

New Mexico Health Insurance Exchange Work Group Minutes

Work Group	Legislative	Date	11/13/12
Facilitator	Milton Sanchez	Time	9:00 a.m. MT
Location	Conference Call/ In-Person	Scribe	Cicero Group

Agenda Item

Discussion Item

Conclusion

Action Item

Attendees			
No.	Name	No.	Name
1.	Milton Sanchez (<i>Human Services Department</i>)	7.	Senator Lopez
2.	Jonni Pool (<i>Human Services Department</i>)	8.	Mike Hely
3.	Kathryn Toone (<i>Leavitt Partners</i>)	9.	Dan Case (<i>Cicero Group</i>)
4.	Senator Munoz	10.	
5.	Senator Feldman	11.	
6.	Representative Taylor	12.	

Agenda Item 1: Introduction

Name: Milton Sanchez

DISCUSSION ITEM 1

Status Update and Approval of Prior Meeting Minutes

Mr. Sanchez opened the meeting and updated those present with a report, saying the Letter of Declaration was due November 16. The Exchange Blueprint document deadline had been extended to December 14, although New Mexico's document is already substantially completed.

Mr. Sanchez also advised the group that for those states forming a partnership Exchange with the federal government, the Blueprint deadline has been extended to February 15. He said the Memorandum of Understanding (MOU) with the Health Insurance Alliance (HIA) had been adopted and is awaiting signatures. The HIA board had also adopted a Conflict of Interest clause modeled on a Colorado document, modified for the New Mexico Exchange.

Mr. Hely asked whether the MOU covers the HIA/Exchange transition, and Mr. Sanchez indicated that it does. Mr. Hely then asked if the MOU contains provisions for qualifications for individuals and employers wishing to participate in the Exchange and the granting of exemptions. Mr. Sanchez explained that it does not, that it was a general document detailing Exchange conformity and board compliance with ACA requirements. He said the MOU entrusts the board with Exchange administration and adjudication. The MOU grants the HIA the authority to refine the scope of the HIA to fit Exchange requirements; however, regulatory authority will still lie with the DOI. He informed members he would distribute copies of the MOU as soon as it was signed.

Mr. Sanchez presented the prior minutes for group approval. Senator Feldman indicated she

would review the minutes as the discussion proceeds. She subsequently approved the minutes as presented. Mr. Sanchez stated that he would circulate the minutes to absent members before final approval.

Agenda Item 2: Legal Authority

Name: Mike Hely

DISCUSSION ITEM 1

Presentation by Mike Hely

Mr. Hely referred to correspondence previously sent to Amanda Crowley of the CCIIO, to which she had responded. In his letter he had asked Ms. Crowley the following questions, which she had answered in general terms.

- 1) In consideration of a Leavitt Partners' representative's statement before the Health and Human Services (HHS) Committee that the Individual Exchange may be delayed, Mr. Hely asked: *Would CCIIO approve a state's Blueprint if a state desired to only implement a Small Business Exchange and to delay the creation of an Individual Exchange?* CCIIO Response: States have to show they are making significant progress towards ACA compliance by January 1, 2013. Conditional approval will be granted if they can show they will be operational by October 1, 2013.
- 2) *If a state submitted a Blueprint that did not demonstrate ACA compliance, will the federal government step in at that point and establish a federal Exchange?* CCIIO Response: All legal and operational requirements must be in place for conditional approval to avoid the federal government stepping in and establishing a federal Exchange. Ms. Crowley did not specify a date by which legal and operational compliance must be met in order to avoid federal intervention.
- 3) *Will CCIIO approve a state's Blueprint if proper legal authority has not been established? Will state legislation (e.g., more than the Taylor v. Johnson precedent upon which New Mexico legal authority is presumed) be required to establish sufficient authority for a state to operate an Exchange?* CCIIO Response: If a state does not have proper legal authority at the time of submitting the blueprint, that state will have until October 1, 2013 to obtain authority. Ms. Crowley did not define the "legal authority" necessary to establish an Exchange.

Mr. Sanchez discussed a prior planning review held with CCIIO in which the Blueprint and the assumptions of legal authority were discussed upon which Exchange board governance will proceed. He said a letter from General Counsel that will formalize the legal authority of the board is forthcoming, and this letter will be forwarded with the Blueprint. He added later that the CCIIO had indicated this would be sufficient to establish legal authority.

Senator Feldman was concerned with the current makeup of the board, and Mr. Sanchez expressed confidence that the HIA board was moving towards compliance with ACA requirements. Senator

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Feldman asked whether there had been any new appointments to the HIA board. Based on a recent conversation with Mike Nuñez, Mr. Sanchez did not believe this to be the case although appointments were expected to be forthcoming. Senator Feldman discussed certain members of the board, and was concerned that the current composition, with its high ratio of members with an interest in the insurance industry, could potentially bring about a conflict of interest. Senator Feldman advocated for consumers and employers to be appointed to the board. Mr. Sanchez indicated this was an issue discussed at a recent board retreat.

Agenda Item 3: Conflict of Interest

Name: Milton Sanchez

DISCUSSION ITEM 1

Conflict of Interest and Usage of Colorado Clause

Mr. Sanchez referred to his circulation of an email containing the proposed policy on Conflict of Interest, and asked for feedback. He indicated that this proposed policy has been adopted by the HIA. Senator Feldman indicated she had not seen the email; but that a gentleman from Colorado had made a presentation to the HHS Committee on the Colorado Exchange, in which uncertainty had been expressed regarding that state's Exchange. She asked if there were any updates in this regard. Mr. Sanchez indicated he was not aware of the Colorado status.

Ms. Toone then advised that she believed Colorado was still actively moving forward with their Exchange as planned. Senator Feldman asked about the Colorado Exchange board composition. Ms. Toone's research indicated there were 12 board members with the following representation:

- Three government agency representatives (non-voting)
- Four insurance carrier or carrier partner representatives
- One consumer advocate representative
- One provider
- Three local business representatives (2 of which are healthcare-related businesses)

The question was asked whether the Colorado Exchange was considered a state-operated entity, and Ms. Toone described it as a non-profit, unincorporated public entity.

Upon enquiry from Senator Feldman, Mr. Sanchez explained the following relevant points from the Conflict of Interest document.

- Definition of *conflict of interest*: Performing an official act which may have a direct economic benefit on a business or undertaking in which a board member has a direct or substantial economic interest.
- The purchase of insurance through the New Mexico Health Insurance Exchange does not constitute a conflictive interest.
- Definition of *substantial interest*: An interest held by board member or committee member

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with board-delegated powers which is: 1) an ownership interest in a business; 2) a creditor's interest in an insolvent business; 3) an employment or prospective employment for which negotiations have begun; 4) an ownership interest in real or personal property; 5) a loan or any other debtor interest; or, 5) a position of director or officer in a business.

Senator Feldman asked whether at meetings with the HIA, there was any discussion as to whether the Advisory Task Force and Work Groups might continue to be involved in an advisory capacity. Mr. Sanchez indicated that this matter had been discussed, and that collaboration could feasibly continue, particularly with the Native American group and Advisory Task Force. Jane Wishner then informed the group regarding a comment she had offered at a recent HIA meeting, in which she had requested ongoing stakeholder advisory discussions, and said had received no response as yet.

Agenda Item 4: Preparation of Recommendations for Presentation to Task Force

Name: Milton Sanchez

DISCUSSION ITEM 1

Where Should Regulatory Authority Reside?

Mr. Sanchez advised the group that this was the last meeting of the Work Group, and that recommendations will be presented to the Task Force at its next meeting on November 28 at 8:30 a.m. at Plaza La Prensa, address to be forthcoming. He advised the members that they were welcome at this meeting, and mentioned the possibility of holding additional meetings prior to this date. He then solicited comments.

Senator Munoz asked for legislative appointments to the board, and Senator Feldman informed him that the opportunity for board members to be appointed by legislation had been closed, unless new legislation was introduced. Mr. Sanchez reiterated an awareness of board composition as out of compliance with ACA requirements, but repeated that efforts were being made to address this, and that the Governor is vested in filling the board appropriately to avoid any potential conflict of interest.

Mr. Hely explained, and Mr. Sanchez concurred, that the original board had been set up as a coalition of insurance executives selling product, which accounts for its current state of industry over-representation, but that efforts are being made towards compliance, and the board is awaiting appointments by the governor.

Representative Taylor pointed out other areas that need attention: defined contribution criteria, interface with Medicaid systems, IT challenges, etc. He explained the difficulties the board is having with unclear guidance and technological challenges. He expressed confidence that board composition will be addressed. Sen. Munoz reiterated the need for legislative oversight, and expressed concern with the lack of control inherent in not establishing this up front.

Mr. Sanchez asked if *ex officio*, non-voting legislative representation on the board would alleviate

these concerns, as changing actual board composition at this point would require legislation. Sen. Munoz responded that a non-voting position would not be optimal. Senator Feldman asked for a definition of current board composition by law, and this was reviewed by Mr. Sanchez. The board is comprised of 14 members, including 9 government appointees, as follows:

- 4 small business employers
- 4 small business employees
- 1 nonprofit
- 5 elected carrier directors
- Superintendent of Insurance serving as chair

In response to further questioning by Senator Feldman, consumer representation was described as possibly included among the employees, and small businesses might include healthcare professionals. Senator Feldman enquired as to Mr. Sanchez's use of the phrase *ex officio*, which she felt implied expanding or changing the composition of the board. He explained that as he understands it, the Plan of Operations or Bylaws could be modified to address this sort of change without legislative intervention. Senator Feldman asked if the board would be able to change its own composition by statute and Mr. Sanchez believed that it had the authority to do so, in order to become ACA compliant.

Rep. Taylor discussed the evolution of the HIA into the Exchange, and the transition of policy between the two. It was described as already a functioning Exchange in such aspects as marketing, billing, IT and services offered, although a few aspects need to be added or modified to constitute full conformity. Senator Feldman felt that the HIA may serve sufficiently as a SHOP Exchange, but that individual coverage and Medicaid interfaces comprise significant aspects of necessary development.

Rep. Taylor clarified that there is already individual coverage offered by the HIA, and that referrals to the Human Services Department (HSD) for Medicaid were already occurring. He expressed that the expected churn and the effect on risk pooling with the influx of enrollees in the Exchange transition, estimated at 50,000 individuals, were major concerns.

Mr. Sanchez gave the numbers of those groups and individuals currently served by HIA coverage as 2,679 small groups, and 1,573 individuals. He said the Request for Proposal (RFP) for IT services had been released and expects the HIA system will interact with Medicaid to determine if an individual is eligible for Medicaid and subsidies. He informed the group that the RFP for Project Management had also been released. Responses to RFP are due January 7, 2013.

It was pointed out that the Exchange will be used a tool to determine Medicaid eligibility only, and Medicaid will continue to be administered by the HSD and state Medicaid offices. Federal offices will interact with the Exchange, including Medicaid, the IRS and Homeland Security, to assist with

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processes such as ID and income verification. Mr. Sanchez explained that appeals would be handled by the Exchange, but verification of income, etc., would be conducted at the federal level. Mr. Hely then asked for specifics of the appeals process, and Mr. Sanchez responded that rules were not yet determined. Various aspects of Exchange development and other possible legislative measures were also discussed.

An additional Work Group member joined the meeting at this point and the proceedings were reviewed. Mr. Sanchez added that the letter from General Counsel referred to in Item #1 might be from the governor, the Human Services Department (HSD), or the agency (agency not specified). Senator Feldman and Senator Munoz were excused at this point.

CONCLUSION: SOLICITATION OF FORMAL RECOMMENDATIONS

Name: Milton Sanchez

Mr. Sanchez solicited final recommendations for the Advisory Task Force. Senator Lopez expressed dissatisfaction with beginning the Exchange with a lack of legislative oversight, and stressed the importance of sufficient outreach and education.

The Work Group members asked if the Exchange required more legislative funding, and Mr. Sanchez responded that it is intended to be self-sustaining without further funding. An attendee pointed out that the method of reimbursement for Navigators has yet to be determined, and various methods of reimbursement and recruitment were discussed. Various aspects of the Exchange were discussed, including the possibility of expansion of “small business” from 50 to 100. Ms. Nunez asked if the board might appoint a Medicaid Managed Care program representative to an advisory capacity. Mr. Sanchez indicated that there is current Medicaid representation within the Work Groups, and there is discussion of ongoing advisory input.

Mr. Sanchez asked the group for Advisory Task Force recommendations but none were forthcoming. The members were thanked and the meeting dismissed.