STATE OF MAINE
126th LEGISLATURE
SECOND REGULAR SESSION

Final Report of the Maine Health Exchange Advisory Committee

November 2014

Staff:
Colleen McCarthy Reid, Legal Analyst
Office of Policy & Legal Analysis
13 State House Station
215 Cross Building
Augusta, ME 04333-0013
(207) 287-1670
www.maine.gov/legis/opla

Members:
Sen. Margaret M. Craven, Co-chair
Rep. Sharon Anglin Treat, Co-chair
Sen. Rodney L. Whittemore
Rep. Michael D. McClellan
Rep. Linda Sanborn
Christine Alibrandi
John Benoit
John Costin
Bob Dawber
Sara Gagne-Holmes
Jack Comart
Laurie Kane-Lewis
Kevin Lewis
Elizabeth Neptune
Kristine Ossenfort
David Shipman
Gordon Smith
Mitchell Stein

Table of Contents

Page

Executive Summary i

I. Introduction 1

II. Advisory Committee Duties 2

III. Advisory Committee Process 3

IV. Recommendations 4

V. Conclusion 17

Appendices

A. Authorizing Joint Order
B. Membership list, Maine Health Exchange Advisory Committee
C. Draft Legislation: Establish a permanent state health exchange advisory committee
D. Draft Legislation: Conduct a feasibility study of the Basic Health Program option and other alternatives for health care coverage
E. Sample Department of Health and Human Services notices
F. Correspondence to Congressional Delegation and Internal Revenue Service

EXECUTIVE SUMMARY

The Maine Health Exchange Advisory Committee was established by Joint Order, H.P. 1136, to advise the Legislature regarding the interests of individuals and employers with respect to any health benefit exchange that may be created for this State pursuant to the federal Patient Protection and Affordable Care Act. In December 2013, the Advisory Committee submitted a preliminary report to the Legislature. The preliminary report is found at http://www.maine.gov/legis/opla/MHEAC2013Report.pdf. This is the final report of the Advisory Committee.

Senator Margaret M. Craven and Representative Sharon Anglin Treat served as the Senate and House chairs of the Advisory Committee. As required by the Joint Order, the Advisory Committee has 18 members: 5 Legislators representing the Joint Standing Committees on Insurance and Financial Services, Appropriations and Financial Affairs and Health and Human Services; 6 members appointed by the President of the Senate; and 7 members appointed by the Speaker of the House of Representatives. While the Joint Order directed the President of the Senate and the Speaker of the House of Representatives to invite the Superintendent of Insurance and Commissioner of Health and Human Services or their designees to participate as ex officio nonvoting members, the Governor declined to appoint any representatives of the Administration to serve on the Advisory Committee.

During 2014, the Advisory Committee met 4 times: June 3, August 26, September 22 and October 16. All of the meetings were held in the Room 228 at the State House in Augusta and open to the public. Live audio of each meeting was made available through the Legislature's webpage. The Advisory Committee also posted agendas, meeting materials, links to related resources and audio recordings of selected committee meetings to its website, http://www.maine.gov/legis/opla/healthexchangeac.htm.

The Advisory Committee monitored the operations of Maine's federally-facilitated marketplace (FFM) and the coordination between the FFM, the Medicaid program, the Bureau of Insurance and the qualified health plans operating in Maine on and off the FFM. The Advisory Committee also focused on the consumer outreach and assistance resources available to individuals and small businesses and the effectiveness of those resources.

The Advisory Committee received an update at each meeting from Christie Hager, Region One Director for the United States Department of Health and Human Services. Ms. Hager was a valuable resource to the Advisory Committee and an important link for information on federal implementation efforts for the FFM in Maine and other provisions of the federal Affordable Care Act. The Superintendent of Insurance, Eric Cioppa provided updates at each meeting on the regulatory activities of the Bureau of Insurance with regard to the FFM and oversight of qualified health plans. The Advisory Committee also received presentations on the medical and dental plans available through the FFM in 2014 (and expected in 2015) from representatives of Anthem Health Plans of Maine, Maine Community Health Options, Northeast Delta Dental and Harvard Pilgrim Health Care.

The Advisory Committee discussed consumer outreach and enrollment assistance issues with representatives from Western Maine Community Action, Maine Health Access Foundation, Consumers for Affordable Health Care and Maine Equal Justice Partners. Finally, the Advisory Committee discussed the Basic Health Program and other coverage options with Jessica Schubel from the Center for Budget Policies and Priorities.

The Advisory Committee was disappointed that representatives of the Department of Health and Human Services did not attend any meetings or make presentations as requested. Although DHHS did submit written information in response to requests from the Advisory Committee, the lack of full participation affected the Advisory Committee's discussions.

Pursuant to H.P. 1136, the Maine Health Exchange Advisory Committee was directed by the Legislature to consider the issues described below. Based on its review and discussions, the Advisory Committee makes the following findings and recommendations.

1. Whether Maine's federally-facilitated marketplace is effective for individuals and small businesses and whether the State should transition to a partnership exchange or state-based exchange in the future.

Recommendation: The Advisory Committee recommends the State continue with a Federally-Facilitated Marketplace in Maine in 2016, but the Legislature should continue to monitor the operations of the FFM and, after the 2015 enrollment period, assess whether any changes can be made to make the Marketplace more effective for individuals and small businesses.

2. Evaluate the implementation and operation of any exchange with respect to the essential health benefits benchmark plan designated in this State under the federal Patient Protection and Affordable Care Act, including whether the State should change its designation.

Recommendation: Since the current Essential Health Benefits package maintains the status quo and incorporates mandated health benefits previously enacted by the Legislature, the Advisory Committee does not believe changes are needed to Maine's designated benchmark plan.

3. Evaluate the impact of federal and state laws and regulations governing the health insurance rating for tobacco use and coverage for wellness programs and smoking cessation programs on accessibility and affordability of health insurance.

Recommendation: While there are some differences in the coverage provided, the Advisory Committee believes Maine's insurers are complying with the requirements for coverage of tobacco cessation benefits. At this time, the Advisory Committee does not recommend any policy changes to Maine's law relating to tobacco rating, but the impact of tobacco rating should continue to be monitored for its effect on the accessibility and affordability of health insurance.

4. Evaluate the consumer outreach and enrollment conducted by the exchange and whether the navigator program is effective and whether navigators or other persons providing assistance to consumers are in compliance with any federal or state certification and training requirements.

Recommendation: The Advisory Committee believes that consumer outreach and enrollment efforts in Maine have been successful despite limited federal resources. However, the Advisory Committee believes additional resources are needed to enhance the consumer education, outreach and assistance efforts currently being provided and the Advisory Committee supports continued federal funding for navigators.

5. Evaluate the coordination between the state Medicaid program and the exchange.

Recommendation: The Advisory Committee has had limited information about the coordination of the Medicaid program and Maine's FFM. In order to assess the implementation of the Marketplace and the relationship between the Marketplace and the State's MaineCare program, the Advisory Committee recommends that uniform data elements and common definitions be

developed for use, to the extent possible, by the Department of Health and Human Services, Bureau of Insurance, state agencies, navigators, certified application counselors and other entities to collect and report data.

Recommendation: The Advisory Committee recommends notices sent by DHHS must provide accurate information on all of the coverage options, all of the ways consumers can apply for coverage and all of the resources available to the consumer for assistance in evaluating health coverage options.

6. Evaluate whether health insurance coverage through the exchange is affordable for individuals and small businesses, including whether individual subsidies are adequate.

Recommendation: The Advisory Committee supports providing access to affordable health care coverage for all Maine people as well as the goal of reducing the uninsured and would support policy changes that would close the coverage gap as soon as possible and expand access to affordable health coverage.

7. Evaluate whether the exchange is effective in providing access to health insurance coverage for small businesses.

Recommendation: Because full implementation of the SHOP Marketplace through healthcare.gov was delayed in FFM states until 2015, it is premature for the Advisory Committee to assess the effectiveness of the FFM model for small businesses. The Legislature should monitor the operations of the SHOP in Maine and, after the 2015 enrollment period, assess whether any changes can be made to make the Marketplace more effective for small businesses.

8. Evaluate the implementation of rebates under the federal Patient Protection and Affordable Care Act and the Maine Revised Statutes, Title 24-A, section 4319.

Recommendation: As implemented so far, the minimum medical loss ratio standards and the rebate provisions of federal and state law appear to have had a positive impact on Maine's health insurance market. The Advisory Committee acknowledges that the results for the 2014 plan year may be more complicated due to the impact of the transitional federal risk adjustment programs on health insurance companies.

9. Evaluate the coordination of plan management activities between the Department of Professional and Financial Regulation, Bureau of Insurance and the exchange, including the certification of qualified health plans and rate review.

Recommendation: The Advisory Committee believes current coordination of plan management activities by the Bureau of Insurance with the FFM has been effective for the health plans operating in Maine as well as for Maine insurance consumers. The Advisory Committee does not recommend any changes to this oversight structure at this time but recommends the Legislature's Joint Standing Committee on Insurance and Financial Services monitor the relationship of the FFM with the Bureau of Insurance and determine whether a future transition to a formal partnership model would provide any added benefit.

10. Study the basic health program option, as set forth in the federal Affordable Care Act and make recommendations as appropriate, that examine the potential for establishing a basic health

program for eligible individuals in order to ensure continuity of care and that families previously enrolled in Medicaid remain in the same plan.

Recommendation: Without additional information about the feasibility of a Basic Health Program or other alternatives, it is premature for the Advisory Committee to make a specific policy recommendation. Instead, the Advisory Committee recommends the State conduct an independent study of the feasibility of operating a Basic Health Program as well as other alternatives for coverage.

11. Evaluate the continued necessity of a state health exchange advisory committee, including, including the staffing and funding needs of such an advisory committee and recommend, whether such an advisory committee should be established by the 127th Legislature and whether any changes should be made to the Maine Revised Statutes governing such an advisory committee.

Recommendation: The Advisory Committee recommends the Legislature establish a permanent state health exchange advisory committee.

In addition to the specific issues the Advisory Committee was directed to consider by Joint Order, H.P. 1136, the Advisory Committee also discussed issues related to the implementation and operation of Maine's Federally-Facilitated Marketplace and makes the following additional recommendations.

Recommendation: The Advisory Committee recommends the tax reconciliation process for enrollees in Maine's Federally-Facilitated Marketplace and the exemption process for Maine residents eligible to claim an exemption from the shared responsibility requirement of the federal Affordable Care Act be simplified and streamlined.

Recommendation: The Advisory Committee recommends the Joint Standing Committee on Insurance and Financial Services and any future Advisory Committee gather information about the impact of provider networks on access to health care services with regard to "surprise" bills from out-of-network health care providers for services received in in-network hospitals, looking specifically at emergency services and ancillary services provided in in-network hospitals.

Pursuant to the Joint Order establishing the Advisory Committee, this is the final report of the Advisory Committee. However, the Advisory Committee believes there is an ongoing need for an advisor and liaison to the Governor, the Legislature and the federal Government as implementation of the federal Affordable Care Act continues in Maine. The Advisory Committee urges the Legislature to support its recommendation to establish a permanent advisory committee.

I. INTRODUCTION

The Maine Health Exchange Advisory Committee was established by Joint Order, H.P. 1136, to advise the Legislature regarding the interests of individuals and employers with respect to any health benefit exchange that may be created for this State pursuant to the federal Patient Protection and Affordable Care Act. A copy of the Joint Order, H.P. 1136, is included as Appendix A.

Senator Margaret M. Craven and Representative Sharon Anglin Treat served as the Senate and House chairs of the Advisory Committee. As required by the Joint Order, the Advisory Committee has 18 members: 5 Legislators representing the Joint Standing Committees on Insurance and Financial Services, Appropriations and Financial Affairs and Health and Human Services; 6 members appointed by the President of the Senate; and 7 members appointed by the Speaker of the House of Representatives. While the Joint Order directed the President of the Senate and the Speaker of the House of Representatives to invite the Superintendent of Insurance and Commissioner of Health and Human Services or their designees to participate as ex officio nonvoting members, the Governor declined to appoint any representatives of the Administration to serve on the Advisory Committee.

The Advisory Committee members are:

Sen. Margaret M. Craven	*Senate Chair, Member of the HHS Committee; appointed by the President of the Senate*
Rep. Sharon Anglin Treat	*Chair, House Member of the IFS Committee; appointed by the Speaker of the House*
Sen. Rodney L. Whittemore	*Senate Member of the IFS Committee; appointed by the President of the Senate*
Rep. Michael D. McClellan	*House Member of the IFS Committee; appointed by the Speaker of the House*
Rep. Linda F. Sanborn	*House Member of the AFA Committee; appointed by the Speaker of the House*
Christine Alibrandi	*Representing dental insurance carriers; appointed by the Speaker of the House*
John Benoit	*Representing insurance producers; appointed by the President of the Senate*
John Costin	*Representing individuals expected to purchase coverage through exchange; appointed by the President of the Senate*
Bob Dawber	*Employee of an employer expected to purchase coverage through exchange; appointed by the Speaker of the House*
Sara Gagne-Holmes, Jack Comart	*Representing Medicaid recipients; appointed by the Speaker of the House*

Doug Gardner	*Advocate for enrolling hard-to-reach populations; appointed by the President of the Senate*
Laurie Kane-Lewis	*Representing federally-qualified health centers; appointed by the Speaker of the House*
Kevin Lewis	*Representing health insurance carriers; appointed by the Speaker of the House*
Elizabeth Neptune	*Representing a federally-recognized Indian tribe; appointed by the President of the Senate*
Kristine Ossenfort	*Representing health insurance carriers; appointed by the President of the Senate*
David Shipman	*Representing an employer expected to purchase coverage through exchange; appointed by the Speaker of the House*
Gordon Smith	*Representing health care providers; appointed by the Speaker of the House*
Mitchell Stein	*Representing navigators or entities likely to be navigators; appointed by the President of the Senate*

The complete membership of the Advisory Committee, including contact information, is included as Appendix B. The Office of Policy and Legal Analysis provided staffing support to the Advisory Committee.

During 2014, the Advisory Committee met 4 times: June 3, August 26, September 22 and October 16. In 2013, the Advisory Committee met 5 times: September 23, October 21, November 18, December 2 and December 9. All of the meetings were held in the Room 228 at the State House in Augusta and open to the public. Live audio of each meeting was made available through the Legislature's webpage. The Advisory Committee also posted agendas, meeting materials, links to related resources and audio recordings of selected committee meetings to its website, http://www.maine.gov/legis/opla/healthexchangeac.htm.

In December 2013, the Advisory Committee submitted a preliminary report to the Legislature. The preliminary report is found at http://www.maine.gov/legis/opla/MHEAC2013Report.pdf.

II. ADVISORY COMMITTEE DUTIES

In its role as adviser to the Legislature regarding the interests of individuals and small businesses with respect to Maine's health benefit exchange, the Advisory Committee's specific duties are to:

- Advise the Legislature regarding the interests of individuals and employers with respect to any exchange that may be created for this State;

- Serve as a liaison between any exchange and individuals and small businesses enrolled in the exchange;

- Evaluate the implementation and operation of any exchange with respect to the following:
  - The essential health benefits benchmark plan designated in this State under the federal Patient Protection and Affordable Care Act, including whether the State should change its designation;
  - The impact of federal and state laws and regulations governing the health insurance rating for tobacco use and coverage for wellness programs and smoking cessation programs on accessibility and affordability of health insurance;
  - The consumer outreach and enrollment conducted by the exchange and whether the navigator program is effective and whether navigators or other persons providing assistance to consumers are in compliance with any federal or state certification and training requirements;
  - The coordination between the state Medicaid program and the exchange;
  - Whether health insurance coverage through the exchange is affordable for individuals and small businesses, including whether individual subsidies are adequate;
  - Whether the exchange is effective in providing access to health insurance coverage for small businesses;
  - The implementation of rebates under the federal Patient Protection and Affordable Care Act and the Maine Revised Statutes, Title 24-A, section 4319; and
  - The coordination of plan management activities between the Department of Professional and Financial Regulation, Bureau of Insurance and the exchange, including the certification of qualified health plans and rate review;

- Following the release of guidance or regulations addressing the basic health program option, conduct a study, and make recommendations as appropriate, that examines the potential for establishing a basic health program for eligible individuals in order to ensure continuity of care and that families previously enrolled in Medicaid remain in the same plan; and

- Make recommendations for any changes in policy or law that would improve the operation of an exchange for consumers and small businesses in the State.

III. ADVISORY COMMITTEE PROCESS

The Advisory Committee monitored the operations of Maine's federally-facilitated marketplace (FFM) and the coordination between the FFM, the Medicaid program, the Bureau of Insurance and the qualified health plans operating in Maine on and off the FFM. The Advisory Committee also focused on the consumer outreach and assistance resources available to individuals and small businesses and the effectiveness of those resources.

The Advisory Committee received an update at each meeting from Christie Hager, Region One Director for the United States Department of Health and Human Services. Ms. Hager was a valuable resource to the Advisory Committee and an important link for information on federal implementation efforts for the FFM in Maine and other provisions of the federal Affordable Care Act.

The Superintendent of Insurance Eric Cioppa provided updates at each meeting on the regulatory activities of the Bureau of Insurance with regard to the FFM and oversight of qualified health plans. The Advisory Committee also received presentations on the medical and dental plans available through the

FFM in 2014 (and expected in 2015) from representatives of Anthem Health Plans of Maine, Maine Community Health Options, Northeast Delta Dental and Harvard Pilgrim Health Care.

The Advisory Committee discussed consumer outreach and enrollment assistance issues with the following individuals:

- Jacob Grindle, Western Maine Community Action;
- Wendy Wolf and Morgan Hynd, Maine Health Access Foundation, regarding *enroll207.com*;
- Emily Brostek, Consumers for Affordable Health Care; and
- Robyn Merrill, Maine Equal Justice Partners.

Finally, the Advisory Committee discussed the Basic Health Program and other coverage options with Jessica Schubel from the Center for Budget Policies and Priorities.

The Advisory Committee was disappointed that representatives of the Department of Health and Human Services did not attend any meetings or make presentations as requested. Although DHHS did submit written information in response to requests from the Advisory Committee, the lack of full participation affected the Advisory Committee's discussions.

IV. ADVISORY COMMITTEE FINDINGS AND RECOMMENDATIONS

Pursuant to H.P. 1136, the Maine Health Exchange Advisory Committee was directed by the Legislature to consider the issues described below. Based on its review and discussions, the Advisory Committee makes the following findings and recommendations.

1. Whether Maine's federally-facilitated marketplace is effective for individuals and small businesses and whether the State should transition to a partnership exchange or state-based exchange in the future.

Recommendation: The Advisory Committee recommends the State continue with a Federally-Facilitated Marketplace in Maine in 2016, but the Legislature should continue to monitor the operations of the FFM and, after the 2015 enrollment period, assess whether any changes can be made to make the Marketplace more effective for individuals and small businesses.

The Advisory Committee recommends the State continue with a Federally-Facilitated Marketplace (FFM) in Maine in 2016. More than 44,000 people selected qualified health plans through Maine's Marketplace; 90% of those selecting health plans qualified for premium assistance.[1] Despite the initial problems with the *healthcare.gov* website, Maine's first year in the Marketplace was very successful for individuals and families. While the 2015 enrollment period may present different challenges, the Advisory Committee believes the FFM has provided those individuals enrolled with comprehensive health care coverage and critical financial assistance to those eligible for that assistance. The success of Marketplaces in other states was mixed. Some states that chose to establish state-based Marketplaces, like Connecticut and Kentucky, successfully launched Marketplaces, while other states, like Oregon and Maryland, were not as successful in implementing their Marketplaces.

[1] Health Insurance Marketplace: Summary Enrollment Report, October 1, 2013 – April 19, 2014, Office of the Assistant Secretary for Planning and Evaluation (ASPE), Department of Health and Human Services (HHS); May 1, 2014. http://aspe.hhs.gov/health/reports/2014/marketplaceenrollment/apr2014/ib_2014apr_enrollment.pdf

While Maine's FFM ultimately operated effectively for individuals, full implementation of the SHOP Marketplace for small businesses through *healthcare.gov* was delayed in FFM states until 2015. As such, it is premature for the Advisory Committee to assess the effectiveness of the FFM model for small businesses. During its meetings in 2013, the Advisory Committee did discuss the potential for the State to establish a state-based SHOP Marketplace to serve small businesses. The Advisory Committee received a briefing on Kentucky's health benefit exchange, "kynect". After the first year, Kentucky's Marketplace appears to be one of the most successful state-based Marketplaces in terms of small business enrollment. The Advisory Committee was impressed with that state's approach to its small business Marketplace and the broad involvement of health insurance brokers. The Advisory Committee may be interested in exploring this potential model if the Federally-Facilitated SHOP Marketplace fails to attract enrollment from small businesses in Maine.

The Advisory Committee has also considered whether a transition to a formal partnership model would provide any added benefit. Under the partnership model, states can assume responsibility for the plan management functions and/or consumer assistance functions of the Marketplace in conjunction with the federal government. In a partnership Marketplace, states may perform plan management functions on behalf of the Marketplace, including certification and oversight of qualified health plans and review and oversight of plan rates, benefits and quality. Alternatively, states may also assume some or all of the consumer assistance functions of the Marketplace in a partnership, including assistance, education and outreach to consumers, call center operations, website management and oversight and administration of the Navigator program. Through an exchange of letters, the Bureau of Insurance has assumed certain plan management functions for the FFM. The Bureau oversees the regulation of health insurance carriers participating in the FFM, including review of premium rates. Although Maine has not adopted the formal partnership approach, the Advisory Committee believes the current coordination of plan management activities by the Bureau of Insurance with the FFM has been effective for the health plans operating in Maine, as well for Maine insurance consumers.

The Advisory Committee also recognizes that the Bureau of Insurance has devoted considerable time and resources toward consumer outreach and education in 2014. The Advisory Committee supports the outreach efforts undertaken by the Bureau of Insurance and urges the State, through the Bureau of Insurance, to consider whether a partnership model focused on consumer assistance functions would provide additional federal funding to help pay the costs of the Bureau's consumer outreach activities.

The Advisory Committee does not recommend any immediate changes to the oversight structure, but the Legislature's Joint Standing Committee on Insurance and Financial Services should monitor the relationship of the FFM with the Bureau of Insurance and determine whether a future transition to a formal partnership model should be considered. Based on existing federal guidance, states must provide notice of policy decisions to transition to a different exchange model 14 months in advance to allow sufficient time for review and approval by the federal government and preparation by states and health plan issuers. Given this timetable, the State would be required to notify the federal government by the end of November 2014 of its intent to change the oversight of Maine's Marketplace beginning in the 2016 plan year.

The Advisory Committee discussed pending legal challenges to the validity of premium subsidies in states with an FFM. Based on inconsistent language in different sections of federal law, court actions have challenged the authority of the FFM to extend premium subsidies, arguing that subsidies may only be provided in states that have established their own marketplaces.[2] Currently, the pending court actions

[2] On November 7, 2014, the United States Supreme Court granted a petition to review *King v. Burwell*, a U.S. Court of Appeals for Fourth Circuit decision issued on July 22, 2015 which upheld an Internal Revenue Service rule

have no effect on the availability of subsidies through an FFM. Premium subsidies will continue to be available for individuals enrolled in coverage for 2014 or those enrolling in coverage for 2015. At this time, there is no need to make structural changes to Maine's FFM and the Advisory Committee does not recommend any changes in 2015. Future court decisions may affect the operation of Maine's Marketplace and cause policymakers to reconsider Maine's current structural model.

The Legislature should continue to monitor the operations of the FFM and, after the 2015 enrollment period, assess whether any changes can be made to make the Marketplace more effective for individuals and small businesses.

2. Evaluate the implementation and operation of any exchange with respect to the essential health benefits benchmark plan designated in this State under the federal Patient Protection and Affordable Care Act, including whether the State should change its designation.

Recommendation: Since the current Essential Health Benefits package maintains the status quo and incorporates mandated health benefits previously enacted by the Legislature, the Advisory Committee does not believe changes are needed to Maine's designated benchmark plan.

The current federal guidance under which States designated Essential Health Benefits medical and dental benchmark plans applies through plan year 2015. When the current benchmark plan selection process was announced, CMS indicated that additional guidance as to any changes in that selection process might be provided for plan years beginning in 2016 and thereafter. The Advisory Committee wrote letters in June and August 2014 urging CMS to issue immediate notification to states as to whether the current federal guidance permitting states to designate a benchmark plan for Essential Health Benefits will be continued without change or modified for the 2016 plan year. If changes are anticipated, the Advisory Committee believes guidance must be provided no later than in the last quarter of 2014 so that health insurance carriers are able to incorporate any changes into 2016 health plans submitted for approval to the Maine Bureau of Insurance in the spring of 2015. In addition, if changes to Maine's designation of Essential Health Benefits will be permitted for the 2016 plan year, the Legislature will need adequate time to consider any policy options carefully and receive public input on those options before making any recommendations.

Because Maine did not affirmatively select a benchmark plan as permitted by the federal guidance, Maine's benchmark plan for Essential Health Benefits is the default benchmark plan, which is based on the largest small group health plan. Maine's benchmark plan for Essential Health Benefits includes all of the mandated health insurance benefits that were applicable to small group health plans as of December 2011. Since the current Essential Health Benefits package maintains the status quo and incorporates mandated health benefits previously enacted by the Legislature, the Advisory Committee does not believe changes are needed to Maine's designated benchmark plan.

---

interpreting federal law to allow premium tax credits in all states. The Supreme Court is expected to hear oral arguments in the case in March 2015 and issue a decision in late June 2015. In a separate related case, the Court of Appeals for the District of Columbia Circuit has granted an *en banc* hearing on December 17, 2014 in *Halbig v. Burwell*, which also challenges the validity of premium tax credits in states with federally-facilitated marketplaces (vacating a 2-1 decision also issued on July 22, 2014 holding that premium tax credits are only available in states that have established own exchanges). At this time, the impact of the Supreme Court's decision to hear the *King v. Burwell* on the court action in the D.C. Circuit is unclear.

The Advisory Committee also discussed a separate issue related to the effect of additional mandated health benefits on Maine's Essential Health Benefits. Pursuant to the federal Affordable Care Act, if a state subsequently enacts laws mandating additional health benefits in qualified health plans effective on or after January 1, 2014, that state is required to defray the increased premium costs of those additional mandated health benefits. In 2014, Maine enacted a law requiring all individual and small group health insurance policies to provide coverage for bone marrow testing. While initial estimates of the costs of this added mandate are modest (approximately $40,000 annually), the federal government has not provided guidance to States for how States will be required to pay these costs. During the Legislature's consideration of the law mandating coverage for bone marrow testing, the Joint Standing Committee on Insurance and Financial Services discussed the possibility that a de minimis threshold might be established so that the State may not be required to defray the costs of a mandate considered to meet a de minimis standard. The Advisory Committee believes guidance must be provided so that the Legislature can evaluate future legislative proposals for mandated health benefits knowing the financial impact of the proposal on the State budget.

3. Evaluate the impact of federal and state laws and regulations governing the health insurance rating for tobacco use and coverage for wellness programs and smoking cessation programs on accessibility and affordability of health insurance.

Recommendation: While there are some differences in the coverage provided, the Advisory Committee believes Maine's insurers are complying with the requirements for coverage of tobacco cessation benefits. At this time, the Advisory Committee does not recommend any policy changes to Maine's law relating to tobacco rating, but the impact of tobacco rating should continue to be monitored for its effect on the accessibility and affordability of health insurance.

The Advisory Committee reviewed federal and state laws and regulations relating to tobacco cessation coverage and tobacco rating. Under current federal law and guidance, coverage for tobacco benefits is required in all health insurance plans as a preventive benefit in the Essential Health Benefits package. The Advisory Committee also reviewed information about the scope of tobacco cessation coverage provided by health insurance carriers in Maine's individual and small group markets. While there are some differences in the coverage provided, the Advisory Committee believes Maine's insurers are complying with the requirements for coverage of tobacco cessation benefits.

With regard to rating, federal law expressly permits tobacco use to be used as a rating factor in health insurance with a surcharge of up to 50% on the premium rate. Under federal law, states may enact laws that are more protective of consumers, i.e., lowering the amount of the maximum surcharge that may be assessed or prohibiting the use of a tobacco rating surcharge.[3] Maine's law permits insurers to assess a surcharge of up to 50%, consistent with federal law. Prior to the enactment of the federal Affordable Care Act and changes to state insurance laws in Public Law 2013, chapter 90, Maine law authorized individual and small group insurers to vary rates on the basis of tobacco use pursuant to rules adopted by the Bureau of Insurance. However, the provision was never implemented and rules were not adopted. Legislative proposals to prohibit the use of tobacco rating were considered, but not enacted, during the 126th Legislature.

[3] Six states and the District of Columbia prohibit rating based on tobacco use: California, Massachusetts, New Jersey, New York, Rhode Island and Vermont. Three states restrict the maximum surcharge below 50%: Arkansas (20%); Colorado (15%); and Kentucky (40%). The remaining states are consistent with federal law. http://kff.org/other/state-indicator/individual-market-rating-reforms-as-of-january-1-2014/

The Advisory Committee also requested information from Maine insurers about whether tobacco use is used as a rating factor. Based on the information provided, Maine insurers have different approaches to tobacco rating allowing consumers to consider that variable as a factor when selecting a health plan. Because there was not a full year of data available at the time of the Advisory Committee's request, insurers were only able to provide limited information about the number of individuals subject to a tobacco rating surcharge. Insurers also cautioned that individuals applying for health insurance self-certify on the application as to their tobacco use, and federal rules prohibit the use of a surcharge if an individual indicates they are willing to undergo tobacco cessation treatment. For the 2015 plan year, Maine Community Health Options will not use tobacco rating as a factor in the individual and small group market; Aetna will include a tobacco rating surcharge of 10% for its individual and small group health plans; Harvard Pilgrim Health Care will use a factor for tobacco use of 1.207 in its individual plans and no factor will be used for its small group plans; and Anthem will use a tobacco rating factor that will increase with age from 1.000 to 1.490.

At this time, the Advisory Committee does not recommend any policy changes to Maine's law relating to tobacco rating. The Advisory Committee is divided on this issue with many members expressing support for a recommendation to prohibit tobacco rating. In their remarks, these members noted that several health care organizations, including the American Lung Association, American Cancer Society's Cancer Action Network, American Heart Association and the Maine Medical Association, oppose the use of tobacco rating. Members also expressed concerns about the accessibility and affordability of coverage for individuals who use tobacco. They believe increased premium costs for tobacco users may cause users to drop coverage (or not to seek coverage) and may also affect their choice and selection of a health plan through the FFM. The Advisory Committee believes the impact of tobacco rating should continue to be monitored for its effect on the accessibility and affordability of health insurance.

4. Evaluate the consumer outreach and enrollment conducted by the exchange and whether the navigator program is effective and whether navigators or other persons providing assistance to consumers are in compliance with any federal or state certification and training requirements.

Recommendation: The Advisory Committee believes that consumer outreach and enrollment efforts in Maine have been successful despite limited federal resources. However, the Advisory Committee believes additional resources are needed to enhance the consumer education, outreach and assistance efforts currently being provided and the Advisory Committee supports continued federal funding for navigators.

The Advisory Committee believes that consumer outreach and enrollment efforts in Maine have been successful despite limited federal resources. Maine's enrollment in the FFM exceeded the initial federal projections for 20,000 people to enroll as 44,258 Maine residents selected health care plans during the open enrollment period. It is a remarkable achievement that would not have been possible without the coordinated effort of Maine's recognized navigators, certified application counselors and other community partners. The Maine Health Access Foundation provided significant leadership, funding and resources for consumer outreach and education. The *enroll207.com* website and the corresponding advertising and marketing campaign developed by MeHAF had a demonstrated impact on Maine's enrollment success. The Advisory Committee also wants to acknowledge the important role that libraries throughout Maine played in sponsoring information sessions and providing assistance to consumers.

However, the Advisory Committee believes additional resources are needed to enhance the consumer education, outreach and assistance efforts currently being provided. The Advisory Committee believes consumer education and outreach efforts must continue for both individuals and small businesses. The delays in full implementation of the SHOP Marketplace highlight the continued need for assistance to small businesses. Individuals and small businesses must be informed of regulatory changes and other

implementation developments so they are able to make good decisions based on current information about their health coverage options. The Advisory Committee supports the Navigator program and was pleased that federal funding for Maine's two recognized navigator agencies has been extended and increased for 2015. However, the Advisory Committee believes that Maine would benefit from having more than two Navigator organizations so that resources could be available for consumers statewide. Funding should be available to support and expand the Navigator program as long as Maine's FFM is operating. At present, federal funding has not been committed for navigators beyond 2015. The Advisory Committee supports continued federal funding for navigators at existing levels.

The Advisory Committee believes Maine's navigator program is effective. Navigators have fulfilled federal and state requirements for certification and training. During the 2014 enrollment period, the Bureau of Insurance did not receive any consumer complaints about the conduct of navigators.

As over 44,000 Mainers begin to use their new health insurance coverage and with more Mainers expected to join the Marketplace in the upcoming open enrollment period, the Advisory Committee also believes that consumer assistance programs are needed more than ever. Many people who are now covered have never had health insurance before. They need help to understand how their health care coverage works and how to access the new protections that the federal Affordable Care Act has provided. Maine consumers also need help with navigating their coverage, including filing complaints and appeals, if needed. The Advisory Committee sent a letter in support of Consumer for Affordable Health Care's application for continued federal funding for its consumer assistance program. Given the limited federal resources being spent in Maine, the Advisory Committee feels this valuable assistance needs to continue in 2015.

5. Evaluate the coordination between the state Medicaid program and the exchange.

Recommendation: The Advisory Committee has had limited information about the coordination of the Medicaid program and Maine's FFM. In order to assess the implementation of the Marketplace and the relationship between the Marketplace and the State's MaineCare program, the Advisory Committee recommends that uniform data elements and common definitions be developed for use, to the extent possible, by the Department of Health and Human Services, Bureau of Insurance, state agencies, navigators, certified application counselors and other entities to collect and report data.

Recommendation: The Advisory Committee recommends notices sent by the Department of Health and Human Services must provide accurate information on all of the coverage options, all of the ways consumers can apply for coverage and all of the resources available to the consumer for assistance in evaluating health coverage options.

When the Affordable Care Act was first enacted, the law envisioned a seamless transition for health coverage between the Medicaid program and the exchange. As the law has been implemented, the seamless coordination between the State Medicaid program and Maine's FFM has been complicated by Maine's failure to expand Medicaid program. The Advisory Committee has had limited information about the coordination of the Medicaid program and Maine's FFM. The Maine Department of Health and Human Services (DHHS) has not been responsive to the Advisory Committee's requests for information and has not attended any meetings or accepted the Advisory Committee's invitations to make presentations. While DHHS has responded to written requests for information, it has been difficult for the Advisory Committee to evaluate the Department's coordination efforts without meaningful input from its representatives. Based on input provided by Christie Hager, Region One Director, Office of Intergovernmental and External Affairs, U.S. Department of Health and Human Services, the Advisory Committee understands that the FFM and DHHS are working to improve the coordination and exchange of information needed to determine eligibility of individuals for health coverage through Medicaid or

eligibility for the FFM.

In order to assess the implementation of the Marketplace and the relationship between the Marketplace and the State's MaineCare program, the Advisory Committee recommends that uniform data elements and common definitions be developed for use, to the extent possible, by the DHHS, Bureau of Insurance, state agencies, navigators, certified application counselors and other entities to collect and report data. The Advisory Committee believes it is very important to develop a uniform system to collect and report demographic, eligibility and enrollment data on those individuals and small businesses seeking assistance in obtaining health care coverage through the Marketplace or through public programs like MaineCare. The Advisory Committee believes the data should be reported on a regular basis to the Advisory Committee, policymakers and the public to provide the objective data needed to assess the operation of the Marketplace in Maine. Such uniformity of data is also needed to inform future recommendations for changes in policy or law affecting the marketplace. The Advisory Committee recommends that the DHHS develop partnerships with interested organizations to adopt uniform data elements and survey instruments to collect and report demographic, eligibility and enrollment data.

The Advisory Committee has also reviewed sample notices used by DHHS and believes these notices provide inaccurate and incomplete information to consumers. For example, notices sent to individuals notifying them that they are not eligible for MaineCare indicate their information has been referred to the Federally-Facilitated Marketplace and that the FFM will contact them by letter letting them know what to do next. It is not clear to the Advisory Committee whether the FFM is engaging in this activity or even has the authority, capacity or resources to contact these individuals. The Advisory Committee recommends notices sent by DHHS must provide accurate information on all of the coverage options, all of the ways consumers can apply for coverage and all of the resources available to the consumer for assistance in evaluating health coverage options. Copies of the sample notices provided by DHHS can be found in Appendix E.

6. Evaluate whether health insurance coverage through the exchange is affordable for individuals and small businesses, including whether individual subsidies are adequate.

Recommendation: The Advisory Committee supports providing access to affordable health care coverage for all Maine people as well as the goal of reducing the uninsured and would support policy changes that would close the coverage gap as soon as possible and expand access to affordable health coverage.

In its preliminary report from December 2013, the Advisory Committee recommended the State take action to close the coverage gap to ensure individuals have access to affordable health insurance coverage. As changes in MaineCare eligibility have been implemented, individuals have lost eligibility for MaineCare and will not qualify for subsidies to provide assistance to access private health coverage through the Marketplace. In addition to the individuals who lost eligibility for coverage, there are individuals who are also ineligible for subsidies due to their low incomes. These individuals are described as being in the "coverage gap."

Since the implementation of the ACA only began on January 1, 2014, the Advisory Committee has not had an opportunity to gather data about the impact of the coverage gap on "churn". Churning is the movement of consumers, in or out of, or between systems of health coverage. Churn can occur between public and private health coverage and between private health plans in and outside of the Marketplace. Churning interrupts continuity of coverage and of care and makes programs more complicated and costly to administer. It can also create gaps in coverage when consumers need to move between programs or health plans, and can interfere with accurate and comprehensive quality measurement. The coverage gap and churn also have an effect on the financial stability of federally-qualified health centers, hospitals and

other health care providers that depend on federal and state reimbursement for services provided to individuals enrolled in public and private health plans. The Advisory Committee is concerned about the effects of the coverage gap and churn on the effectiveness of the Marketplace and believes these effects should be monitored.

The Advisory Committee supports providing access to affordable health care coverage for all Maine people as well as the goal of reducing the uninsured and would support policy changes that would close the coverage gap as soon as possible and expand access to affordable health coverage. For the Advisory Committee, affordable health coverage means the availability of the appropriate health care at the right time, at the right place and at the right price. While individuals may be eligible to purchase private health care coverage through the marketplace, the affordability of that coverage is a significant issue for those with limited income.

All policy options should be explored, including amendments to the ACA, to expand the availability of premium tax credits to individuals with lower income levels and to expand eligibility for MaineCare, an option which is currently available to the State in accordance with federal law and regulation. The Advisory Committee acknowledges that this recommendation is significant because it represents the consensus of its members; individual members of the Advisory Committee have differing opinions on specific policy options available to address the coverage gap, but all support this recommendation in the interest of achieving consensus.

Although the Marketplace and other reforms under the Affordable Care Act have only been in effect for one year, the Advisory Committee wants to highlight the positive impact these reforms appear to have on health insurance premium rates in Maine. Based on information provided by the Maine Bureau of Insurance, average individual health insurance rates for 2015 plans being offered on the FFM have decreased from 2014; average rates decreased 0.8% for Maine Community Health Options and 1.1%.for Anthem Health Plans of Maine. While not all consumers will experience premium rate decreases because of their age, geographic area or specific plan of coverage, the overall rate reduction and moderation of rate increases are promising.

The Advisory Committee also notes that the design and structure of the ACA has had an effect on affordability of coverage. Current IRS guidelines interpret the ACA to prevent an employee's family from being eligible for premium and cost-sharing subsidies and other financial assistance through the Marketplace even if the cost of coverage for the family is unaffordable. These rules state that an employer's offer of individual coverage is used to determine if that coverage is affordable (costs less than 9.5 percent of the employee's income). Even if that employer also offers the employee's family members coverage in its plan, the cost of the family coverage is not used to determine the affordability of the employee's coverage. While the employee's family may purchase coverage through the FFM, they will not be eligible for financial assistance. The Advisory Committee supports efforts at the federal level to address the "family glitch."

7. Evaluate whether the exchange is effective in providing access to health insurance coverage for small businesses.

Recommendation: Because full implementation of the SHOP Marketplace through healthcare.gov was delayed in FFM states until 2015, it is premature for the Advisory Committee to assess the effectiveness of the FFM model for small businesses. The Legislature should monitor the operations of the SHOP in Maine and, after the 2015 enrollment period, assess whether any changes can be made to make the Marketplace more effective for small businesses.

Because full implementation of the SHOP Marketplace through healthcare.gov was delayed in FFM states until 2015, it is premature for the Advisory Committee to assess the effectiveness of the FFM

model for small businesses. During its meetings in 2013, the Advisory Committee did discuss the potential for the State to establish a state-based SHOP Marketplace to serve small businesses. The Advisory Committee received a briefing on Kentucky's health benefit exchange, "*kynect.*" After the first year, Kentucky's Marketplace appears to be one of the most successful state-based Marketplaces in terms of small business enrollment. The Advisory Committee was impressed with Kentucky's approach to its small business Marketplace and the broad involvement of health insurance brokers. The Advisory Committee may be interested in exploring this potential model if the Federally-Facilitated SHOP Marketplace fails to attract enrollment from small businesses in Maine.

For 2015 open enrollment, improvements in functionality are expected for the SHOP Marketplace, including online enrollment through the *healthcare.gov* website (which was not available in 2014). However, due to an additional delay permitted by the federal government and elected by Maine's Superintendent of Insurance, Maine's small employers will not be able to offer their employees a choice of qualified health plans through the SHOP Marketplace in 2015.

The Advisory Committee is concerned that the SHOP Marketplace does not provide adequate financial assistance to small employers and their employees to access affordable coverage. Although tax credits are available to certain small businesses for two years, small employers do not qualify for any ongoing financial assistance to help pay premium costs when enrolling the business in the SHOP marketplace. The Advisory Committee notes that the Dirigo Health program which operated in Maine prior to the FFM did provide financial assistance to employees based on income. As noted above, the "family glitch" can prevent an employee's family from being eligible for premium subsidies and other financial assistance through the Marketplace should the offer of coverage exist.

The Legislature should monitor the operations of the SHOP in Maine and, after the 2015 enrollment period, assess whether any changes can be made to make the Marketplace more effective for small businesses.

8. Evaluate the implementation of rebates under the federal Patient Protection and Affordable Care Act and the Maine Revised Statutes, Title 24-A, section 4319.

Recommendation: As implemented so far, the minimum medical loss ratio standards and the rebate provisions of federal and state law appear to have had a positive impact on Maine's health insurance market. The Advisory Committee acknowledges that the results for the 2014 plan year may be more complicated due to the impact of the transitional federal risk adjustment programs on health insurance companies.

Since 2011, the Affordable Care Act has required health insurance companies in the individual and small group markets to spend at least 80% of the premium dollars they collect on medical care and quality improvement actives. This standard is referred to as the minimum medical loss ratio (MLR). In the large group market, the MLR is 85%. Carriers that fail to meet the minimum standards are required to issue annual rebates for the amount by which they exceeded the MLR in the form of premium reductions or refunds.

For Maine in 2011, only the large group market was touched by the rebates, with Connecticut General Life Insurance Co. required to pay a rebate of $2,579,922.[4] No insurers in the individual[5] or small group

[4] Consumers Union, http://yourhealthsecurity.org/health-insurance-refund-list-2011

markets were required to issue a rebate. For Maine in 2012, CMS reported $501,240 in rebates in the large group market with 8,796 consumers benefitting from the rebates which averaged $106 per family.[6] As with 2011, there were no rebates reported for the small group or individual market. For the 2013 claim year in Maine, a total of $1,845.006 in rebates was due in the small group market ($237,887 benefitting 6,002 consumers, $50 average rebate) and large group market ($1,607,119 benefitting 13,540 consumers, $211 average rebate).[7]

As implemented so far, the minimum medical loss ratio standards and the rebate provisions of federal and state law appear to have had a positive impact on Maine's health insurance market. The Advisory Committee acknowledges that the results for the 2014 plan year may be more complicated due to the impact of the transitional federal risk adjustment programs on health insurance companies.

9. Evaluate the coordination of plan management activities between the Department of Professional and Financial Regulation, Bureau of Insurance and the exchange, including the certification of qualified health plans and rate review.

Recommendation: The Advisory Committee believes current coordination of plan management activities by the Bureau of Insurance with the FFM has been effective for the health plans operating in Maine as well as for Maine insurance consumers. The Advisory Committee does not recommend any changes to this oversight structure at this time but recommends the Legislature's Joint Standing Committee on Insurance and Financial Services monitor the relationship of the FFM with the Bureau of Insurance and determine whether a future transition to a formal partnership model would provide any added benefit.

Through an exchange of letters, the Bureau of Insurance has assumed certain plan management functions for the FFM. The Bureau oversees the regulation of health insurance carriers participating in the FFM, including review of premium rates. The Advisory Committee believes current coordination of plan management activities by the Bureau of Insurance with the FFM has been effective for the health plans operating in Maine as well as for Maine insurance consumers. The Advisory Committee does not recommend any changes to this oversight structure at this time but recommends the Legislature's Joint Standing Committee on Insurance and Financial Services monitor the relationship of the FFM with the Bureau of Insurance and determine whether a future transition to a formal partnership model would provide any added benefit. In a partnership Marketplace, states may perform plan management functions on behalf of the Marketplace, including certification and oversight of qualified health plans and review and oversight of plan rates, benefits and quality. Alternatively, states may also assume some or all of the consumer assistance functions of the Marketplace in a partnership, including assistance, education and outreach to consumers, call center operations, website management and oversight and administration of the Navigator program.

The Advisory Committee also recognizes that the Bureau of Insurance has devoted considerable time and resources toward consumer outreach and assistance. The Advisory Committee supports the outreach efforts undertaken by the Bureau of Insurance and urges the State, through the Bureau of Insurance, to consider whether a partnership model focused on consumer assistance functions would provide

---

[5] In the individual market, Maine was granted a temporary waiver of the 80% medical loss ratio under federal law for 2011 and 2012; carriers in the individual market were required to meet a 65% MLR.

[6] http://www.cms.gov/CCIIO/Resources/Data-Resources/Downloads/2012-mlr-rebates-by-state-and-market.pdf

[7] http://wwwcms.gov/CCIIO/Resources/Data-Resources/Downloads/2013_MLR_Refunds_by_State.pdf

additional federal funding to help pay the costs of the Bureau's plan management and consumer outreach activities.

The Advisory Committee wants to compliment the Bureau of Insurance for its exemplary effort to oversee the qualified health plans in Maine's FFM and provide assistance to Maine consumers. Health insurance carriers, consumers and legislators have all had positive experiences with the Bureau's professional staff.

10. Study the basic health program option, as set forth in the federal Affordable Care Act and make recommendations as appropriate, that examine the potential for establishing a basic health program for eligible individuals in order to ensure continuity of care and that families previously enrolled in Medicaid remain in the same plan.

Recommendation: Without additional information about the feasibility of a Basic Health Program or other alternatives, it is premature for the Advisory Committee to make a specific policy recommendation. Instead, the Advisory Committee recommends the State conduct an independent study of the feasibility of operating a Basic Health Program as well as other alternatives for coverage.

The Advisory Committee received a presentation on the Basic Health Program option and other alternative coverage options from Jessica Schubel of the Center for Budget Policies and Priorities. The Advisory Committee reviewed the federal law and regulations and discussed the activities of other States that are considering the Basic Health Program option, an optional Medicaid State plan "XX" group waiver or a State Innovation Waiver. At this time, Minnesota is the only state poised to establish a Basic Health Program beginning in January 2015. However, other states, including New York, Oregon and Vermont, are considering a Basic Health Program or other alternatives for universal coverage. Without additional information about the feasibility of a Basic Health Program or other alternatives, it is premature for the Advisory Committee to make a specific policy recommendation. Instead, the Advisory Committee recommends the State conduct an independent study of the feasibility of operating a Basic Health Program as well as other alternatives for coverage. A draft of the recommended legislation is attached in Appendix D.

11. Evaluate the continued necessity of a state health exchange advisory committee, including, including the staffing and funding needs of such an advisory committee and recommend , whether such an advisory committee should be established by the 127th Legislature and whether any changes should be made to the Maine Revised Statutes governing such an advisory committee.

Recommendation: The Advisory Committee recommends the Legislature establish a permanent state health exchange advisory committee.

The Advisory Committee recommends the Legislature establish a permanent state health exchange advisory committee. The Advisory Committee believes there is a continuing need for such a committee to advise the Legislature regarding the implementation of the federal Affordable Care Act through the Marketplace and other health reforms. The implementation of the federal Affordable Care Act is a work in progress; the implementation of several key components in the law has been delayed or phased-in over time. In this report, the Advisory Committee has identified several issues that need further study and evaluation before final policy recommendations can be made. The structure of the Advisory Committee brings together important stakeholders who have an in-depth understanding of the law and expertise in health care policy. Through a permanent Advisory Committee, these stakeholders will be able to evaluate the issues and make informed policy recommendations to the Legislature and Governor regarding the implementation and operation of Maine's FFM as well as other aspects of the federal law. The Advisory

Committee can also serve an important role moving forward as liaison to the federal Government, the Governor and the Legislature for exchanging information and ideas to make Maine's Marketplace effective for individuals and small businesses.

The Advisory Committee would recommend two changes to the original joint order: 1) to add a member with expertise in taxation matters; and 2) to provide annual staff support to the Advisory Committee year-round, including during the legislative session. A draft of the recommended legislation is attached in Appendix C.

In addition to the duties identified in the original joint order and discussed in this report, the Advisory Committee has identified the following issues that should also be considered by the future Advisory Committee:

- Evaluate the impact of dental health coverage and the integration of medical and dental coverage in qualified health plans and consider whether changes should be made in federal law or regulation, including but not limited to, expansion of coverage or changes to address premiums and out-of-pocket costs;

- Evaluate whether the State should consider changes to its designated rating areas for geographic area to the extent permitted by federal law and regulation;

- Evaluate the impact of "churn" on the effective operation of the marketplace, public health programs and the private health insurance market;

- Evaluate the impact of federal requirements to provide employer-sponsored health coverage, including but not limited to, the employer mandate for coverage on employers in the health care industry and other types of employers and the "30 hour work week" rule;

- Evaluate the impact of the statutory change in the definition of "small group" for health insurance purposes in 2016;

- Evaluate the impact of federal transitional risk adjustment programs and whether the State should consider ending the suspension of the Maine Guaranteed Access Reinsurance Association;

- Evaluate whether the State should pursue the Basic Health Plan program or other coverage alternatives following review and evaluation of the feasibility study recommended by the Advisory Committee;

- Evaluate the impact of individual health insurance policies continued in accordance with the transitional relief provided by the federal Government on Maine's health insurance market; and

- Evaluate the impact of provider networks on access to health care services, including access to in-network providers for emergency services and ancillary services provided in in-network hospitals.

In addition to the specific issues the Advisory Committee was directed to consider by Joint Order, H.P. 1136, the Advisory Committee also discussed other issues related to the implementation and operation of Maine's Federally-Facilitated Marketplace and makes the following additional recommendations.

Recommendation: The Advisory Committee recommends the tax reconciliation process for enrollees in Maine's FFM and the exemption process for Maine residents eligible to claim an exemption from the shared responsibility requirement of the federal Affordable Care Act be simplified and streamlined.

The Advisory Committee advocated for changes to simplify the tax reconciliation process for enrollees in Maine's FFM and the exemption process for Maine residents eligible to claim an exemption from the shared responsibility requirement of the federal Affordable Care Act. The Advisory Committee discussed the potential problems for Maine residents seeking to file 2014 tax returns if changes are not made to the draft instructions for Forms 8962 and 8965 recently proposed by the Internal Revenue Service.

The draft instructions for Form 8962 prohibit those required to file Form 8962 using the Form 1040-EZ when filing their tax return. The Advisory Committee believes the instructions and forms related to the premium tax credit should be developed in a manner that will not force Mainers to use a different or longer tax return form than they are currently using. The reconciliation process for the premium tax credit should be as straightforward and easy to complete for the tax filer as possible.

Pursuant to the draft instructions for Form 8965, this form must be filed by any individual claiming an exemption from the shared responsibility requirement (individual mandate). One of the available exemptions is for individuals who live in a state that has not expanded Medicaid whose income is below 138% of the federal poverty level. Maine has not expanded its Medicaid program so thousands of Maine residents whose income is below 138% can qualify for this exemption. The draft instructions direct a tax filer claiming this exemption to obtain proof of the exemption from the Marketplace. This must be done prior to filing their tax return by April 15, 2015 unless the tax filer requests an extension. The certificate number of that exemption is then entered on Form 8965. This requirement adds an unnecessary administrative burden on the tax filer and the Marketplace. Because Maine has a Federally-Facilitated Marketplace, the Advisory Committee advised that the Internal Revenue Service automate the process so that the exemption can be verified through the FFM without involving the individual tax filer. Information about the individual tax filer's state of residence and income is provided on the tax return itself and should be accepted by the IRS as proof of eligibility for the exemption. The filing of additional forms like Form 8965 should not be necessary.

The Advisory Committee wrote letters to Maine's Congressional delegation and to the Internal Revenue Service to advocate that the process be streamlined and the instructions simplified. Copies of the letters are attached in Appendix C.

Recommendation: The Advisory Committee recommends the Joint Standing Committee on Insurance and Financial Services and any future Advisory Committee gather information about the impact of provider networks on access to health care services with regard to "surprise" bills from out-of-network health care providers for services received in in-network hospitals, looking specifically at emergency services and ancillary services provided in in-network hospitals.

At its last meeting, the Advisory Committee discussed a range of issues associated with the use of provider networks in qualified health plans. The Advisory Committee reviewed recent national news articles describing the experiences of consumers in other states with regard to "surprise" bills from out-of-network health care providers for services received in in-network hospitals. The Advisory Committee has no information about whether consumers in Maine have had similar experiences or have filed complaints with the Bureau of Insurance. The Advisory Committee recommends the Joint Standing Committee on Insurance and Financial Services and any future Advisory Committee gather information

about the extent of this issue in Maine, looking specifically at the impact of provider networks on access to health care services, including access to in-network providers for emergency services and ancillary services provided in in-network hospitals.

V. CONCLUSION

Pursuant to the Joint Order establishing the Advisory Committee, this is the final report of the Advisory Committee. However, the Advisory Committee believes there is an ongoing need for an advisor and liaison to the Governor, the Legislature and the federal Government as implementation of the federal Affordable Care Act continues in Maine. The Advisory Committee urges the Legislature to support its recommendation to establish a permanent advisory committee.

APPENDIX A

H.P. 1136, Joint Study Order
Establishing the Maine Health Exchange Advisory Committee

H.P. 1136, Joint Study Order, Establishing the Maine Health Exchange Advisory Committee

ORDERED, the Senate concurring, that, notwithstanding Joint Rule 353, the Maine Health Exchange Advisory Committee, referred to in this order as "the advisory committee," is established to advise the Legislature regarding the interests of individuals and employers with respect to any health benefit exchange, referred to in this order as "the exchange," that may be created for this State pursuant to the federal Patient Protection and Affordable Care Act.

1. Appointment; composition. The advisory committee consists of members appointed as follows:

A. The following 5 members of the Legislature, of whom 3 members must serve on the Joint Standing Committee on Insurance and Financial Services and 2 members must serve on the Joint Standing Committee on Health and Human Services or the Joint Standing Committee on Appropriations and Financial Affairs:

(1) Two members of the Senate, appointed by the President of the Senate, including one member recommended by the Senate Minority Leader; and

(2) Three members of the House of Representatives, appointed by the Speaker of the House, including one member recommended by the House Minority Leader;

B. Two persons representing health insurance carriers, one of whom is appointed by the President of the Senate and one of whom is appointed by the Speaker of the House of Representatives;

C. One person representing dental insurance carriers, appointed by the Speaker of the House of Representatives;

D. One person representing insurance producers, appointed by the President of the Senate;

E. One person representing Medicaid recipients, appointed by the Speaker of the House of Representatives;

F. Two persons representing health care providers and health care facilities, including one member representing federally qualified health centers, appointed by the Speaker of the House of Representatives;

G. One person who is an advocate for enrolling hard-to-reach populations, including individuals with mental health or substance abuse disorders, appointed by the President of the Senate;

H. One member representing a federally recognized Indian tribe, appointed by the President of the Senate; and

I. Four members representing individuals and small businesses, including:

(1) One person, appointed by the President of the Senate, who can reasonably be expected to purchase individual coverage through an exchange with the assistance of a premium tax credit and who can reasonably be expected to represent the interests of consumers purchasing individual coverage through the exchange;

(2) One person, appointed by the Speaker of the House of Representatives, representing an employer that can reasonably be expected to purchase group coverage through an exchange and

who can reasonably be expected to represent the interests of such employers;

(3) One person, appointed by the President of the Senate, representing navigators or entities likely to be licensed as navigators; and

(4) One person, appointed by the Speaker of the House of Representatives, employed by an employer that can reasonably be expected to purchase group coverage through an exchange and who can reasonably be expected to represent the interests of such employees.

The President of the Senate and the Speaker of the House of Representatives shall invite the Superintendent of Insurance, or the superintendent's designee, and the Commissioner of Health and Human Services, or the commissioner's designee, to participate as ex officio nonvoting members.

2. Chairs. The first-named Senator is the Senate chair of the advisory committee and the first-named member of the House of Representatives is the House chair of the advisory committee.

3. Appointments; convening. All appointments must be made no later than 30 days following passage of this order. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment of all members has been completed, the chairs of the advisory committee shall call and convene the first meeting of the advisory committee. If 30 days or more after the passage of this order a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the advisory committee to meet and conduct its business.

4. Duties. The advisory committee shall:

A. Advise the Legislature regarding the interests of individuals and employers with respect to any exchange that may be created for this State;

B. Serve as a liaison between any exchange and individuals and small businesses enrolled in the exchange;

C. Evaluate the implementation and operation of any exchange with respect to the following:

(1) The essential health benefits benchmark plan designated in this State under the federal Patient Protection and Affordable Care Act, including whether the State should change its designation;

(2) The impact of federal and state laws and regulations governing the health insurance rating for tobacco use and coverage for wellness programs and smoking cessation programs on accessibility and affordability of health insurance;

(3) The consumer outreach and enrollment conducted by the exchange and whether the navigator program is effective and whether navigators or other persons providing assistance to consumers are in compliance with any federal or state certification and training requirements;

(4) The coordination between the state Medicaid program and the exchange;

(5) Whether health insurance coverage through the exchange is affordable for individuals and small businesses, including whether individual subsidies are adequate;

(6) Whether the exchange is effective in providing access to health insurance coverage for small businesses;

(7) The implementation of rebates under the federal Patient Protection and Affordable Care Act and the Maine Revised Statutes, Title 24-A, section 4319; and

(8) The coordination of plan management activities between the Department of Professional and Financial Regulation, Bureau of Insurance and the exchange, including the certification of qualified health plans and rate review;

D. Following the release of guidance or regulations from the federal Centers for Medicare and Medicaid Services addressing the basic health program option, as set forth in Section 1331 of the federal Patient Protection and Affordable Care Act, conduct a study, and make recommendations as appropriate, that examines the potential for establishing a basic health program for eligible individuals in order to ensure continuity of care and that families previously enrolled in Medicaid remain in the same plan. In conducting the study, the advisory committee shall consider the affordability of coverage for low-income populations, the potential cost savings to the state Medicaid program, the systems needed to create a seamless transition between a basic health program and Medicaid coverage, the impact of a basic health program on the negotiation of rates or receipt of rebates and the cost-effectiveness of delivering coverage through a basic health program; and

E. Based on the evaluations conducted by the advisory committee pursuant to this order, make recommendations for any changes in policy or law that would improve the operation of an exchange for consumers and small businesses in the State.

5. Compensation. The legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

6. Quorum. A quorum is a majority of the members of the advisory committee.

7. Meetings. The advisory committee shall meet at least 4 times a year at regular intervals and may meet at other times at the call of the chairs. Meetings of the advisory committee are public proceedings as provided by the Maine Revised Statutes, Title 1, chapter 13, subchapter 1.

8. Records. Except for information designated as confidential under federal or state law, information obtained by the advisory committee is a public record as provided by the Maine Revised Statutes, Title 1, chapter 13, subchapter 1.

9. Staffing. The Legislative Council shall provide staff support for the operation of the advisory committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session or for more than 4 meetings annually between regular or special sessions of the Legislature. In addition, the advisory committee may contract for administrative, professional and clerical services if funding permits.

10. Funding for advisory committee activities. The 'Legislative Council on behalf of the'advisory committee may accept from the Department of Professional and Financial Regulation, Bureau of Insurance and the Department of Health and Human Services any grant funding made available to the

State for exchange implementation and plan management activities that is received by those state agencies. The Legislative Council on behalf of the advisory committee may apply for and receive funds, grants or contracts from public and private sources to support its activities. Contributions to support the work of the advisory committee may not be accepted from any party having a pecuniary or other vested interest in the outcome of the matters being studied. Any person, other than a state agency, desiring to make a financial or in-kind contribution shall certify to the Legislative Council that it has no pecuniary or other vested interest in the outcome of the advisory committee's activities. Such a certification must be made in the manner prescribed by the Legislative Council. All contributions are subject to approval by the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council along with an accounting record that includes the amount of funds, the date the funds were received, from whom the funds were received and the purpose of and any limitation on the use of those funds. The Executive Director of the Legislative Council shall administer any funds received by the advisory committee.

11. Reports. The advisory committee shall submit to the Joint Standing Committee on Insurance and Financial Services a preliminary report on its activities no later than December 4, 2013. The advisory committee shall submit to the Joint Standing Committee on Insurance and Financial Services a final report on its activities no later than November 5, 2014, and shall include in its report a review and evaluation of the continued necessity of a state health exchange advisory committee, including the staffing and funding needs of such an advisory committee, recommendations as to whether such an advisory committee should be established by the 127th Legislature and whether any changes should be made to the Maine Revised Statutes governing such an advisory committee.

APPENDIX B

Membership List
Maine Health Exchange Advisory Committee

Maine Health Exchange Advisory Committee

Joint Order, H.P. 1136

Wednesday, November 12, 2014

Appointment(s) by the President

Sen. Margaret M. Craven - Chair 41 Russell St Lewiston, ME 04240 207 783-1897	Senate Member
Sen. Rodney L. Whittemore PO Box 96 Skowhegan, ME 04976 207 474-6703	Senate Member
Ms. Kristine Ossenfort Director Government Relations Anthem blue Cross/Blue Shield 2 Gannett Drive So. Portland, ME 04106	Representing health insurance carriers
John Benoit President Employee Benefits Solutions 1085 Brighton Avenue Portland, ME 04102	Representing insurance producers
John Costin 1 Colonial Gelardi Drive Kennebunk, ME 04043	Expected to purchase coverage through an exchange
Doug Gardner Director artment of Health & Human Services City of Portland 389 Congress Street Portland, ME 04101	Enrollment advocate
Elizabeth Neptune PO Box 102 Princeton, ME 04668	Representing a federally recognized Indian tribe
Mitchell Stein Consumers for Affordable Health Care PO Box 2490 Augusta, ME 04338	Representing navigators

Appointment(s) by the Speaker

Rep. Sharon Anglin Treat - Chair 22 Page Street Hallowell, ME 04347 207 623-7161	House Member
Rep. Michael D. McClellan 27 Pismire Mountain Road RAYMOND, ME 04071 207 655-4438	House Member
Rep. Linda F. Sanborn 170 Spiller Road Gorham, ME 04038 207 839-4664	House Member
Christine Alibrandi Esq. Delta Dental Plan of Maine One Delta Drive P.O. Box 2002 Concord, NH 03302-2002	Representing dental insurance carriers
Jack Comart Maine Equal Justice Partners 126 Sewall Street Augusta, ME 04330 207 623-7777	Representing Medicaid recipients
Bob Dawber Serenity House 30 Mellen Street Portland, ME 04101	Employee of an employer expected to purchase group coverage through an exchange
Laurie Kane-Lewis DFD Russell Medical Center 180 Church Hill Road Suite 1 Leeds, ME 04263-3348	Representing health care providers and facilities (1 representing federally qualified health centers)
Kevin Lewis CEO Community Health Options P.O. Box 1121 Lewiston, ME 04243	Representing health insurance carriers
David Shipman 94 Maple Ridge Road China, ME 04358	Representing employer expected to purchase group coverage through an exchange
Gordon Smith Maine Medical Association P.O. Box 190 Manchester, ME 04351	Representing health care providers and facilities (1 representing federally qualified health centers)

Staff:

Colleen McCarthy-Reid 287-1670
OPLA

Danielle Fox 287-1670
OPLA

APPENDIX C

Draft Legislation:
Establish a permanent state health exchange advisory committee

Sec. 1. 5 MRSA § 12004-I, sub-§ 50-B is enacted to read:

50-B.			
Insurance:Health Exchange	Maine Health Exchange Advisory Committee	Legislative Per Diem and Expenses for Legislators and Expenses Only for Other Members upon Demonstration of Financial Hardship	24-A MRSA § 4320-J

Sec. 2. 24-A MRSA § 4320-J is enacted to read:

§ 4320-J. Maine Health Exchange Advisory Committee

The Maine Health Exchange Advisory Committee, referred to in this section as "the advisory committee," is established to advise the Governor and the Legislature regarding the interests of individuals and employers with respect to any health benefit exchange, referred to in this section as "the exchange," that may be created for this State pursuant to the federal Patient Protection and Affordable Care Act.

1. Appointment; composition. The advisory committee consists of 21 members appointed as follows:

A. The following 5 members of the Legislature, of whom 3 members must serve on the Joint Standing Committee on Insurance and Financial Services and 2 members must serve on the Joint Standing Committee on Health and Human Services or the Joint Standing Committee on Appropriations and Financial Affairs:

(1) Two members of the Senate, appointed by the President of the Senate, including one member recommended by the Senate Minority Leader; and

(2) Three members of the House of Representatives, appointed by the Speaker of the House, including one member recommended by the House Minority Leader;

B. Two persons representing health insurance carriers, one of whom is appointed by the President of the Senate and one of whom is appointed by the Speaker of the House of Representatives;

C. One person representing dental insurance carriers, appointed by the Speaker of the House of Representatives;

D. One person representing insurance producers, appointed by the President of the Senate;

E. One person representing Medicaid recipients, appointed by the Speaker of the House of Representatives;

F. Two persons representing health care providers and health care facilities, including one member representing federally qualified health centers, appointed by the Speaker of the House of Representatives;

G. One person who is an advocate for enrolling hard-to-reach populations, including individuals with mental health or substance abuse disorders, appointed by the President of the Senate;

H. One member representing a federally recognized Indian tribe, appointed by the President of the Senate;

I. One member who has expertise in tax matters, appointed by the President of the Senate;

J. Four members representing individuals and small businesses, including:

(1) One person, appointed by the President of the Senate, who can reasonably be expected to purchase individual coverage through an exchange with the assistance of a premium tax credit and who can reasonably be expected to represent the interests of consumers purchasing individual coverage through the exchange;

(2) One person, appointed by the Speaker of the House of Representatives, representing an employer that can reasonably be expected to purchase group coverage through an exchange and who can reasonably be expected to represent the interests of such employers;

(3) One person, appointed by the President of the Senate, representing navigators or entities likely to be licensed as navigators; and

(4) One person, appointed by the Speaker of the House of Representatives, employed by an employer that can reasonably be expected to purchase group coverage through an exchange and who can reasonably be expected to represent the interests of such employees;

K. .The Superintendent of Insurance, or the superintendent's designee, who serves as an ex-officio nonvoting member; and

L. The Commissioner of Health and Human Services, or the commissioner's designee, who serves as an ex officio nonvoting member.

2. Term. Except for members who are Legislators, all members are appointed for 3-year terms. A vacancy must be filled by the same appointing authority that made the original appointment. Appointed members may not serve more than 2 terms. Members may continue to serve until their replacements are designated. A member may designate an alternate to serve on a temporary basis. Members of the Legislature serve 2-year terms coterminous with their elected terms. Except for a member who is a Legislator, a member may continue to serve after expiration of the member's term until a successor is appointed.

3 Chair. The first-named Senator is the Senate chair of the advisory committee and the first-named member of the House of Representatives is the House chair of the advisory committee.

4. Duties. The advisory committee shall:

A. Advise the Governor and Legislature regarding the interests of individuals and employers with respect to any exchange that may be created for this State;

B. Serve as a liaison between any exchange and individuals and small businesses enrolled in the exchange;

C. Evaluate the implementation and operation of any exchange with respect to the following:

(1) Whether the State should transition from a federally-facilitated exchange model to a state-based exchange or partnership model:

(2) The essential health benefits benchmark plan designated in this State under the federal Patient Protection and Affordable Care Act, including whether the State should change its designation;

(3) The impact of federal and state laws and regulations governing the health insurance rating for tobacco use and coverage for wellness programs and smoking cessation programs on accessibility and affordability of health insurance;

(4) The consumer outreach and enrollment conducted by the exchange and whether the navigator program is effective and whether navigators or other persons providing assistance to consumers are in compliance with any federal or state certification and training requirements;

(5) The coordination between the state Medicaid program and the exchange;

(6) Whether health insurance coverage through the exchange is affordable for individuals and small businesses, including whether individual subsidies are adequate;

(7) Whether the exchange is effective in providing access to health insurance coverage for small businesses;

(8) The implementation of rebates under the federal Patient Protection and Affordable Care Act and the Maine Revised Statutes, Title 24-A, section 4319; ~~and~~

(9) The coordination of plan management activities between the Department of Professional and Financial Regulation, Bureau of Insurance and the exchange, including the certification of qualified health plans and rate review;

(10) The potential for establishing a basic health program or seeking a "XX Group" Medicaid State Plan amendment or State Innovation waiver to provide alternative health coverage programs for eligible individuals;

(11) Whether changes should be considered in federal law or regulation to address dental health coverage available through the marketplace, including but not limited to, premiums and out-of-pocket costs;

(12) Whether the State should consider changes to its designated rating areas for geographic area to the extent permitted by federal law and regulation;

(13) The impact of "churn" on the effective operation of the marketplace, public health programs and the private health insurance market;

(14) The impact of federal requirements to provide employer-sponsored health coverage;

(15) The impact of the statutory change in the definition of "small group" for health insurance purposes in 2016;

(16) The impact of federal transitional risk adjustment programs and whether the State should consider ending the suspension of the Maine Guaranteed Access Reinsurance Association;

(17) The impact of health insurance policies continued in the State under the transitional relief granted by the federal Department of Health and Human Services; and

(18) Any issue relating to the implementation of the federal Patient Protection and Affordable Care Act agreed upon by a majority of the advisory committee; and

E. Based on the evaluations conducted by the advisory committee pursuant to this section,

make recommendations for any changes in policy or law that would improve the operation of an exchange for consumers and small businesses in the State.

5. Compensation. The legislative members of the advisory committee are entitled to receive the legislative per diem, as defined in the Maine Revised Statutes, Title 3, section 2, and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the advisory committee. Public members not otherwise compensated by their employers or other entities that they represent are entitled to receive reimbursement of necessary expenses and, upon a demonstration of financial hardship, a per diem equal to the legislative per diem for their attendance at authorized meetings of the advisory committee.

6. Quorum. A quorum is a majority of the members of the advisory committee.

7. Meetings. The advisory committee shall meet at least 4 times a year at regular intervals and may meet at other times at the call of the chairs. Meetings of the advisory committee are public proceedings as provided by the Maine Revised Statutes, Title 1, chapter 13, subchapter 1.

8. Records. Except for information designated as confidential under federal or state law, information obtained by the advisory committee is a public record as provided by the Maine Revised Statutes, Title 1, chapter 13, subchapter 1.

9. Staffing. The Legislative Council shall provide year-round staff support for the operation of the advisory committee.

10. Accounting; funding for advisory committee activities. All funds appropriated, allocated or otherwise provided to the advisory committee must be deposited in an account separate from all other funds of the Legislature and are nonlapsing. Funds in the account may be used only for the purposes of the advisory committee. The advisory committee may apply for grants and other nongovernmental funds to provide staff support or consultant support to carry out the duties and requirements of this section.Prompt notice of solicitation and acceptance of funds must be sent to the Legislative Council. All funds accepted must be forwarded to the Executive Director of the Legislative Council, along with an accounting that includes the amount received, the date that amount was received, from whom that amount was received, the purpose of the donation and any limitation on use of the funds. The executive director shall administer all funds received in accordance with this section. At the beginning of each fiscal year, and at any other time at the request of the cochairs of the advisory committee, the executive director shall provide to the advisory committee an accounting of all funds available to the advisory committee, including funds available for staff support.

11. Reports. Beginning February 15, 2016 and annually thereafter, the advisory committee shall report annually and make specific recommendations, including any necessary legislation, relating to its duties in section 4 to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters and the joint standing committee of the Legislature having jurisdiction over health and human services matters and to any appropriate state agency.

SUMMARY

This draft proposes to establish the Maine Health Exchange Advisory Committee on a permanent basis. The proposal adds one additional member with expertise in taxation matters and requires that the Advisory Committee meet on a year-round basis.

APPENDIX D

Draft Legislation:
Conduct a feasibility study of the Basic Health Program Option and other alternatives for health care coverage

Maine Health Exchange Advisory Committee
Draft Legislation: Conduct feasibility of Basic Health Plan option
and other alternatives for health care coverage

Sec. 1. Feasibility study; Basic Health Program and other alternative coverage programs. Resolved: That the Legislative Council, through the Maine Health Exchange Advisory Committee, shall contract with a qualified consultant to conduct an independent study of the feasibility of operating the following coverage affordability programs in this State pursuant to the federal Affordable Care Act:

1. A basic health program;
2. An optional Medicaid State Plan "XX" Group; and
3, A State Innovation waiver.

Sec. 2. Study requirements. Resolved: That the study must meet the following requirements:

1. For each alternative coverage option, provide estimates of the:
   (a) Number and characteristics of households who would be eligible to enroll in the basic health program or in the other alternative options;
   (b) Federal funds available to operate each coverage program option;
   (c) State expenses and administrative costs to operate each coverage program option;
   (d) Impact of each coverage program option on the number of households enrolled in qualified health plans through the State's federally-facilitated exchange;
   (e) Impact of each coverage program option on the rates at which households with incomes below 200 percent of the federal poverty guidelines lack health insurance coverage compared to such rates in the absence of each coverage program option;
   (f) Extent to which households would be expected to:
      (A) Cycle in and out of each coverage program option and the exchange due to changes in income; and
      (B) Maintain continuity of care;
   (g) Premium and out-of-pocket costs of health care to consumers with and without each coverage program option; and
   (h) Impact of each coverage program option on premiums charged in the private insurance market.

2. The study must evaluate the financial feasibility of operating each coverage program option using at least two alternatives for:
   (a) Health benefit packages, including packages that mirror the State's MaineCare benefit package and the essential health benefits package offered through the exchange;
   (b) Provider reimbursement rates, including rates that mirror provider reimbursement rates in the MaineCare program and the private insurance market in this state; and
   (c) Premium and out-of-pocket cost limits.

3. The Advisory Committee shall solicit input using a public process to determine the factors and assumptions on which the study will be based.

4. The Legislative Council may seek outside grant funding to support the costs of the updated study, which may not exceed $60,000.

5. The study must be submitted no later than October 15, 2015 to the Advisory Committee. The Advisory Committee may submit legislation based on the feasibility study to the Joint Standing Committee on Insurance and Financial Services for its consideration during the Second Regular Session of the 127th Legislature; and be it further

SUMMARY

This draft directs the Legislative Council, through the Maine Health Exchange Advisory Committee, to contract for a study of the feasibility of establishing a basic health program or other alternative health coverage options under the federal Affordable Care Act. The draft authorizes the Legislative Council to seek outside grant funding to support the costs of the study, which may not exceed $60,000. The study must be submitted to the Advisory Committee by October 1, 2015.

APPENDIX E

Sample Department of Health and Human Services notices

Dept. of Health & Human Services
Office for Family Independence
396 Griffin Road
Bangor ME 04401

(State Seal)

State of Maine
Paul R. LePage, Governor
Mary C. Mayhew, Commissioner

<Worker Name>
Family Independence Specialist
XXX-XXXX local
800-432-7825 Toll Free
TTY users call Maine relay 711
Re: Jane E. Doe
ID: 11300000A
Review For: August 2014
Date: July 23, 2014
LE CME 005 Rev 8/14

To: <Case Head>
Ad1: <Address 1>
Ad2: <Address 2>

Dear <Case Head>:

We reviewed your eligibility for MaineCare. We decided that the below individuals do not qualify for MaineCare coverage.

<ACES Entered Name>
<ACES Entered Name>

But, you still may be able to get health coverage – and help paying for it – through the new Health Insurance Marketplace. We sent your application to them. The Marketplace will send you a letter letting you know what to do next. If you do not hear from the Marketplace shortly, please call them at 1-800-318-2596 (TTY: 1-855-889-4325).

In the meantime, you can create a Marketplace user account. To create an account, go to HealthCare.gov/marketplace and click "Account Setup." This user account is different from a Medicaid user account.

Dept. of Health & Human Services
Office for Family Independence
161 Marginal Way
Portland, ME 04101

State of Maine

Paul R. LePage, Governor

Alexandria M. Lauritzen
OFI Specialist
800-482-7520 Toll Free
822-2071 local
TTY call Maine relay 711
Re:
ID:
Nex

To:
LN1:
CSZ: R

013

Please send in the following information by September 4, 2014.

Your referral from the Federally Facilitated Marketplace is currently being processed. In order to complete the review of your eligibility, please provide the following:

1. Copies of your 2013 personal and business (S Corp) income tax returns including all schedules and filings to verify self-employment income.
2. Four weeks of current and consecutive paystubs for a and if either of you draw a paycheck from the business.
3. Copies of private health insurance cards for all applicable members, front and back.

Please include your client ID number on all paperwork submitted. If you have any questions please contact Alex Lauritzen at 207-822-2111.

If I do not hear from you before September 4, 2014 benefits may end or be denied.

Call us Monday through Friday, 8:00am to 5:00pm, if you have questions or need help getting this information. The phone numbers are at the top of this letter.

APPENDIX F

Correspondence to Congressional Delegation and Internal Revenue Service

SEN. MARGARET M. CRAVEN, CHAIR
SEN. RODNEY L. WHITTEMORE
CHRISTINE ALIBRANDI
JOHN BENOIT
JOHN COSTIN
BOB DAWBER
SARA GAGNE-HOLMES
DOUG GARDNER
LAURIE KANE-LEWIS

REP. SHARON ANGLIN TREAT, CHAIR
REP. MICHAEL D. MCCLELLAN
REP. LINDA F. SANBORN
KEVIN LEWIS
ELIZABETH NEPTUNE
KRISTINE OSSENFORT
DAVID SHIPMAN
GORDON SMITH
MITCHELL STEIN

STATE OF MAINE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

MAINE HEALTH EXCHANGE ADVISORY COMMITTEE

VIA EMAIL AND U.S. MAIL

September 26, 2014

Senator Susan M. Collins
United States Senate
413 Dirksen Senate Office Building
Washington, DC 20510-1904

Senator Angus King
United States Senate
359 Dirksen Senate Office Building
Washington, DC 20510-1903

Representative Michael Michaud
United States Congress
1724 Longworth House Office Building
Washington, DC 20515-1902

Representative Chellie Pingree
United States Congress
1037 Longworth House Office Building
Washington, DC 20515

Dear Senators Collins and King and Representatives Michaud and Pingree,

We are writing to convey our concerns about the tax reconciliation process for enrollees in Maine's Federally-Facilitated Marketplace and the exemption process for Maine residents eligible to claim an exemption from the shared responsibility requirement of the federal Affordable Care Act. At our most recent meeting on September 22nd, the Advisory Committee discussed the potential problems for Maine residents seeking to file 2014 tax returns if changes are not made to the draft instructions for Forms 8962 and 8965 recently proposed by the Internal Revenue Service. The Advisory Committee believes the draft instructions and forms may be too complicated and hard to understand. We write to share these concerns with you and to ask that you share these concerns with the Internal Revenue Service.

Tax Reconciliation Process: Form 8962

Based on our understanding, Maine tax filers who purchased health insurance coverage through Maine's Federally-Facilitated Marketplace are going to be required to file Form 8962 to figure the appropriate amount for their premium tax credit and reconcile it with any advance premium tax credit already received by the tax filer. The draft instructions also prohibit those required to file Form 8962 from filing their tax return using the Form 1040-EZ. The Advisory Committee believes the instructions and forms related to the premium tax credit should be developed in a manner that will not force Mainers to use a different or longer tax return form than they are currently using. The reconciliation process for the premium tax credit should be as straightforward and easy to complete for the tax filer as possible.

In addition, as Maine has a Federally-Facilitated Marketplace, we ask that the Internal Revenue Service use information technology as much as possible to facilitate the electronic exchange of data between the FFM and the Internal Revenue Service to validate the amount of any premium tax credit received by the tax filer.

The Advisory Committee also notes that the complexity of the health coverage provisions of the federal Affordable Care Act and the proposed tax reconciliation process may have a disproportionate impact on lower-income Maine residents. We are concerned that Maine does not have adequate resources to provide tax-filing and preparation assistance. Maine's consumer outreach and education resources for navigators and certified application counselors are limited and do not have adequate capacity or adequate training to help Mainers assess the tax implications of their health coverage through Maine's FFM.

Claiming an Exemption from the Shared Responsibility Requirement—Form 8965

Another issue we want to address is related to the proposed Form 8965. Pursuant to the draft instructions, this form must be filed by any individual claiming an exemption from the shared responsibility requirement (individual mandate). One of the available exemptions is for individuals who live in a state that has not expanded Medicaid whose income is below 138% of the federal poverty level. As you know, Maine has not expanded its Medicaid program so thousands of Maine residents whose income is below 138% can qualify for this exemption. The draft instructions direct a tax filer claiming this exemption to obtain proof of the exemption from the Marketplace (prior to filing their tax return by April 15, 2015 unless the tax filer requests an extension) and then to enter the certificate number of that exemption on Form 8965. This requirement adds an unnecessary administrative burden on the tax filer and the Marketplace. Because Maine has a Federally-Facilitated Marketplace, the Advisory Committee recommends that the Internal Revenue Service automate the process so that the exemption can be verified through the FFM without involving the individual tax filer. Information about the individual tax filer's state of residence and income is provided on the tax return itself and should be accepted by the IRS as proof of eligibility for the exemption. The filing of additional forms like the Form 8965 is not necessary.

Before the tax forms are finalized, the Advisory Committee recommends that the Internal Revenue Service streamline its process and make changes to simplify the instructions. Thank you for your consideration. Please contact us or our Advisory Committee staff, Colleen McCarthy Reid, at colleen.mccarthyreid@legislature.maine.gov or 207-287-1670, if you would like to discuss these issues further or need additional information.

Sincerely,

Margaret M. Craven

Sharon Anglin Treat

Margaret M. Craven
Senate Chair

Sharon Anglin Treat
House Chair

cc: Sylvia M. Burwell, Secretary, U.S. Department of Health and Human Services
Christie Hager, Region One Director, U.S. Department of Health and Human Services
Kevin Counihan, Health Insurance Marketplace CEO
Joint Standing Committee on Taxation
Maine Health Exchange Advisory Committee members

SEN. MARGARET M. CRAVEN, CHAIR
SEN. RODNEY L. WHITTEMORE
CHRISTINE ALIBRANDI
JOHN BENOIT
JOHN COSTIN
BOB DAWBER
SARA GAGNE-HOLMES
DOUG GARDNER
LAURIE KANE-LEWIS

REP. SHARON ANGLIN TREAT, CHAIR
REP. MICHAEL D. MCCLELLAN
REP. LINDA F. SANBORN
KEVIN LEWIS
ELIZABETH NEPTUNE
KRISTINE OSSENFORT
DAVID SHIPMAN
GORDON SMITH
MITCHELL STEIN

STATE OF MAINE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

MAINE HEALTH EXCHANGE ADVISORY COMMITTEE

VIA EMAIL AND U.S. MAIL

September 26, 2014

John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224-0002

Dear Commissioner Koskinen,

On behalf of Maine's Maine Health Exchange Advisory Committee, we are writing to convey our concerns about the tax reconciliation process for enrollees in Maine's Federally-Facilitated Marketplace and the exemption process for Maine residents eligible to claim an exemption from the shared responsibility requirement of the federal Affordable Care Act. At our most recent meeting on September 22nd, the Advisory Committee discussed the potential problems for Maine residents seeking to file 2014 tax returns if changes are not made to the draft instructions for Forms 8962 and 8965 recently proposed by the Internal Revenue Service. The Advisory Committee believes the draft instructions and forms may be too complicated and hard to understand.

Tax Reconciliation Process: Form 8962

Based on our understanding, Maine tax filers who purchased health insurance coverage through Maine's Federally-Facilitated Marketplace are going to be required to file Form 8962 to figure the appropriate amount for their premium tax credit and reconcile it with any advance premium tax credit already received by the tax filer. The draft instructions also prohibit those required to file Form 8962 from filing their tax return using the Form 1040-EZ. The Advisory Committee believes the instructions and forms related to the premium tax credit should be developed in a manner that will not force Mainers to use a different or longer tax return form than they are currently using. The reconciliation process for the premium tax credit should be as straightforward and easy to complete for the tax filer as possible.

In addition, as Maine has a Federally-Facilitated Marketplace, we ask that the Internal Revenue Service use information technology as much as possible to facilitate the electronic exchange of data between the FFM and the Internal Revenue Service to validate the amount of any premium tax credit received by the tax filer.

The Advisory Committee also notes that the complexity of the health coverage provisions of the federal Affordable Care Act and the proposed tax reconciliation process may have a disproportionate impact on lower-income Maine residents. We are concerned that Maine does not have adequate resources to provide tax-filing and preparation assistance. Maine's consumer outreach and education resources for navigators and certified application counselors are limited and do not have adequate capacity or adequate training to help Mainers assess the tax implications of their health coverage through Maine's FFM.

Claiming an Exemption from the Shared Responsibility Requirement—Form 8965

Another issue we want to address is related to the proposed Form 8965. Pursuant to the draft instructions, this form must be filed by any individual claiming an exemption from the shared responsibility requirement (individual mandate). One of the available exemptions is for individuals who live in a state that has not expanded Medicaid whose income is below 138% of the federal poverty level. As you know, Maine has not expanded its Medicaid program so thousands of Maine residents whose income is below 138% can qualify for this exemption. The draft instructions direct a tax filer claiming this exemption to obtain proof of the exemption from the Marketplace (prior to filing their tax return by April 15, 2015 unless the tax filer requests an extension) and then to enter the certificate number of that exemption on Form 8965. This requirement adds an unnecessary administrative burden on the tax filer and the Marketplace. Because Maine has a Federally-Facilitated Marketplace, the Advisory Committee recommends that the Internal Revenue Service automate the process so that the exemption can be verified through the FFM without involving the individual tax filer. Information about the individual tax filer's state of residence and income is provided on the tax return itself and should be accepted by the IRS as proof of eligibility for the exemption. The filing of additional forms like the Form 8965 is not necessary.

Before the tax forms are finalized, the Advisory Committee recommends that the Internal Revenue Service streamline its process and make changes to simplify the instructions. Thank you for your consideration. Please contact us or our Advisory Committee staff, Colleen McCarthy Reid, at colleen.mccarthyreid@legislature.maine.gov or 207-287-1670, if you would like to discuss these issues further or need additional information.

Sincerely,

Margaret M. Craven

Sharon Anglin Treat

Margaret M. Craven
Senate Chair

Sharon Anglin Treat
House Chair

cc: Joint Standing Committee on Taxation
Maine Health Exchange Advisory Committee members