



## Advocacy Report: The Health Benefit Exchange Act of 2011

### *Maryland Sets the Pace on Implementation of the Affordable Care Act*

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#### **Executive Summary**

The O'Malley administration and Maryland's General Assembly got it right with the **Health Benefit Exchange Act of 2011**. A critical component of the Affordable Care Act (ACA), this law establishes only the governance structure and goals for the health insurance marketplace for individuals and small businesses in Maryland. The Exchange will ensure that hundreds of thousands of Maryland's presently uninsured will have access to affordable and high-quality health care.

**Background:** Congressman Elijah Cummings (D-MD) said on the occasion of the first birthday of the Patient Protection and Affordable Care Act (ACA) that this was the "**most important piece of legislation** I have worked on in my years in Congress." Not only will it greatly increase the number of Americans with access to high-quality, affordable health care, but it also ensures that consumers will have greater control over their health care decisions.

**Implementing the ACA – A Roadmap:** In Maryland, Governor O'Malley took immediate steps to realize the promise of this landmark law. He established the Health Care Reform Coordinating Council (HCRCC). In its interim report the HCRCC stated that the ACA provided a "once-in-a-generation opportunity to transform the health care landscape." The HCRCC created an open, transparent and inclusive process. This allowed stakeholder groups from all sectors, including consumer advocates, to provide essential expertise and recommendations on all elements of implementation.

#### **Advocacy Tip – Getting A Seat At The Table Is Good, But You Need To Do More**

Advocates need to be well informed and prepared to make substantive recommendations on issues of concern to your constituencies. By attending all relevant meetings of the HCRCC, providing testimony and written comments and recommendations, the Women's Coalition made its voice heard. And, it followed this up with meetings with key administration officials and legislators during the bill drafting process to create a strong partnership for its future work.

**The Health Benefit Exchange Act of 2011.** The primary elements of the 2011 Act establish:

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- The Exchange as a “public corporation and a unit of state government” with specific purposes including reducing the number of uninsured in the state, facilitating the purchase of qualified health plans and assisting qualified employers to enroll their employees
- A nine member Board and advisory committees
- Administrative rules within the framework of state regulations

The 2011 Act does not define the functions of the Exchange, but rather calls for a series of studies. Based upon the outcomes of these studies and the recommendations of the Exchange Board, legislation will be drafted for consideration in the 2012 General Assembly.

**Drafting the Legislation:** To gain passage of the 2011 Act, a stakeholder panel was formed that included representatives from Maryland’s large and influential broker community and third party administrators, as well as consumer advocacy groups including the Maryland Women’s Coalition for Health Care Reform. The panel was chaired by Lt. Governor Anthony Brown and DHMH Secretary, Josh Sharfstein. Its purpose was to create broad-based support for the Act based upon a set of “consensus amendments” to the administration’s original legislation. The Women’s Coalition worked with the administrator, its members and partners across the state to see that the final legislation met its criteria as well as the goal, as stated in the Act, to create a **broadly-based governing structure that reflects the “racial, ethnic and geographic diversity of the State and the expertise and competence necessary to oversee the effective development and operation of the Exchange.”**

**Health Benefit Exchange Board:** The **nine-member Exchange Board** created by the legislation includes three *Ex Officio* positions - the Secretary of Health and Mental Hygiene, the Maryland Insurance Commissioner, and the Executive Director of the Maryland Health Care Commission. In addition, six other members with rotating terms will be appointed by the Governor with the advice and consent of the Maryland Senate. These include:

- Three members who “represent the interests of employers and individual consumers of products offered in the Exchange and who may have public health research expertise.”
- Three more members who have knowledge and expertise in at least two of seven areas that include administration of public or private health care delivery systems, health finance and “public health and public health research, including knowledge about the health needs and health disparities among the state’s diverse communities.”

**Women’s Coalition Amendments:** The language to include **expertise in the area of public health on the Exchange Board** was, arguably, the most significant of the amendments that the Women’s Coalition proposed. The recommendation, accepted as a “consensus amendment,” was based in part on the past work of the Women’s Coalition, which has done extensive research on Maryland’s public health infrastructure. This has led to productive partnerships with state agencies and an

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understanding of the potential role of public health as central to implementation of the ACA. In addition, the Women's Coalition understood that an individual with expertise in public health and a knowledge of, and an ability to make use of, relevant research would be invaluable as the Board analyzes a broad range of options related to benefit design, affordability and access. Specific areas that a public health researcher could address include:

- The demographics, health needs, and roots of health disparities of the Exchange population
- The role of prevention, including early detection and interventions, to improve the health of individuals, the well being of communities, and the reduction of health care costs
- An understanding of Maryland's public health infrastructure and the potential to integrate the work of local health departments, FOHCs and community-based safety-net providers to ensure access to quality care.

The **Women's Coalition gained significant support** for the public health researcher amendment from policy makers, including those at the Department of Health and Mental Hygiene (DHMH), key legislators, and partner organizations that included the American Cancer Society, the League of Women Voters, Advocates for Children and Youth, the Maryland Nurses Association, Alzheimer's Association, Maryland PIRG, and the Maryland Citizens' Health Initiative, among others.

**Advocacy Tip – Build Your Case on Shared Values and Goals**

By linking the value of addressing health disparities with the inclusion of public health expertise on the Exchange Board, the Women's Coalition was able to build strong support from a broad coalition.

**Additional Amendments:** The Women's Coalition proposed a number of other amendments that were incorporated into the final legislation:

- Advisory Committees that include 12 areas of expertise and stakeholder groups. These include consumers and consumer advocates, as well as public health researchers and other academic experts with knowledge and background relevant to the functions and goals of the exchange.
- A requirement that the Exchange Board consult with the Advisory Committees.
- The inclusion of gender and geographic location as data sets to identify disparities as part of an annual reporting process.
- Greater separation between the governor's office and the position of Director of the Exchange to address concerns over excessive political influence.

**Maryland - A National Health Care Reform Leader:** The Health Benefit Exchange Act of 2011 further secures its position as setting the pace and pattern for others to follow. However, as noted above, the Act does not include the all-important functions of the Exchange. Deemed potentially too controversial and complicated at this time, it will require action in 2012. Consumer advocates supported a "consensus amendment"

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that allowed the Exchange Board to move forward with establishing the functions, under the ACA guidelines and based upon a series of relevant studies, if the General Assembly failed to act during the 2012 legislative session. However, this approach failed and the final language in the Act requires action by the Governor and the General Assembly in the 2012 legislative session.

**Advocacy Tip – Embrace the Art of the Possible**

The Women’s Coalition originally promoted legislation in 2011 that would have incorporated the functions essential for a “robust” Exchange. However, it became apparent that Maryland’s political landscape would not be conducive to this approach without a great deal more advocacy than time allowed. Therefore, the Coalition supported a more scaled back law that continues to move Maryland forward. At the same time, we understand that more education of legislators and the public, as well as continued coalition-building are required over the next year to achieve our goals.

**Future Legislation Required: Marylanders want and need a consumer-oriented Exchange** where they can access high-quality affordable health care. To achieve that will require vigilance on the part of advocates to ensure that the Exchange Board’s recommendations, to be presented in a December 23, 2011 report, facilitate achieving those goals. The recommendations, and subsequent legislation, will be based upon a series of critical studies that include: (1) Selective contracting; (2) Multistate or regional contracting; (3) The design and content of benefit packages sold inside and outside the Exchange; (4) The design of the Navigator Program; (5) The design of the Shop Exchange; (6) Financing of the Exchange.

### **Advocacy Tip – Identify the Problem, Define the Solution, and Prioritize Your Resources**

The Women's Coalition, led by a small group of volunteers, has achieved positive results due to a number of factors, not the least of which is support from its members and partners. Also important, and perhaps useful for other advocacy groups, is that it has consistently focused on:

- The core mission of health care for all Marylanders and identified the unique role that women have in the health care landscape – as recipients, providers, and decision-makers
- Specific legislative and advocacy strategies based upon clearly defined health care reform goals
- Public health and the state's infrastructure as core, cross-cutting areas not being addressed by other advocacy groups
- Developing effective partnerships within state government agencies and with key legislators
- Educating our members about key issues and providing them with advocacy tools to take action individually and collectively
- Forging strong and productive relationships with individuals and organizations committed to a *culture of coverage and care* in Maryland to effect positive change

The **Women's Coalition and its health care reform partners across the state** will monitor and participate in these studies and use their resources to ensure that Maryland's Health Benefit Exchange enables the transformation of our health care landscape. At the same time, we must continue to educate the public on the immediate patient protections of the ACA as well as its long-term promise. Ultimately the Women's Coalition envisions a state where access to health care is universal. The Health Benefit Exchange Act of 2011 is the first step to achieve that.

### **WOMEN ARE THE BEST ADVOCATES!**

**Women are the most powerful and effective voice for health care reform. Why?**

- **Women play a large role in our health care system as:**
  - **Caretakers of the sick, disabled and elderly in our communities**
  - **Guardians of our children's and family's health**
  - **Employees of small businesses that cannot afford to provide coverage**
  - **Owners of small businesses that cannot afford coverage**
  - **Part-time employees ineligible for coverage**
  - **Single mothers with dependent children ineligible for Medicaid**
- **Women have been the ones most adversely impacted by our health care system:**
  - **Women could be charged premiums as much as 48% higher than men.**
  - **Simply being a woman could be considered a pre-existing condition – whether a victim of domestic violence, or because a doctor ordered a Caesarean section – we could be denied coverage.**

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*The Maryland Women's Coalition for Health Care Reform is a statewide alliance of individuals and 53 organizations committed to ensuring that every Marylander has access to high-quality, comprehensive, affordable, and accessible health care for all.*

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