efficient market functioning. We recommend that the regulatory responsibilities of the Exchange be assigned to the New York State Department now regulating related issues in the individual (primarily DOH) and small group markets (primarily DOI).

Furthermore, as we noted earlier, the only Exchange-like entities to successfully operate in the small group market have been and continue to be agile and flexible independent, not-for-profits that compete aggressively in the commercial marketplace. Based on that history, we recommend that outreach, consumer education, marketing and distribution functions of the SHOP Exchange are assigned to a single not-for-profit entity that will implement, manage and coordinate the activities of regional efforts. In order to be successful in the marketplace, this entity will have to be an equal partner with the larger Public Authority and the entity(ies) assigned regulatory authority over the individual and small group markets when negotiating product offerings and other issues that will determine its viability in the commercial marketplace.

We are concerned that certain advocacy groups, citing “conflict of interest concerns” are attempting to keep key stakeholders (anyone with a commercial interest in the matters at hand) off of the Board that would govern the Exchange Public Authority. All parties in this discussion are conflicted in that their interests potentially undermine the interests of the other parties. We do not see how such an Authority could make viable decisions based only on the input from people with little or no experience in the markets they will impact. Success will come from the difficult task of achieving consensus among the various parties with diverse interests. This issue becomes crucial if the most challenging design decisions are going to be addressed after the initial Exchange legislation is passed. If the Exchange is given a voice in that discussion, that voice must represent consensus between all the stakeholders in the Exchange initiative.

● **Combining the Markets & Small Group Definition**

Finally, the issue of expanding the small group market to include employers with up to 100 employees prior to 2016 (when they are mandated), seems to us to be a straight-forward, actuarially-driven decision. The NYS individual market serves only a fraction of the intended market and needs immediate repair. We need to remain cognizant of the fact that every percent that premiums rise in the small group market results in the loss of benefits for thousands of employees of small business throughout the state. Solving the problems of the individual market by exacerbating the problems of the small group market makes little sense to us. We urge New York State to

commission a neutral entity to model the likely premium impact of combining the three market segments (individuals, small groups [2-50] and larger small groups [51-99]). If such market consolidation can be done without producing significant disenrollment or premium elevation in any of the other market segments, it certainly makes sense. Trading enrollment in one area with disenrollment in another area does not.

◆ **Allow the SHOP Exchange to Offer Robust Choice of Coverage Offerings but Enable Consumers to Make Informed Decisions Using a Variety of Robust Filtering & Decision-Support Tools**

Simplifying the complex health insurance market is a must for any Exchange. Achieving this important dynamic, though, requires striking the right balance between offering a cumbersome number of benefit plans while making available a selection of options that small businesses and their employees demand and in which they will enroll. A workable approach is one that offers a robust and diverse (but not duplicative) set of options – both public and commercial – that accommodates the various purchasing styles that employers and employees utilize in obtaining health insurance. This strategy also has the important effect of appealing to a large number of potential small business customers.

Equally important is the ability for the SHOP Exchange to offer employees and their families the tools needed to shop for and ultimately select health care coverage that fits their unique needs and budget. A variety of filtering tools on the SHOP Exchange's web portal could easily facilitate this process. These include, for instance, an "Express Lane" filter option designed specifically for the market cohort that requires market simplification. After asking consumers to answer a limited number of easy questions, the Express Lane could show a very small subset (e.g., four to six) of relevant products. A second filter option, after having the consumer complete a health risk assessment, could display coverage options (e.g., value-based insurance designs targeted toward patients with certain conditions) that are tailored to serve individuals with certain health risks or needs. A third possible filter option could be similar to the experience one has when visiting websites such as Expedia when shopping for airline tickets. This approach would allow more sophisticated consumers to have direct access to all available choices, using a powerful filtering tool to winnow down the options. Other filters could be designed to meet the needs of specific ethnic or religious groups, or any other significant consumer community identified by the SHOP Exchange.

A theme that is central to successfully expanding coverage under the reconfigured marketplace under PPACA is full compliance with the "no wrong door" policy. Given the large number of individuals who are expected to migrate back and forth between the individual Exchange and the Small Business Exchange (some estimates run as high as 50% of the participants in the individual Exchange), we believe that all enrollment partners of both Exchanges must be trained to enroll eligible and willing individuals in all products offered by both Exchanges.

**ADDITIONAL RECOMMENDATIONS FOR AN EFFECTIVE AND SUSTAINABLE NYS SHOP EXCHANGE**

In general, our comments and recommendations will focus on our area of expertise, the SHOP Exchange for small business.

In short, our recommendations for the SHOP Exchange are as follows:

- ◆ Design the SHOP Exchange as a selective contractor.
- ◆ Provide choice to both employers & employees.

- Allow and encourage a defined contribution mechanism.
- Use the SHOP Exchange as a mechanism to relieve small businesses of the burden of administering health benefits.
- Include brokers, agents, Chambers of Commerce and other local “points of contact” with the small business community.

### ***Design the SHOP Exchange as a Selective Contractor***

Considerable debate has taken place about the purchasing role of the state’s Exchange(s). Questions and uncertainties abound as to whether the Exchange(s) should be designed as an active purchaser that negotiates rates with health insurance carriers, a market-organizing selective contractor that represents a microcosm of the marketplace outside the Exchange, or a clearinghouse that sells any plan that meets the criteria to be designated as a qualified health plan under PPACA.

We recommend the middle ground; that the NYS SHOP Exchange be designed as a selective contractor that offers a broad, but not overwhelming, non-duplicative selection of health plans that represent a microcosm of high-value plans available in the commercial market outside of the Exchange.

### ***Provide Choice to Both Employers and Employees***

The current small group health insurance model prohibits employees from having a say in what is a very personal and unique decision – their health care coverage. In fact, four out of five small businesses offer their employees only one plan option.<sup>2</sup> Today employees’ premium contributions are often larger than their employers’ contribution, so it is only natural that the choice of coverage is made by the largest investor.

A component central to the attractiveness and success of a SHOP Exchange is employee choice at the point of enrollment. The health reform law is explicit in allowing employees choice of coverage plan, but contemplates limiting their choice to a coverage tier (i.e., the bronze, silver, gold, and platinum “precious metal” tiers) selected by the employer. This method of coverage selection was incorporated into the statute out of adverse risk selection concerns. However, these apprehensions are likely to be significantly mitigated, if not completely offset, because of New York State’s community rating scheme as well as the risk adjustment mandated by PPACA. Although other small business Exchanges have failed primarily due to prevailing adverse risk selection dynamics, HealthPass has not fallen victim to this common trend in part because of the level playing field inherent in our state’s system of community rating. Thus, employees enrolled in HealthPass are fully able to select from whichever coverage option they wish without the full menu of options being narrowed by their employer. Conversely, certain segments of the population prefer to rely on the wisdom and expertise of their employer and are therefore perfectly content to enroll in the coverage option selected by their employer sponsor.

For these reasons, we recommend that the NYS SHOP Exchange provide choice of coverage to both employers and employees. In this scheme, employers could have the option of choosing a single plan for all employees, as has always been the case. Or, alternatively, employers could allow their employees to choose from either a single precious metal tier, a limited set of products across all metal tiers, or from all products in all four metal tiers. Should an employee choose to rely on the

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<sup>2</sup> Kaiser Family Foundation. (2010). *Employer Health Benefits 2010 Annual Survey*. Menlo Park, CA: Kaiser Family Foundation.

wisdom and expertise of their employer, he/she would be automatically enrolled in a plan option designated as the default plan by their employer, if they choose not to indicate a personal choice.

### ***Defined Contribution Mechanism***

Employer contributions to health insurance premiums that are based on a percentage of premium in a choice-based SHOP Exchange model creates a level of financial uncertainty that is not conducive to planning and setting a yearly operating budget. We recommend that the NYS SHOP Exchange allow and recommend, but not require, participating small business to contribute a defined flat-dollar amount toward their employees' premium, shielding employers from unpredictable premium hikes. This approach clearly enables employers to more effectively set a benefits budget for the year while still allowing employees to pay the difference in premium of a selected plan whose cost is higher than the employer's contribution with pre-tax salary dollars using a Section 125 premium-only plan.

### ***Relieving Small Businesses of the Burden of Administering Health Benefits***

Unlike large employers, small businesses typically lack a human resources department dedicated to administering the variety of functions associated with offering health benefits. Besides providing employees with a choice of plan options, one of the most powerful features of a SHOP Exchange is its ability to significantly reduce a small business' administrative and time burden invested in health benefits. HealthPass' small businesses frequently cite this feature as one of the reasons for their continued participation in this type of arrangement. As mentioned above, this model frees up small businesses to focus more energy, time, and resources on achieving their business goals rather than on administering health benefits.

The administrative functions crucial to providing small businesses with a seamless, high quality experience include:

- ◆ **One billing invoice** per employer group per month payable by a single check or electronic funds transfer (EFT) so as to avoid unnecessary paperwork and administrative confusion.
- ◆ **Premium aggregation** that collects one premium payment from the employer each month and remits the payment and enrollment information directly to each health insurer with which the employees are enrolled.
- ◆ **COBRA/NYS Continuation coverage** administered directly to the former employee instead of the employer.
- ◆ **Robust member services** that assist with any coverage, claims, enrollment, renewal, or other concerns.
- ◆ **Advocacy services** that assist employees and their families with any disputed claims, coverage, or cost issues and are available without additional charge or fees.
- ◆ **Pre-tax employee premium contributions** administered through a Section 125 plan
- ◆ **Access to ancillary benefits** (e.g., dental, life, AD&D, LTD, etc.) which provide better coverage for enrolled employees as well as additional revenue for the SHOP Exchange, contributing to its sustainability.

### ***Involve Brokers, Agents, Chambers of Commerce and other local "points of contact" with the small business community***

Rapid and robust enrollment into both the American Health Benefits Exchange (AHBE) for individuals and the SHOP Exchange is a key element to building risk pools large and diverse enough for sustained



operation.<sup>3</sup> As small businesses' trusted advisers, licensed, independent health insurance brokers and agents, Chambers of Commerce and other local points of contacts play a major role in today's marketplace. For decades, their value in the marketplace has been realized in the ongoing personalized support, education, and service they provide to their small business clients from sign-up to renewal. Since the establishment of HealthPass in 1999, brokers and agents have been a crucial component to educating small businesses regarding the merits of its model and driving its significant enrollment. It is imperative that these important local assets, along with others that have developed enduring relationships with small businesses, be engaged as important partners as they are likely to play a major role in educating small businesses about the NYS SHOP Exchange, how it may benefit them in both the short- and long-term, and their role in interfacing with the SHOP Exchange. As such, we recommend that the NYS SHOP Exchange make a concerted effort to actively include and partner with all such local assets as they engage the local markets through regional outreach efforts.

To incentivize enrollment in all health insurance programs – whether public or private – we also recommend that brokers/agents and navigators be subject to the same licensing, education, and certification requirements.

### ***Other Important Considerations***

Regardless of whether there is a single NYS Exchange fulfilling the responsibilities of both the AHBE and SHOP Exchanges or two separate Exchanges, we recommend that:

- They share a common information technology (IT) structure and common set of business practices,
- The regulatory functions related to the NYS SHOP Exchange be retained by the State Insurance Department (SID), which already regulates the small group market,
- The NYS SHOP Exchange consumer education, outreach, marketing and distribution functions be performed by an independent not-for-profit small and agile enough to respond to ever-changing market demands and dynamics, and
- Regional distribution entities customize consumer education, outreach, marketing and distribution functions to meet the needs of their local markets and to leverage all existing resources and assets, including Chambers of Commerce and licensed brokers and agents.

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The SHOP exchange mandated under the federal health reform law represents a truly once-in-a-lifetime opportunity to bring order, simplicity and value-based products to at least a portion of New York State's dysfunctional and unsustainable small group health insurance market. Building an efficient, sustainable, and vigorous SHOP Exchange holds great promise not only in reorganizing a sizeable portion of the state's health insurance and health care systems, but also in greatly contributing to the state's overall economic development strategy. Designing the SHOP Exchange outreach capacity to be a robust, nimble and competitive entity in the marketplace is a key component to attracting small businesses that, in today's marketplace, continue to struggle to offer their workers a benefit that is critical to recruiting and retaining quality, long-tenured employees.

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<sup>3</sup> Alain Enthoven – who devised and refined the Exchange concept – along with a number of colleagues, contends that the amount of Exchange enrollment needed to ensure that its risk pools are diverse enough for long-term viability is at least 100,000 covered lives and between 20% and 25% of the non-Medicare/non-Medicaid population. See Enthoven A, Kramer WE, Reimer DR, Minarak JJ. (2009). *Making Exchanges Work in Health-Care Reform*. Washington, DC: Committee for Economic Development.

Thank you again for providing this opportunity to weigh in on the state's efforts to design, implement, and sustain a health insurance Exchange that is both best in its class and a vehicle effectively serving the needs of its constituents. This deliberative process is an important and necessary step in advancing the transformation of our state's health insurance system from one that covers far too few individuals and small businesses into one that delivers high-value coverage for as many as possible.

We hope that our comments provide some insight into the factors that will ensure a successful SHOP Exchange and stand ready to work with you and your staff as legislation and other important operational and policy decisions are formulated and implemented.

Please do not hesitate to contact me at 212.252.8010 if you have any further questions or would like to discuss our comments in greater detail.

Sincerely,

Vincent C. Ashton  
Executive Director