WORKING WITH STATE REGULATORY AUTHORITIES: EXCHANGE-STATE DOI RELATIONSHIPS
Exchange Options

- **Federally Facilitated Exchange**
  - Feds set standards and operate the Exchange
  - State maintains oversight of health plans and may coordinate with the federal Exchange

- **Partnership**
  - Feds operate Exchange, but state makes many key decisions and may do plan management and/or some consumer assistance

- **Quasi-Partner**
  - Letter of Intent from DOI that the state will fulfill QHP certification functions and/or consumer assistance functions

- **State Exchange**
  - State operates Exchange
  - Determining eligibility for subsidies optional
Exchange-DOI Interaction

- Plan Management
  - Rate and Form Review
  - Network Adequacy
  - Marketing
- Navigators
- Agents/Brokers and Other Assisters
- Enforcement
- Consumer Assistance
- Key Challenges
Plan Mgt: Approval of QHPs

• Submission of Rates and Forms
  – Pure FFE: filed with SERFF and HIOS
  – Partnership, Quasi-Partner & State-Based: filed with SERFF (or other system designated by the state)
  – All states retain role in rate and form review and in approving rates and forms

• Review of Rates and Forms (Completed by July 31st)
  – Essential Health Benefits
  – Actuarial Value Calculator
  – New Rating Rules – Risk-Sharing
  – Non-Discrimination and Meaningful Difference
  – If state does not review, then feds will

• Network Adequacy (based on State/NAIC rules)
• Marketing (by State)
Navigators

• In federal Exchanges, HHS sets standards to ensure that Navigators are qualified and trained

• Navigators may not be insurers or receive direct or indirect compensation from insurers for enrollment in a QHP, or from stop loss entities

• States may not require a Navigator to be licensed as an agent or broker or have errors and omissions coverage, but may require them to be certified and meet training standards

• States should be careful to ensure that Navigators do not perform functions that would require a producer's license
Agents and Other Assisters

• Agents and Brokers
  – Registered to sell on the federal Exchange
  – Commissions paid by insurers
  – States regulate license and appointment

• State Assisters (grant funds available)
  – State or Exchange employees who are trained to answer questions and assist consumers

• Application Assisters (Counselors)
  – Primarily in hospitals and clinics
  – Volunteers with training and certification
Enforcement

STATES REMAIN PRIMARY REGULATORS – FEDS ONLY ACT IF STATE DOES NOT

State Departments of Insurance remain the primary regulator

Public Health Service Act: Sec. 2723 ENFORCEMENT.

(a) STATE ENFORCEMENT.—

(1) STATE AUTHORITY.—Subject to section 2723, each State may require that health insurance issuers that issue, sell, renew, or offer health insurance coverage in the State in the small or large group markets individual or group market meet the requirements of this part with respect to such issuers.

(1) FAILURE TO IMPLEMENT PROVISIONS.—In the case of a determination by the Secretary that a State has failed to substantially enforce a provision (or provisions) in this part with respect to health insurance issuers in the State, the Secretary shall enforce such provision (or provisions) under subsection (b) insofar as they relate to the issuance, sale, renewal, and offering of health insurance coverage in connection with group health plans or individual health insurance coverage in such State.
Enforcement

• Options for Enforcement of 2014 Market Reforms
  – Amend state rules to meet minimum federal standards
  – Use general authority (form review, rate review, unfair trade practices) to enforce federal rules
  – Enter into a “Collaborative Enforcement Agreement” with CCIIO under which the state reviews for compliance, but CCIIO uses federal penalties
  – State enforces state rules; CCIIO enforces federal rules

• Letter sent to commissioners on Feb 15 outlining where CCIIO believes state enforcement authority exists – most states assumed to have authority

• CCIIO will informed carriers in AL, MO, OK, TX, and WY that they will be enforcing the ACA and that carriers must submit information to CCIIO
Federal Enforcement Actions

• Penalties
  – The maximum amount of penalty imposed under this paragraph is $100 for each day for each individual with respect to which such a failure occurs
  – No penalties if “reasonable diligence” found
  – Administrative review
  – Judicial review

• Deny Exchange Participation

• Federal government may not prohibit the sale of a policy or use of a rate in a state
Consumer Assistance

• Complaints and consumer questions will be received by Exchanges and State Departments of Insurance
  – Need to coordinate to ensure complaints go to right entities
  – Need to ensure answers are correct

• Consumer outreach is critical to the health of the marketplace and Exchanges and Departments should work together
Challenges

• Time
• Resources
• Systems Development and Integration
• Coordination
  – Dual regulation can add to administrative costs if Exchange and DOI requirements are not coordinated
• Clear Communication
  – The message from DOIs and Exchanges must be clear and consistent
Questions