



# Empire Justice Center

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***New York State Public Forum:***  
**The Establishment of a Health Insurance  
Exchange in New York State**

**May 19, 2011  
Rochester, NY**

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## **Introduction**

Thank you for the opportunity to provide testimony today on the design of New York's Health Insurance Exchange (the Exchange). My name is Trilby de Jung and I am the Senior Health Law Attorney for the Empire Justice Center.

Empire Justice is a statewide back-up center for legal services organizations across the state. We engage in policy research and analysis, legislative and administrative advocacy, and when circumstances demand it, class action litigation on behalf of low income New Yorkers. Our advocates focus on Health and Medicaid, public benefits (cash assistance, child care, food stamps and child support issues), Supplemental Security Income (SSI) and Social Security Disability (SSD) benefits, education and special education, housing, immigration, consumer law, domestic violence and civil rights. We have offices in Albany, Rochester, White Plains and Central Islip (Long Island).

Empire Justice Center serves on the policy committee of Health Care for All New Yorkers (HCFANY) and the steering committee of Medicaid Matters New York (MMNY).

On behalf of all the low-income New Yorkers we represent, we urge immediate legislative action in order to capitalize on federal funding opportunities and lay the framework for a strong, consumer-friendly Exchange where everyone can get affordable, high quality health care coverage.

## **Create a Government-run Exchange**

New York has already been awarded Level I funding from the federal government to begin the work required to establish its Exchange. Although we are currently eligible for another short term grant, in order to apply for Level II funding which would extend over the next five years, we must pass Exchange legislation. Given the uncertainties that surround federal health care reform funding at the national level, we must act quickly to in order to guarantee the longer term funding. We urge policy makers to engage with legislators immediately to work out the basic framework for creating an Exchange Authority for New York, this legislative session.

We believe the Exchange should be a governmental entity in order to provide governmental accountability and transparency. If a public authority is selected because of its ability to achieve flexibility in procurement and avoid conflict of interest, we would urge a Board governance model in which consumers are well represented. The Board should reflect diversity of expertise and the gender, racial and ethnic diversity of the State. No Board members with a conflict of interest should be allowed – including financial interest, affiliation with a carrier, producer or managed care organization. An

Advisory Committee could be constituted to provide input from stakeholders who would otherwise be precluded from service because of conflicts of interest.

### **One Exchange for all New Yorkers**

We believe there should be one statewide Exchange for all New Yorkers with the capacity for regional variation in pricing and consumer outreach. The functions that will be required of the Exchange are complex, and New York cannot afford to create duplication or inconsistency among regional Exchanges.

Under federal law, Exchanges must function as portals for enrolling in health coverage, both public programs and private products, made affordable through subsidies in the form of tax credits and cost-sharing reductions. Consumers will need to be able to explore the health insurance and other options available to them and apply online for the full range of benefits using a single online application. The system must be integrated with federal and state verification and eligibility systems, and must be capable of issuing eligibility determinations and coverage notifications and renewals.

Consumers eligible for subsidies will depend on the Exchange for appealing denials and recoupment actions based on the tax credits and cost-sharing reductions. Consumers eligible for public programs will likewise need access to appeals and fair hearings for denials and reductions in their benefits. Communications issued to consumers from the Exchange will need to explain complex options and determinations in simple and culturally accessible language.

In order to support all of these functions, New York's Exchange must house complex rules engines and technologies that can support a multi-layered process for accessing health care coverage. We have seen in the Medicaid program what happens when 58 different districts are saddled with administering a complex eligibility system. We must avoid that kind of local burden going forward. Many, if not most, districts are operating the program with error rates and delays in violation of federal law. We must ensure efficiency in the system and consistency for consumers by designing one Exchange with the capacity for regional variation in pricing and localized consumer outreach and assistance.

### **Active Purchasing and Combined Markets to Maximize Affordability**

We believe both individuals and small businesses should use the same Exchange, in order to maximize the size and benefits of the Exchange in terms of efficiency, spreading risk, maximizing bargaining power and gathering data.

To ensure that coverage is affordable for all, we support merging the individual and small group markets. The individual mandate in federal health care reform will introduce healthier subscribers into the individual market and increase its size. We also support increasing the size of small businesses eligible to use the exchange to 100 employees, which would increase the size of the small group market significantly. Although some fear that merging the markets will increase prices in the small group market, a study by the United Hospital Fund concluded that small group prices would only rise by 2%, while individual prices would decline by as much as 38% if New York were to merge the markets.<sup>1</sup>

The Exchange should also maximize value and consumer protections by assuming the role of active purchaser. This creates a critical opportunity to harness purchasing power for the individuals and small businesses that traditionally have had none.

Acting as an active purchaser also allows the state to keep the number of choices manageable for consumers, ensure quality coverage, and address health disparities. Implementing a single, statewide Exchange will make it easier to collect data that can be used to identify and address disparities. As an active purchaser, the Exchange can require that all interactions with consumers are conducted in a linguistically and culturally competent manner, and that consumers with disabilities are able to access all Exchange services and health care provider offices.

If we take the route that some suggest and merely enact the bare minimum regulations, we will fail to realize the potential benefit of the Exchange. While Utah has taken the minimum regulation approach, it is important to realize that the Utah Exchange covers only a few thousand lives, thus Utah never had the opportunity that New York has to bring down costs for its residents. New York should follow the lead of Massachusetts to maximize the benefits of the Exchange by merging markets and shaping the choices available to consumers.

### **Quality and Affordable Health Benefits**

Exchange legislation should address the need for quality and affordable benefit packages for all consumers. We urge the state to consider creating a Basic Health Plan, which has the potential to realize significant savings over current programs while significantly decreasing the coverage “cliff” for working families.

With regard to qualified health plans offering products within the Exchange, we urge policy makers to utilize federal requirements as a floor, not a ceiling and to apply the

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<sup>1</sup> United Hospital Fund, “*Merging the Markets: Combining New York’s Individual and Small Group Markets into Common Risk Pools*,” 2008.

same rules to plans outside the Exchange. Otherwise, plans outside the Exchange might use marketing strategies or product modifications to attract healthier consumers.

These are complex issues, deserving of study and input from New York's diverse stakeholders. Exchange legislation should provide placeholders for decisions regarding benefit packages and outline a process that will ensure adequate consumer involvement going forward.

### **Strong Consumer Assistance/Navigation Programs**

New York should establish an Office of Consumer Assistance within the Exchange to administer a robust Navigator and Consumer Assistance Program. While New York has 2.6 million uninsured people, only 1.2 million are expected to gain coverage through the Exchange.<sup>2</sup> Even this goal cannot be accomplished without the assistance of Navigators, who will perform the critical functions of outreach, education and facilitated enrollment. Consumer Assistance programs are also expected to be critically important in terms of advocating on behalf of applicants and new enrollees who experience barriers to accessing care.

Federal law requires state Exchanges to establish Navigator programs to coordinate with Consumer Assistance Programs to help individuals and small business make good coverage choices; streamline enrollment once a choice has been made; and trouble shoot coverage problems as they arise. New York will be able to build upon its existing enrollment and consumer assistance infrastructure to meet these requirements.

Within the next few months, the New York State Health Foundation will be releasing a report prepared by Empire Justice and the Community Service Society on the design of Navigator and Consumer Assistance Programs in New York. The report surveys existing services, compiles input from stakeholder meetings and conversations conducted across the state, and provides design recommendations.

The following recommendations received broad support from stakeholders and will emerge from the report:

- The Exchange should establish an Office of Consumer Assistance to administer the Navigator and Consumer Assistance Programs.
- The Exchange should select Navigators from a range of trusted entities with expertise in helping the targeted populations enroll in coverage.

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<sup>2</sup> New York State Health Foundation, "Implementing Federal Health Care Reform: A Roadmap for New York State," August 2010, p. 4.

- A significant number of Navigators must have the ability to communicate in a linguistically and culturally appropriate manner with vulnerable and hard-to-reach consumers throughout the state.
- The Exchange should also contract with a Consumer Assistance Program – skilled advocates able to handle a diversity of complex consumer assistance cases relating to both public and private coverage.
- The Consumer Assistance Program should collect data on access issues and report it to relevant government agencies and the public.
- Financing for Navigator and Consumer Assistance functions should be through a broad-based assessment on health and insurance entities inside and outside the Exchange, in order to avoid adverse incentives to purchasing coverage through the Exchange.

We look forward to discussing these recommendations for the design of Navigators/Consumer Assistance Programs in more detail and working with you to meet the daunting enrollment challenges presented by the Exchange.

Thank you once again for the opportunity to testify today. Please feel free to contact me at **585-295-5722** or [tdejung@empirejustice.org](mailto:tdejung@empirejustice.org) should you have any questions.