

# Health Insurance Exchanges - Governance and Organization

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# Today's Presentation

- Governance Requirements & Options in PPACA
- Issues to consider when establishing Exchange Governance structures
- Governance models
- Governance models through a privacy lens

# Exchanges under PPACA

By January 1, 2014, all 50 states must establish (or defer to feds)

<b>American Health Benefits Exchange (AHBE) – Individual Market</b>	<b>Small Business Health Options Program (SHOP) Exchange – Small Group Market</b>
<p><u>Eligible Users:</u></p> <ul style="list-style-type: none"><li>- US citizen or legal alien</li><li>- Not incarcerated</li><li>- Resident of the state in which exchange is based</li></ul> <p><u>Restrictions:</u></p> <p><i>To access premium tax credits and cost-sharing subsidies must be:</i></p> <ul style="list-style-type: none"><li>- Between 134-400% FPL</li><li>- Not offered AHBE-qualified coverage (i.e. meeting affordability and QHP standards) through employer or government program</li></ul>	<p><u>Eligible Users:</u></p> <p>Full-time employees of small businesses from 1 to 100 workers.</p> <p><u>Restrictions:</u></p> <ul style="list-style-type: none"><li>- State option to limit to businesses of 50 or less until 2016</li><li>- State may expand to 100+ as of 2017, with approval of USHHS</li></ul>

# Process for Establishing Exchanges Under PPACA

- State establishes AHBE (individual market) Exchange
  - AHBE facilitates the purchase of qualified health plans (QHP's) by qualified individuals and the application of federal subsidies/tax credits
  - AHBE must “Provide for the establishment of” the SHOP Exchange
  - AHBE may contract out for any of its responsibilities to an “eligible entity”
    - insurance experience but not an insurer
- SHOP Exchange (small group market)
  - facilitates the purchase of QHP's insurance by qualified employers
- State decides whether ABHE and SHOP are merged or separate
  - Merged markets
  - Merged organizations
  - Merged governance
  - Can only merge if AHBE has adequate resources to support small business

# Governance Requirements and Options for Exchanges

- AHBE must be:
  - Public
    - Federal or State
  - Public/Private : quasi-governmental
  - Private (non-profit)
  - May be “regional” (multi-state)
    - Decisions on whether to share infrastructure or merge markets between states may impact the governance decision, but are separate decisions.
  - May be comprised of “sub-exchanges”
    - No smaller than a geographic rating area
- SHOP may have a separate governance structure from AHBE

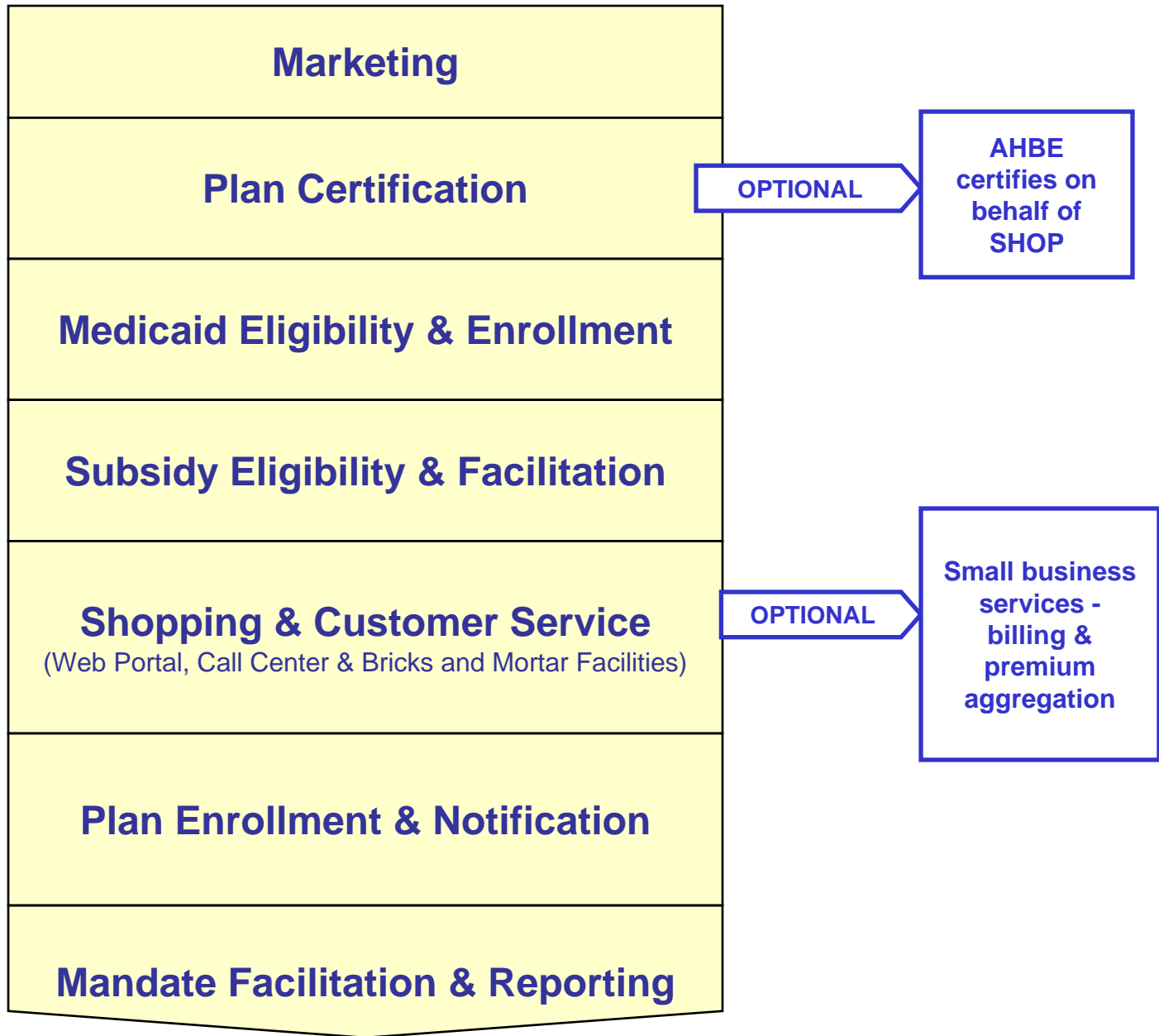
# Considerations

- Decisions on governance structure can best be made **AFTER** states have determined:
  - Government/commercial hybrid mix of AHBE functions
  - Populations to be served in each Exchange
  - Financing structure for AHBE/SHOP
  - Relationship between individual and small group markets
  - Orientation of State towards Exchanges

# Governance Impacts: Government/Commercial Hybrid Mix

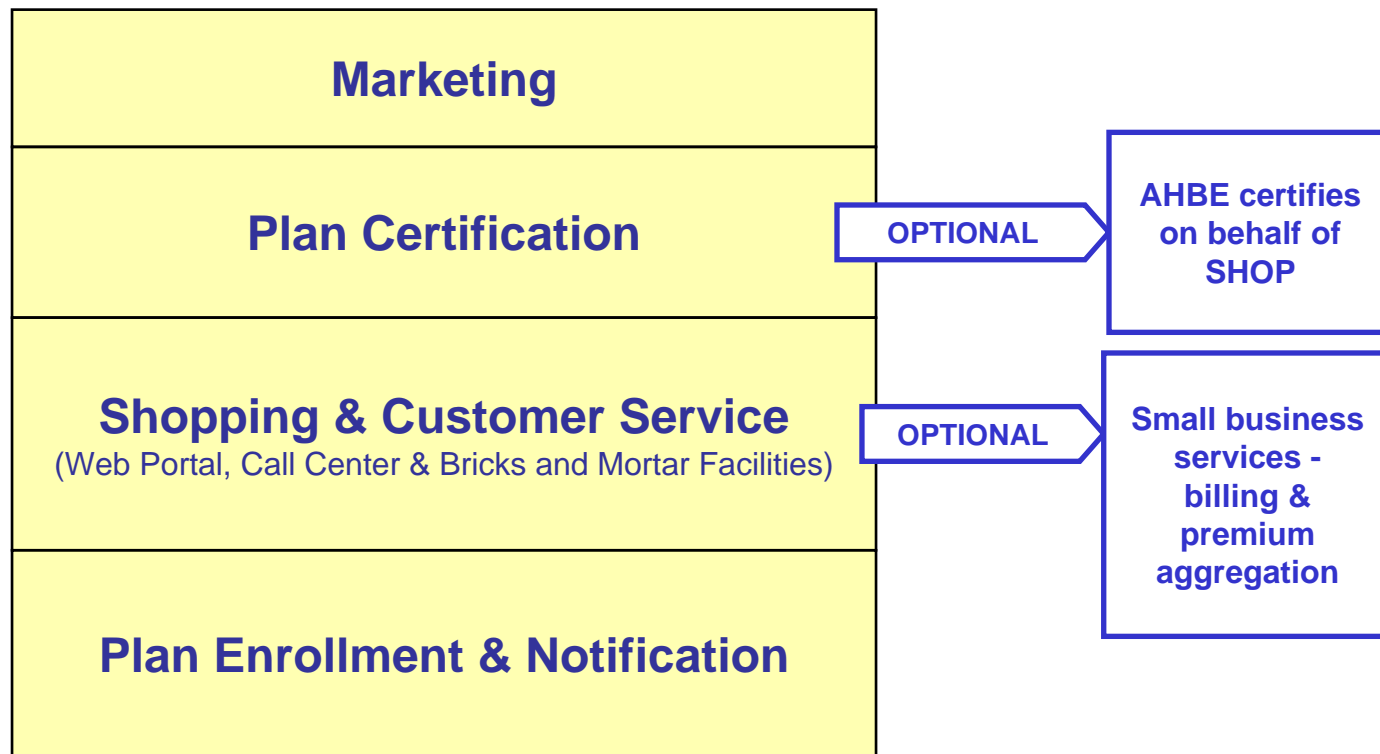


# Governance Impacts: SHOP Functions





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# Governance Impacts: Populations Served by Each Exchange

- Governance decisions are impacted by the populations that each Exchange is designed to serve:
- AHBE:
  - Relationship to State Medicaid population
    - Data on state population 0-400% FPL is key
      - Must be viewed through a post-2014 lens
    - Decisions on populations above 133% FPL
    - Regional analysis
  - Is there a significant population above 400% FPL?
- SHOP:
  - Small employer data key to sizing market and establishing marketing structures

# Governance Impacts: Financing Structure for AHBE/SHOP

- Exchanges must be self-sustaining by 2015
  - Cost/benefit analysis as component of all decisions:
    - Maximum use of existing infrastructure & capabilities
      - Public & private
    - Elimination of redundancy
    - Clarity of definition of “sustainable”
- Source of funds impact governance decisions
  - General revenues
  - Fees
    - Exchange plans
    - All plans
  - Redirected public monies

# Governance Impacts: Relationship between small & non-group markets

- Developing and/or maintaining healthy individual and small group markets will be a balancing act
  - Potential for AHBE to undermine SHOP and/or small group market
    - Challenge: Employers >50
    - Challenge: Shift from “2” as starting point for SG market
    - Challenge: Churn between ESI/Medicaid/AHBE
  - SHOP & AHBE decisions made in isolation will impact markets inside & outside the Exchanges
  - Governance decisions should reflect State goals for both markets

# Governance Impacts: State Orientation

- Free-market vs. selective contracting vs. negotiated purchasing models
  - May be different for AHBE & SHOP
- Priority of AHBE vs. SHOP
  - Equal or will one take precedence in timing or attention?
- Locus of control:
  - National, state, or local
    - If State; degree of political intervention/control
  - Public vs. private
  - May be different for AHBE & SHOP

# Putting it all Together

- Once a State has made key decisions on:
  - The populations to be served in both Exchanges & their connection to Medicaid/SCHIP
  - The desired relationship between the small & non-group markets
  - What's needed for both Exchanges to be financially sustainable
  - What infrastructure and/or functions, if any, will be shared between the state(s), the AHBE & the SHOP Exchange
  - How the Exchanges will work in the market and who should either control them or have a voice in their decision-making, then:

# Governance Decisions

- Will the State establish or defer to the feds?
- If the State establishes, will AHBE be:
  - A state entity –
    - Political control;
    - Ease of data control and information flow; coordination with other state operations
    - Accountability, transparency
    - Lack of commercial insurance experience
    - Hiring limitations
    - Public Perception
    - Government financial liability

# Governance Decisions

- A public/private entity
  - Board make-up, terms of office, and chair impacts:
    - Political control
    - Flexibility & nimbleness to respond to market
    - Balance of interests on Board
      - » SHOP interests if combined SHOP/AHBE Governance
      - » Public vs. private
  - Locus of hiring authority for Exchange senior management
  - Contracting authority source/limitations/process
  - Decisions on which state requirements (hiring, etc.) will apply to Exchange.



# Governance Decisions

- A private, non-profit entity
  - Is there an existing entity the State can designate?
  - If establishing a new entity, Board considerations are same
    - Specific issues regarding privacy of data and other information provided through the Exchange to HHS & State
      - » Operational structures must address these concerns
    - Transparency & accountability issues if public fees; funds are used and in the facilitation of subsidies & mandate requirements

# Governance Decisions

- Combining AHBE/SHOP Governance
  - Can the interests of both be reflected?
  - If separated, can the required balance & coordination necessary between the two be maintained?
- Establishing subsidiary exchanges throughout the state
  - Are there regional distinctions that could best be reflected by a local governance entity?
    - If so, balance issues between State and Local interests should be considered
- Establishing a multi-state governance structure
  - Follows from establishing combined operations & merged markets

# Governance Models Through a Privacy Lens

- “Data governance” must be considered in designing governance and operational structures
- There are numerous privacy laws that will apply to the Exchanges:
  - HIPAA
  - State Privacy Laws
  - Others
- The focus for today will be on HIPAA

# HIPAA Privacy Impacts on Exchanges: Impact of Governance Model Chosen

- The effect of the various privacy laws are not dependent on the governance model chosen but on the amount and type of data that flows through the Exchange

# Governance Models through a HIPAA Privacy Lens

- **HIPAA Privacy and Security**

- Privacy Rule: The Privacy Rule provides federal protections for personal health information used or disclosed by covered entities and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of personal health information needed for patient care and other important purposes.
- Security Rule: The Security Rule specifies a series of administrative, physical, and technical safeguards for covered entities to use to assure the confidentiality, integrity, and availability of electronic protected health information.

# Governance Models through a HIPAA Privacy Lens: Overview of HIPAA

- HIPAA governs Protected Health Information (“PHI”)
  - PHI is defined as *individually identifiable health information* held or transmitted by a covered entity or its business associate, in any form or media
  - *Individually identifiable health information* is information, including demographic data, that relates to:
    - the individual’s past, present or future physical or mental health or condition,
    - the provision of health care to the individual, or
    - the past, present, or future payment for the provision of health care to the individual,
    - and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual.
  - *Individually identifiable health information* includes many common identifiers, e.g., name, address, birth date, Social Security Number

# Governance Models through a HIPAA Privacy Lens: Overview of HIPAA

- HIPAA applies to:
  - Covered Entities (“CEs”)
    - Health Plans: Individual and group plans that provide or pay the cost of medical care. This includes prescription drug insurers, HMO’s, Medicare, Medicaid, employer-sponsored group plans, as well as government-sponsored group plans.
    - Health Care Providers: Provider of medical or health services and any organization that furnishes, bills or is paid for health care in the normal course of business and transmits information in electronic form in connection with a HIPAA transaction.
    - Health Care Clearinghouses: Entity that processes health information received from another entity in a nonstandard format into standard data elements or a standard transactions.

# Governance Models through a HIPAA Privacy Lens: Overview of HIPAA

- HIPAA applies to:
  - Business Associates (“BAs”)
    - A BA is a person or organization, other than a member of a covered entity’s workforce, that performs certain functions or activities on behalf of, or provides certain services to, a covered entity that involves the use or disclosure of individually identifiable health information.
    - When a CE utilizes a BA’s services, HIPAA requires that the CE and the BA enter into a *Business Associate Agreement* to ensure the protected health information remains protected by the BA.
    - The 2009 HITECH Act specifically calls for existing HIPAA regulations to apply directly to BAs, essentially strengthening HIPAA’s application.
    - HHS published the proposed HITECH Act regulations modifying the HIPAA Privacy and Security Laws on July 14, 2010. To date, these rules have not been finalized.



# Governance Models through a HIPAA Privacy Lens: Overview of HIPAA

- HITECH's Expansion of Business Associates:  
*Expanded Definition of BAs*
  - Includes patient safety organizations, e-prescribing gateways, vendors offering a personal health record to individuals on behalf of a covered entity, and health information organizations.
  - “Downstream Entities,” such as subcontractors, will also be considered BAs if they access PHI on behalf of a CE or BA.
  - BAs will be required to have a written *business associate agreement* with all of their subcontractors who may handle PHI, and such subcontractors must themselves comply with the applicable HIPAA obligations to avoid direct liability for violations.

# Governance Models through a HIPAA Privacy Lens: Overview of HIPAA

- HITECH's Expansion of Business Associates:  
*BAs Directly Subject to HIPAA Regulations*
  - The current HIPAA regulations reflect the pre-HITECH Act rule that business associates are only indirectly contractually obligated to comply with HIPAA.
  - The proposed regulations make the HIPAA regulations consistent with the HITECH Act by providing that BAs will be directly subject to HIPAA's security obligations and certain privacy obligations.

# Application of HIPAA to the Basic Structure of an AHBE

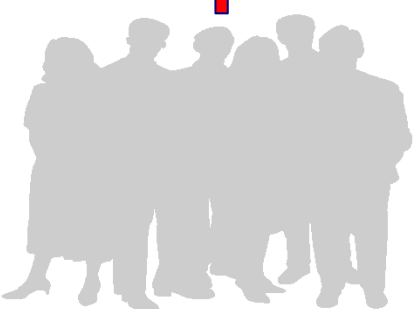


**Criteria for Purchasing Through AHBE:**

- US citizen or legal alien
- Not incarcerated
- Resident of the state in which exchange is based

**Criteria for Accessing Tax Credits & Cost-Sharing Subsidies:**

- Between 134%-400% FPL
- Not offered AHBE-qualified coverage through employer or government program



Eligibility for and Size of Tax Credit and Cost Sharing Subsidy Determined by Exchange (via HHS, IRS, DHS SSA)



Eligible individuals automatically enrolled into Medicaid or CHIP

Individual shops and enrolls through Exchange—IRS, HHS, Employer & Insurer Notified by Exchange of Individuals' choices



Cost-sharing subsidy (USHHS)



Individual share (\$)



Insurers



Tax credit (US Treasury)

# Summary of HIPAA Privacy Impacts on Exchanges

- It is the type and flow of data moving through the exchange and *not* the type of governance model chosen, that will affect the application of HIPAA and other privacy rules.
- When determining the functionalities an Exchange will offer, the more functions the Exchange performs and the more information the Exchange collects and passes along, the more applicable privacy laws become.

# Summary

- Exchanges are a unique hybrid of government and commercial functions
- As states design governance for these entities, it is important to:
  - Understand the balance the state will strike between the government and commercial components of the exchanges
  - Understand the relationship between the individual and small group markets and the states health subsidy programs
  - Understand the data governance and privacy impacts of the various Exchange functions