New Mexico's State-Based Marketplace: An Emerging Model

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The Supreme Court's ruling in *King v. Burwell* could have a significant impact on states. If the Court finds for the petitioners, states with Federally-Facilitated Marketplaces (FFMs) may have to adopt a new model that qualifies as a State-Based Marketplace (SBM) to maintain access to tax subsidies.[1] The loss of subsidies could significantly reverse coverage gains made under the Affordable Care Act (ACA), with nearly 6.4 million people at risk of losing subsidies and, as a result, an estimated average premium increase of 287 percent.[2] Assuming that such a ruling would allow tax subsidies to be available in SBM states using healthcare.gov, there are existing federal-state hybrid models that FFM states could adopt to protect these subsidies. One proposed model is New Mexico's exchange, which is a SBM proposing to run core exchange functions while using healthcare.gov from the Centers for Medicare and Medicaid Services (CMS) for individual enrollments. This model would allow states that declare their intent to establish a SBM to operate most core exchange functions while using the federal platform and, importantly, qualify as a SBM. In fact, Delaware, a State Partnership Marketplace (SPM), and Pennsylvania, a FFM state, submitted blueprints to CMS to potentially transition to such a SBM model pending the outcome of the Supreme Court case. On June 15, 2015, CMS conditionally approved both blueprints for operation in Plan Year 2016.[3]

BeWellnm

In March 2013, the New Mexico Health Insurance Act established the New Mexico Health Insurance Exchange, now known as beWellnm [4], a SBM for the state of New Mexico. New Mexico chose to implement only the SHOP technology for the first Open Enrollment (OE1) and utilize healthcare.gov to facilitate enrollments on the individual exchange while it built its own technology system. Recently, New Mexico proposed to continue using the healthcare.gov technology platform while operating an SBM.

This brief provides a detailed examination of New Mexico's proposed model including an analysis of the applicability of the model to FFM or SPM states, a breakdown of exchange responsibilities, and a comparison to other existing marketplace models.

Applicability of New Mexico's Proposed Lease Model to FFM and SPM States

The New Mexico model represents a prime opportunity for FFM and SPM states that want to transition to a SBM, as New Mexico has utilized the same technology platform used in the FFM and SPM states, healthcare.gov, since 2013, allowing for a more streamlined transition. However, questions of timeliness and cost are unknowns that states and CMS will need to address. BeWellnm asserts that its proposed model offers several benefits to states that want to transition to a SBM including:

The proposed model allows beWellnm to take advantage of economies of scale for user enhancements that healthcare.gov invests in for all states using the platform.

1. Economies of Scale: Cost savings due to utilization of the existing federal IT system versus building a technology solution

2. Local Outreach: As a SBM using the healthcare.gov technology solution, states can have an increased focus on targeted marketing, outreach, and enrollment efforts

3. Local Selection of Consumer Assistance Organizations: Increased focus on consumer assistance and authority to select organizations to provide consumer assistance

Economies of Scale

The proposed model allows beWellnm to take advantage of economies of scale for user enhancements that healthcare.gov invests in for all states using the platform. As a result, New Mexico expects to have a more predictable cost structure over time, as it will avoid paying for costly upgrades and statutorily required changes to its own system. Ultimately, leveraging the economies of scale and more predictable long-term costs may result in lower assessments on carriers, which supports the state's mission of expanding access to high-quality and affordable healthcare.

Local Outreach

Using the healthcare.gov functionality allows marketplace staff to focus on local outreach and education efforts. A June 2015 Health Affairs report, "The Impact of State Policies on ACA Applications and Enrollment Among Low-Income Adults in Arkansas, Kentucky, and Texas," conducted a study and found that application rates, effectuated enrollment, and consumer satisfaction were highest in examined states with more resources dedicated to targeted outreach and consumer

assistance.[5] Furthermore, the study reports "the strongest predictor of completing the application process was receiving help with enrollment from a navigator or application assister, which increased the probability of obtaining coverage by nearly 10 percentage points."[6] New Mexico's model allows exchange staff to expend time and resources on health literacy and outreach campaigns to target hard-to-reach uninsured populations, including Native Americans, Hispanics, and people living in rural or frontier areas.

Local Selection of Consumer Assistance Organizations

With an extensive network of nearly 250 local brokers in addition to enrollment counselors across the state, beWellnm is able to offer New Mexicans the tools and education that they need to select the right plan for themselves and their family. As a SBM, New Mexico selects the organizations that it feels can best provide enrollment assistance and has also decided to make agents and brokers the primary referral source for those looking for help with enrollment. As part of this plan, the exchange is also proposing to create its own state-specific training for agents, brokers, and Enrollment Counselors.

New Mexico's State-Based Marketplace Model

In March 2013, the New Mexico Health Insurance Act established the New Mexico Health Insurance Exchange, now known as beWellnm. New Mexico chose to implement only the SHOP technology for the first Open Enrollment (OE1) and utilize healthcare.gov to facilitate enrollments on the individual exchange while it built its own technology system with plans to launch for the second Open Enrollment (OE2). In the summer of 2014, beWellnm's board voted to continue using healthcare.gov for individual enrollments for OE2 to allow for additional system testing. By late 2014, CMS notified the state that its individual market system design was non-compliant, as it did not allow for a "single door design."[9] That is, consumers would be unable to complete one enrollment form to determine eligibility for all health insurance programs. When CMS denied additional funds to implement technology design changes, beWellnm's board voted to continue to use the healthcare.gov technology solution for OE3 while working closely with CMS on a long-term arrangement to operate a SBM.[10]

SBMs Using Healthcare.gov

Although the ACA originally envisioned the SBM model as a unique, stand-alone entity, new variations evolved out of necessity as states wanted to operate a SBM but not operate their own technology. The "State-Based Marketplace using the healthcare.gov platform,"[7] also frequently referred to as a Supported State-Based Marketplace, became a necessary hybrid solution. This model allows states to operate most core functions but use the federal technology platform for enrollment. The largest distinctions between this model and a SPM are:

1. The SBM model using healthcare.gov can determine its own financing and carrier assessment schedule whereas the SPM is subject to CMS's 3.5% carrier assessment and

2. The SBM model using healthcare.gov has documentation of the state's intent to operate as a SBM, such as enabling legislation or an executive order, whereas the SPM does not.

NM, NV, and OR have adopted variations of the SBM model using the healthcare.gov platform. PA, DE, and HI have declared their intent to pursue this model, as well, and CMS conditionally approved PA and DE's blueprints on June 15, 2015.[8] This model presents a possible opportunity for FFM and SPM states to protect subsidies in the event of a pro-*King* ruling as well as a model for states interested in transitioning to a SBM regardless of the case's outcome.

Proposing the New Mexico Model to CMS

In early 2015, beWellnm proposed to CMS that the state continue to operate its SBM while using the healthcare.gov technology platform for individual enrollment starting in 2017. New Mexico reports that it has received positive verbal feedback from CMS on this approach, to date.

One item still in question is how New Mexico would pay CMS for the use of healthcare.gov starting in 2017 for OE4 and beyond. CMS has verbally indicated that there would need to be a rule-making process with a public comment period to enact regulations that enable CMS to collect fees from states like New Mexico with a SBM that chooses to use the federal technology platform. The lease model will not be in effect in 2016 for OE3, but New Mexico reports that CMS has verbally noted that this model should be on track for implementation in 2017 (OE4). Ideally, the lease model would be ready in time for the release of beWellnm's issuer notices in 2016, prior to OE4. Therefore, it appears that the leasing model would not be ready for other states to implement in time for the upcoming OE3, if the Court rules in favor of *King*. That said, Nevada, Oregon, and New Mexico anticipate operating as SBMs using the healthcare.gov platform without making any payment to CMS for OE3.

Exchange Functions: Defining Responsibilities

New Mexico's proposed model includes the following details, clarifying state and federal roles for exchange functions. For a visual breakdown, see the graphic, "BeWellnm's Operating Framework: Defining Responsibilities," on page 6.

Governance

Under New Mexico's proposed model, the beWellnm board would remain the single source of authority for the exchange. The board would assess issuers and collect revenue to pay for exchange operations, including the federal technology platform to process individual enrollments. BeWellnm would also maintain authority to enter into memoranda of understanding and contracts with government agencies or private vendors of the exchange's choosing.

Managing Enrollment Data

New Mexico is working with CMS to gain access to CMS enrollment data to assist in outreach efforts. Specifically, New Mexico is looking for CMS to provide enhanced aggregate enrollment reports and individually identifiable requested data (e.g., names, enrollment location, household size). If CMS is amenable to sharing this data, New Mexico is currently planning to build a data reporting system to receive, disseminate, and utilize the data efficiently to conduct targeted outreach and maximize enrollment. The data reporting system requires that New Mexico build and comply with all CMS privacy and security standards for data usage and handling. New Mexico is planning proposals for this work in phases, and the costs are not yet known.

State Health Insurance Exchange Models Under the ACA

State Based Marketplaces The ACA anticipated two types of exchange models, SBMs and FFMs, the latter an option if states do not establish a SBM. [11] The statutory framework governing SBMs requires the state to develop and operate all aspects of the exchange. SBMs must satisfy the requirements in Section 1311 of the ACA[12] but enjoy broad flexibility to design the exchange to meet the needs of their unique populations. CMS has verbally indicated that one of the more important SBM requirements is documentation of a state's intent to operate a SBM, such as enabling legislation.

State Partnership Marketplaces As the ACA has unfolded, new models continue to emerge in response to states' needs. In January 2013, the Department of Health and Human Services (HHS) released guidance on a hybrid SPM model, which HHS viewed as a model states could use to transition from a FFM to a SBM.[13] In a SPM, the state operates plan management, consumer assistance, or both in the individual and small group markets. SPMs may choose to implement reinsurance and Medicaid/CHIP eligibility determinations or assessments or defer these responsibilities to the federal government. [14]

Although SPM states have authority over these exchange functions, CMS guidance notes, "HHS remains responsible for overall operation of the [SPM] and will review the activities of the state." For example, CMS approves qualified health plans (QHPs) for exchange eligibility and imposes a 3.5 percent premium assessment on insurers. There are currently six states that received CMS approval to implement a SPM: AR, DE, IA, IL, NH, and WV. [15]

Call Center

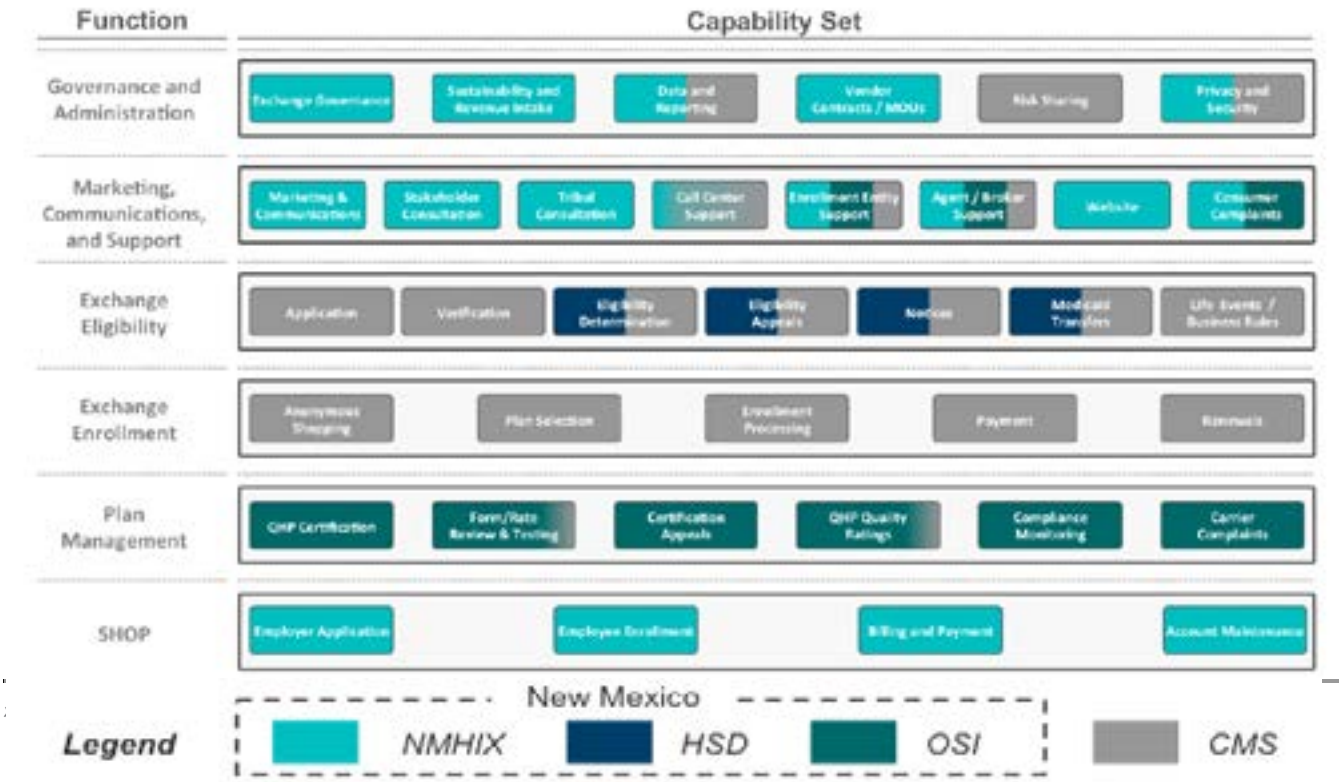
In the proposed model, New Mexico would continue to operate a local referral call center, which would assist consumers and make transfers to brokers and local enrollment entities. CMS would continue to manage the FFM call center and tailor it to the needs of New Mexicans including transfers to New Mexico's local referral call center. New Mexicans can call either the local referral call center or the healthcare.gov call center for assistance with individual enrollment.

Outreach and Enrollment Assistance

BeWellnm would continue implementing marketing and outreach activities including state-specific training for brokers, enrollment entities, and navigators. In addition, the marketplace would continue to operate a front-end consumer website. BeWellnm would select, train, and support grassroots organizations in the state to serve as enrollment counselors and navigators. Agents and brokers would continue to play a vital role in helping new enrollees and retaining existing customers. As the exchange will be running these functions, New Mexico proposes that CMS discontinue federal advertising in New Mexico (e.g. TV, radio, digital) as well as distribution of New Mexico-specific press releases, outreach activities, along with agent and broker training. New Mexico does propose to use training information from CMS to ensure that agents, brokers, and enrollment entities have the most up-to-date information on how to use healthcare.gov to support individual enrollments.

Eligibility and Enrollment

As is the case currently, when individuals in New Mexico apply for coverage through the proposed exchange model, healthcare.gov would conduct initial Medicaid eligibility assessments and calculate advanced premium tax credit (APTC) and cost-sharing reduction eligibility. The New Mexico Human Services Department would continue providing final determination for Medicaid eligibility. SPM states also have the option to conduct final Medicaid eligibility determinations, or they can defer this responsibility to the FFM.[16]



CMS would have authority over defining and implementing special enrollment periods. In addition, CMS would have complete responsibility for technical activities (e.g., providing consumers with shop and compare functionality, maintaining master enrollment records, reconciling enrollment records with carriers, sharing APTC with carriers via 820 files, providing consumers with payment instructions to pay net premiums, generating 1095 forms for consumers, conducting renewal paths for existing consumers) related to qualified health plan (QHP) enrollment in the individual market, just as CMS currently does with SPMs and FFMs.

Plan Management

The Office of the Superintendent of Insurance (OSI) in New Mexico would continue executing plan management functions under the proposal. Currently, there is a Memorandum of Understanding between the exchange and the OSI to perform QHP plan management functions for the exchange. Specifically, the OSI reviews, monitors, and certifies QHPs and dental plans including authority over licensing and network adequacy requirements. In addition, the OSI conducts form and rate review of the plans and provides carriers with feedback. The OSI monitors QHP compliance and implements corrective action against carriers, if necessary. The OSI would continue executing these functions. CMS would support the technical plan load and testing on the healthcare.gov site.

SHOP

The SHOP exchange will continue to function completely under beWellnm inclusive of the technology platform. As previously noted, New Mexico has operated its SHOP exchange since OE1. However, SPM states rely on the federal government's SHOP platform.

Financing and Leasing

As noted above, CMS does not have a rule or regulation in place, as of June 16, 2015, requiring a SBM to pay for use of the healthcare.gov platform. However, New Mexico reports that CMS has been verbally supportive of their proposal for a lease-like model and has stated that it plans to address this question through the rule-making process.[17] The exact costs and payment structure for a lease-like model are currently unknown. Oregon, Nevada, and likely Hawaii, the additional SBM states using the healthcare.gov platform, are currently using the federal platform at no cost. Until CMS issues a rule, the mechanism by which these sates will need to pay to use healthcare.gov in the future is not known.

New Mexico has an issuer assessment in place, which went into effect January 2015, to finance its individual and SHOP exchange operations. The assessment schedule allows for flexibility in payments to CMS, if needed. New Mexico assesses issuers both on and off the exchange that offer major medical plans, policies, or contracts—including Medicaid. Issuers are assessed based on their market share, which beWellnm then multiples by its Operation and Maintenance budget to produce the assessment fee.[18]

beWellnm predicts it will need to generate $15 million per year in carrier assessments to maintain operations of the proposed model.

New Mexico will use this assessment model to cover the annual cost of state exchange operations, including the healthcare.gov leasing fee. Once fully operational in 2017, beWellnm predicts that it would need to generate approximately $15 million per year in revenue from carrier assessments to maintain operations of the proposed model.[19] CMS currently collects a 3.5 percent carrier assessment in all SPM and FFM states. These figures are

not side-by-side comparisons, as beWellnm assesses carriers on and off the exchange whereas CMS's assessment is only applied to insurers on the exchange. In addition, CMS's 3.5 percent carrier assessment is not the sole mechanism in place to finance the FFMs and SPMs; CMS also relies on discretionary appropriations from the CMS Program Management Pool.[20] Individuals interested in additional details regarding the cost and financing structure of New Mexico's model can follow up with beWellnm staff.

Separately, beWellnm is proposing a no-cost extension of remaining 1311 establishment grant funds for the implementation of systems, processes, and tools to support the proposed model, such as the aforementioned data reporting system.

The exchange's predicted budget for operations does not depend on CMS approval of reallocating grant funds.

Uncertainties Exist on the Path Ahead

Despite these potential benefits, New Mexico's SBM model is not yet finalized. CMS must release a rule to clarify terms and requirements for SBMs to lease the healthcare.gov technology platform. Until that point, the federal government does not appear to have sufficient legal authority to charge states for its use. Once the legal platform is in place, beWellnm will determine how to best apply the guidance from CMS to the operation of the exchange.

Officials at beWellnm report that CMS has said that they intend to follow through with these steps to establish a model for SBMs to use the healthcare.gov platform. Other states that might choose to follow the New Mexico model, such as Pennsylvania, Delaware, and Hawaii, will likely benefit from New Mexico's work in proposing this model to CMS. However, it is uncertain if this model will be ready for states to implement prior to OE3, which could be necessary if states must act immediately following a pro-*King* ruling in order to preserve tax subsidies for their citizens. It may be beneficial for a state that is interested in pursuing this model to ask CMS what may be possible.

Conclusion

States are watching the *King v. Burwell* case closely, as a pro-*King* outcome will potentially affect coverage gains made in FFM states, lead to financial losses for hospitals and providers in those states, and disrupt the health insurance market. FFM and SPM states may want to carefully consider a model similar to New Mexico's that allows the state to function as a SBM with increased autonomy, while continuing to leverage the federal technology platform. Governor Wolf of Pennsylvania issued a statement announcing that he intends to work with both CMS and his state's legislature to transition to a SBM that uses the federal government's infrastructure if the court decides for the challengers in *King*.[21] On June 2, 2015, Pennsylvania submitted a SBM blueprint to CMS, followed closely by Delaware, which also sent a blueprint to CMS proposing a hybrid model similar to New Mexico's.[22] On June 15, 2015, CMS conditionally approved both blueprints for Plan Year 2016.[23] While each state's political and financial landscape is unique, a close look at existing state-federal hybrid exchange models may provide an excellent opportunity for current FFM and SPM states.

End Notes

1. It is not clear if states operating a State Partnership Marketplace (SPM) will maintain access to tax subsidies in a pro-*King* ruling. We assume that citizens in SPM states are at risk of losing their tax subsidies. Currently, AR, DE, IA, IL, NH, and WV have authorized SPMs, which use the federal technology solution but allow the state to administer and operate exchange activities associated with plan management, consumer assistance, or both in the individual and small group markets.

2. "State-by-State Effects of a Ruling for the Challengers in *King v. Burwell*." Kaiser Family Foundation. (June 2015). Retrieved from: http://kff.org/interactive/king-v-burwell-effects/

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4.For the purposes of this brief, we will use "New Mexico" and "beWellnm" interchangeably.

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6. Ibid.

7.Assistant Secretary for Planning and Evaluation, Department of Health & Human Services. "Health Insurance Marketplaces 2015 Open Enrollment Period: March Enrollment Report." (March 10, 2015). Retrieved from: http://aspe.hhs.gov/health/reports/2015/MarketPlaceEnrollment/Mar2015/ib_2015mar_enrollment.pdf

8.Lorin Eleni Gill. "Hawaii Health Connector board Oks transition to federal exchange, staff eliminations." (The Business Journals, June 5, 2015). Retrieved from: http://www.healthinsurance.org/hawaii-state-health-insurance-exchange/; Erin Mershon. "Delaware's Steps Toward a State Exchange, Too." (Politico Pulse, June 4, 2015). Retrieved from: http://www.politico.com/politicopulse/0615/politicopulse18599.html

9.The ACA establishes a 'no wrong door' policy that strives to allow consumers to complete one enrollment form to determine for which health insurance programs they are eligible.

10.New Mexico Health Insurance Exchange. "Board Meeting Minutes." (March 31, 2015). Retrieved from: http://www.nmhix.com/wp-content/uploads/2015/05/03-NMHIX-Board-minutes-03.31.15_FINAL_SIGNED.pdf

11.Patient Protection and Affordable Care Act, 42 U.S.C. § 18041 (c)(A)

12.View a complete list of SBM required activities and functions on page 10 of CMS's Blueprint guidelines

13.Centers for Medicare & Medicaid Services, Department of Health & Human Services. "Guidance on the State Partnership Exchange." (January 3, 2013). Retrieved from: https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/partnership-guidance-01-03-2013.pdf

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