

Text of Letter to Governors from HR Policy Association Re Health Insurance Exchanges

March 28, 2011

RE: Concerns of Multi-State Employers Relating to Health Insurance Exchanges Established Under the Patient Protection and Affordable Care Act

Dear Governor:

As «StateTerritory» undertakes the significant challenge of responding to changes put in place by the Patient Protection and Affordable Care Act (PPACA), HR Policy Association wishes to share the views of the chief human resource officers of large companies regarding the establishment and operation of health insurance exchanges and the potential impact on the ability of employers operating in multiple states to maintain uniform health benefits programs for their employees.

HR Policy recognizes that governors have differing positions on PPACA's enactment and that the various states will be implementing health insurance exchanges under the law in different ways, or not at all. Our members also recognize that uncertainty stemming from pending legal challenges to PPACA complicates your planning just as it complicates their own. Nonetheless, the Association believes it is appropriate for us to provide all governors with a sense of the profound impact that the establishment and operation of exchanges will have on large multi-state employers, their employees, and their dependents.

Specifically, as you prepare state actions on health insurance exchanges, our members respectfully ask you to:

- be mindful of the importance of ERISA preemption that allows multi-state employers to operate the same health care program in multiple states,
- seek a timely, efficient and coordinated launch of exchanges among the states, and
- maximize uniformity and consistency in exchange operations and the products available through the exchanges, where appropriate.

The Association consists of the chief human resource officers of more than 300 large employers doing business in the United States, many of whom do business in all 50 states. Collectively, HR Policy members employ over ten million employees which is nearly nine percent of the private sector workforce. Representing every major economic sector, each of HR Policy's member companies currently offer health insurance to most or all of their employees, and our members collectively spend more than \$80 billion annually providing health insurance to millions of American employees, their dependents, and retirees.

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After PPACA is fully implemented, most employees at large companies will receive health care coverage either through their employers as most Americans do now, or through the new state health insurance exchanges. It is difficult to tell how many employees of large employers will seek coverage through an exchange. In enacting PPACA, Congress estimated that as many as four million people would move from employer-provided care to the exchanges. We believe, however, Congress may have significantly underestimated the shift to exchange-based care that will result from the new law. Large employers, therefore, have a keen interest in efficiently and effectively run exchanges to ensure their employees have access to affordable and high quality care. This letter contains some of our key concerns and recommendations.

Continue to Allow Multi-State Employers To Operate Uniform Health Care Programs in Multiple States

One of the Association's chief concerns in the establishment of the health insurance exchanges is that large multi-state employers continue to have the ability to offer and administer health care benefits in a uniform manner. The ability of large multi-state employers who provide health care on a self-insured basis to administer their programs uniformly across America has been a relative success in the otherwise flawed health care system in the United States. Their ability to do so is the result of the strong preemption provision under the Employee Retirement Income Security Act (ERISA).

The ERISA preemption clause prohibits state and local governments from imposing requirements on self-insured employer-sponsored plans that would interfere with the ability of these companies to design and maintain health care plans that meet their unique needs. Nationwide uniformity in benefit design and administration is extremely important because it promotes substantial efficiencies, and it significantly reduces health care costs to employers, employees, and dependents. In addition, it streamlines communications and promotes better understanding of coverage options by allowing employers to offer a standard set of benefits across the country. Further, it allows employers to obtain better pricing with national or regional healthcare providers by allowing them to negotiate contracts on a national basis. Finally, uniformity permits companies to provide similar benefits to their workers (regardless of where they reside), which promotes equity and the ability of employees and retirees to freely move from state to state and city to city without concern for benefit changes.

In view of the above, the Association is concerned that the states, in establishing the health insurance exchanges under PPACA, may undermine the ability of multi-state employers to uniformly design and administer health benefits. This would result in subjecting such employers to numerous sets of operating requirements, a change that would be administratively burdensome and costly for them, and it may make it unworkable for these employers to continue providing employer-sponsored benefits. HR Policy is hopeful that no attempts are made to weaken ERISA preemption in connection with the creation of health insurance exchanges or any aspect of PPACA implementation going forward.

Large Employers Seek a Timely, Efficient, and Coordinatated Launch of Health Insurance Exchanges

We realize that creating the infrastructure to establish and operate exchanges in all 50 states, and coordinating with the vendors who will be participating in these exchanges, is a massive undertaking. Yet, PPACA provides for states to begin operating health insurance exchanges on January 1, 2014. And by March of 2013, employers must provide their employees notice of the coverage they intend to provide in 2014, and notify employees that they may be able to obtain coverage through an exchange and whether they qualify for subsidies for purchasing care through an exchange. Because of the time needed to evaluate available options and prepare communications materials, employers will need to have a good idea of what will be available through the exchanges by March of 2012.

Further, employees who receive their health benefits through employer-sponsored plans are accustomed to relying on their employers and third party administrators to provide critical information about health benefit options. Even after health insurance exchanges are in operation, these individuals may continue to seek information from an employer about exchange coverage even though the employer is not sponsoring the coverage. As a result, the public interest would be best served if employers are given timely access to information and resources to which they can direct employees who request needed information as soon as possible.

Employers Want the Federal and State Governments to Maximize Uniformity and Consistency in Exchange Administration

While employers recognize that the information provided to an employee about exchange options will vary to some degree depending on the state in which he or she resides, the Association urges federal agencies and states to take into account the need for an optimal level of uniformity in the manner in which exchanges are administered, including enrollment practices, description of plan offerings, and communications to consumers. Employers believe exchanges should allow for innovation and accommodate the demographic and geographic differences of eligible populations. However, many functions can be standardized across the nation to facilitate administrative ease. In order to minimize the potential for inefficiency and confusion in the way exchanges communicate with employers and eligible individuals, the Association recommends that the federal government and the states take the following steps:

- provide draft model notices that employers can use to notify employees of exchange options as soon as possible and provide opportunities for employer feedback on model language;
- facilitate as much consistency and uniformity with other exchanges as is possible regarding the communications to employees about exchanges; and
- consider standardizing some consumer tools used to compare plan options.

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We appreciate your consideration of our views and welcome the opportunity for HR Policy Association to work with your state and the federal government to ensure health insurance exchanges that provide quality affordable care that enables U.S. employers to remain competitive.

Sincerely,

Jeffrey C. McGuinness
President & CEO