REPORT OF THE

STATE CORPORATION COMMISSION

HEALTH BENEFIT EXCHANGE DIVISION ON

The Virginia Health Benefit Exchange: 2021 Oversight and Monitoring Report

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Virginia Health Benefit Exchange
Oversight and Monitoring Report

June 1, 2022

Introduction

Effective as of July 1, 2020, Chapter 65 of Title 38.2 of the Code of Virginia created the Virginia Health Benefit Exchange (Exchange) within the State Corporation Commission (Commission). The objectives of this legislation are include creating the Exchange to facilitate the purchase and sale of qualified health plans andqualified dental plans to support the continuity of coverage and reduce the number of uninsured Virginians.

Virginia transitioned to a State-based Exchange on the Federal Platform (SBE-FP) in 2020. The State Corporation Commission is overseeing Virginia's transition to a full state-based exchange for plan year 2024. Virginia consumers will continue to use HealthCare.gov to shop and enroll in Affordable Care Act health plans and access available financial assistance. Small business health insurance is also available at Healthcare.gov/small-businesses/. Virginians began enrolling in qualified health plans (QHPs) through the Federally Facilitated Marketplace with the implementation of the Affordable Care Act in October of 2013. While Virginia's uninsured rate has declined significantly (from 14.6% of those under the age of 65[1] in 2010 to 9.3% in 2019), both health insurance enrollment and premiums have varied considerably over the years and there were still approximately 648,000 Virginians under age 65 who lacked coverage in 2020[2].

1. Exchange Objectives, Operations and Responsibilities

Objectives

The Exchange will make qualified health plans and qualified dental plans available to qualified individuals in the Commonwealth and provide for the establishment of a Small Business Health Options Program (SHOP) to assist qualified small employers in the Commonwealth in facilitating the enrollment of their eligible employees in qualified health plans offered in the small group market. The Exchange will promote a transparent and competitive marketplace, promote consumer choice and education, and assist individuals with access to programs, policies and procedures, premium assistance tax credits, and cost-sharing reductions to support the continuity of coverage and reduce the number of uninsured.

Blueprint Application and Declaration of Intent Letter

As part of its transition to an SBE-FP, Virginia was required to submit a Blueprint Application and Declaration of Intent Letter to the Centers for Medicare and Medicaid Services (CMS) showing how it will meet the legal and operational requirements and implement and execute the required activities. Virginia submitted the letter on May 6, 2020, and the application on July 27, 2020, declaring intention to transition to an SBE by plan year 2023. On August 19, 2020, CMS acknowledged Virginia's ability to perform consumer assistance and plan management. During this transition, the Exchange is using the

[1] https://www.vhcf.org/wp-content/uploads/2021/04/2021-Profile-of-Virginias-Uninsured-Final.pdf
[2] https://www.vhcf.org/data/profile-of-virginias-uninsured/

federal platform for eligibility and enrollment functions. On April 21, 2021, Virginia submitted an update that it intends to complete the transition to an SBE by plan year 2024.

Administrative Structure

On July 1, 2020, the Commission created a new division, the Health Benefit Exchange Division, for the purpose of implementing the provisions of Chapter 65 of Title 38.2 of the Code of Virginia and operating the Exchange. The Exchange will facilitate the purchase and sale of qualified health plans and qualified dental plans to individuals and employers in Virginia. The Commission will ensure that the Exchange and the Bureau of Insurance work in agreement to administer consistent regulation of Exchange plans.

The Commission, through the Division, has governing power and authority in any matter pertaining to the Exchange. The Commission may delegate as it may deem proper these duties and powers to the Director. The Commission will carry out its duties and responsibilities under Chapter 65 in accordance with its rules of practice and procedure and decide all matters related to the Exchange in the same manner as it does when performing its other regulatory, judicial, and administrative duties and responsibilities under the Code of Virginia. The Commission will adopt rules and regulations pursuant to §38.2-223 of the Code of Virginia as may be necessary for the administration of the Exchange.

Keven Patchett has been named Acting Exchange Division Director in accordance with §38.2-6502 of the Code of Virginia and has overall management responsibility for the Exchange. Other key personnel are the Deputy Director of Operations and Finance, the Deputy Director of Outreach, Education, and Policy, the Chief Government Relations Officer, and the Chief IT Program Manager. These positions, along with support from the Bureau of Insurance and other divisions within the Commission, are charged with carrying out Exchange objectives and responsibilities.

Advice and Consultation

Advisory Committee

The Exchange Advisory Committee has been established to advise and provide recommendations to the Commission and the Exchange Director in carrying out Exchange purposes and duties. The Advisory Committee consists of 15 members as follows: five (5) non-legislative citizen members appointed by the Governor, each having expertise in individual health coverage, small employer health coverage, health benefits plan administration, health care finance and economics, actuarial science, or expertise in eligibility and enrollment in health care affordability programs and public health insurance; three (3) non-legislative citizen members appointed by the Commission, including a representative of an organization of the Virginia insurance industry, a representative of insurance agents, and a consumer representative; and any other members determined by the Commission. The Commissioner of Insurance, the Director of the Department of Medical Assistance Services, the State Health Commissioner, the Commissioner of the Department of Social Services, and the Secretary of Health and Human Resources, or their designees, serve as ex officio nonvoting members of the Committee. Information on the Committee, along with meeting announcements and transcripts are publicly available.

A majority of the members appointed by the Governor and the Commission may not have a conflict of interest as set forth in §38.2-6503 of the Code of Virginia. No member of the Committee can be a

legislator or hold any elective office in state government. After the initial staggering of terms, non-legislative citizen members will be appointed for a term of four years. No non-legislative citizen member will serve more than two consecutive four-year terms.

The Committee has elected a chairman and vice-chairman from its membership. Bylaws of the Advisory Committee were approved by a two-thirds majority of its members in January 2021. The Bylaws include the committee purpose, membership requirements, qualifications to serve, terms of appointment, officer election criteria, terms regarding vacancies and removal of members, and meeting requisites.

Stakeholder Consultation

As part of its Outreach and Education plan, the Exchange is maximizing its diverse and wide-ranging stakeholder relationships through ongoing communication and collaborative policy discussions to shape Exchange operations. Stakeholder partners critical to Exchange development include consumers and consumer representatives, Navigators and Certified Application Counselor Designated Organizations (CDOs), insurance agents, representatives of small businesses, Federally recognized tribes, health carriers, health care providers and state agencies such as the Virginia Department of Medical Assistance Services and the Virginia Department of Social Services.

Through its ongoing stakeholder outreach efforts, the Exchange has identified and engaged with over 300 relevant stakeholders. It has invited their suggestions for achieving a transparent and competitive marketplace; promoting consumer choice and education; assisting individuals with access to programs, policies, and procedures for securing coverage and educating them on premium tax credits and cost-sharing reductions; supporting the continuity of care; and reducing the number of uninsured. Stakeholders were also asked to identify any geographic areas or demographic groups that should be the focus of attention and targeted outreach and education efforts. Stakeholders were consulted as part of the Exchange Advisory Committee selection process. Additionally, input from the Virginia Department of Medical Assistance Services and the Virginia Department of Social Services was sought as part of Medicaid coordination efforts around eligibility and enrollment at a multi-day workshop held in March 2022.

Consumer Assisters

The Exchange engages assisters to work with consumers, including Navigators, Certified Application Counselor Designated Organizations (CDOs), and Certified Application Counselors (CAC). Navigators are required to register in accordance with §38.2-3457 and §38.2-6513 of the Code of Virginia. The Exchange designates CDOs to certify CACs in accordance with 45 CFR 155.225 as well as §38.2-6514 of the Code of Virginia. The CDOs are responsible for certifying individual CACs who are associated with their organization as specified by an agreement between the Exchange and the CDO.

The Commission has developed a compliance agreement requiring CDOs to adhere to certain privacy and security standards and to implement required specifications for certifying individuals to perform CAC duties. The Commission has also promulgated rules governing the CACs at 14 VAC 7-10-10 of the Virginia Administrative Code.

Navigator Grant Program

In accordance with §38.2-6513 of the Code, the Exchange oversees a Navigator program to help Virginians navigate, shop for, and enroll in health insurance coverage through HealthCare.gov. In June 2021, the Commission, on behalf of the Exchange, issued a Request for Applications for interested entities or individuals qualified under state and federal law to provide Navigator program services. In September 2021, the Commission awarded approximately $2.1 million in grant funds ($1.9 million in 2020). The Exchange is preparing to issue the 2022 Request for Applications in the next month.

Assister Certification and Training

The Exchange has published a list of frequently asked questions covering certification, training, and registration requirements. It is overseeing and administering the certification of individual Navigators. Assisters will be required to use the Federally-facilitated Exchange's training for Plan Year 2023.

Agents and Brokers

Agents and brokers help enroll qualified individuals in QHPs through the Exchange. Agents and brokers can also help employers review their options for enrolling in SHOP coverage and assist them through the application and enrollment process. Agents and brokers are required to be licensed and in good standing in accordance with provisions of Chapter 18 of Title 38.2 of the Code of Virginia, comply with regulatory requirements as provided in §38.2-6509 G, and in compliance with the requirements under 45 CFR 155.220.

Agreements

On August 30, 2020, the Exchange and CMS executed a Federal Platform Agreement for the Exchange to operate through the federal platform. The Exchange also executed an Information Disclosure Agreement to support authorized sharing of data between CMS and the Exchange.

Open Enrollment Readiness

On September 30, 2021, CMS provided the Exchange with a letter acknowledging the completion of the 2022 Open Enrollment Readiness Review. CMS performed the review of the Exchange's system functions and business processes to assess its ability to handle consumer assistance and plan management functions.

2. Exchange Finances

The Exchange has been granted authority to generate revenue pursuant to §38.2-6510 of the Code to fund its operations through assessment fees, federal grants, or funds appropriated by the Virginia General Assembly for operational sustainability in accordance with the Affordable Care Act.

Budget

The state budget, which is on a July 1 to June 30 fiscal year basis, includes $13.25 million and $29

million, respectively, appropriated to fund State Health Benefit Exchange plan management functions for FYs 2022 and 2023. For those same years, the state budget appropriates $107,562 to fund existing Federal Health Benefit Exchange plan management functions. Insurance carriers participating in the Exchange are required to pay a monthly HBE User Fee to the Exchange. A User Fee Assessment invoicing and collection process has been established and began operation in January 2021, to coincide with Plan Year 2021. Invoices are sent to participating QHPs and QDPs each month based upon prior month enrollment numbers obtained from CMS, with payment into a special fund designated to the Exchange. Exchange revenues for FY 2021 were approximately $3.4 million.

3. Records and Monitoring of Fraud, Waste, and Abuse

Records

The Exchange keeps accounting records and will provide audited financial statements in accordance with GAAP pursuant to 45 CFR 155.1200(a)(1). The Exchange uses available Commission resources and relies upon applicable provisions in Titles 38.2 and 42.1 of the Code of Virginia and existing regulatory policies, procedures, and Virginia's applicable record retention schedules, for the maintenance of records to comply with the standards of 45 CFR 155.1210.1. The Exchange will accommodate periodic auditing of financial records; and enable HHS or its designee(s) to inspect facilities, or otherwise evaluate the Exchange's compliance with Federal standards. Where necessary, the Exchange will create new regulatory policies, procedures, and any applicable record retention schedules to ensure compliance with 45 CFR 155.210.

The Exchange and its grantees, contractors, subcontractors, and agents must ensure that the records include, at a minimum, the following:

a. Information concerning management and operation of the financial and other record keeping systems; Financial statements, including cash flow statements, and accounts receivable and matters pertaining to the costs of operations.

b. Any financial reports filed with other Federal programs or Commonwealth of Virginia authorities.

c. Data and records relating to the eligibility verifications and determinations, enrollment transactions, appeals, and plan variation certifications.

d. Qualified health plan contracting (including benefit review) data and consumer outreach and Navigator grant oversight information.

e. The Exchange must make all of its records and must ensure its grantees and any subcontractors make all records available to HHS, the Auditor of Public Accounts and their designees, upon request.

The Exchange utilized an independent certified public accounting firm for financial and programmatic audits as required under 45 CFR 155.1200(c). The audit and review assessed the Exchange for one or more of the following: adequacy of internal control systems; compliance with contracts, laws, policies, and regulations; effectiveness and efficiency of operations; integrity of recorded and reported information; and safeguarding of assets and resources.

Virginia Exchange consumers are protected from fraud, waste, and abuse by several Virginia laws, as well as guidelines adopted by the Exchange. The operations of the Exchange are subject to: (i) the Commonwealth of Virginia's Fraud and Abuse Whistle Blower Protection Act (Va. Code § 2.2-3009, et. Seq.), required reporting of fraudulent transactions to the Virginia Auditor of Public Accounts (Va.

Code § 30-138), and reporting of fraud, waste, and abuse to a hotline maintained by the Virginia Office of the State Inspector General (Va. Code § 2.2-3009). V. The Exchange has adopted Fraud, Waste, and Abuse Guidelines to help ensure awareness of and adherence to the above-refenced laws and protections.

4. Plan Management

The Exchange requires all QHPs to be certified annually. The Exchange has authority to perform the certification of QHPs and to oversee QHP issuers consistent with 45 CFR 155.1010(a), in coordination with the Bureau of Insurance. The Exchange, after consulting with the Bureau of Insurance, certifies QHPs in accordance with §§ 38.2-326 and 38.2-6506 of the Code of Virginia. The Bureau of Insurance is currently responsible for performing plan management functions with the assistance of the Virginia Department of Health (VDH) and recommends QHPs for certification by the Exchange. The Exchange will certify all health benefit plans recommended by the Bureau meeting the requirements of § 1311(c) of the Federal Act for participation in the Exchange unless it is not in the interest of qualified individuals and qualified employers.

A decertification and appeal process are in place. Section 38.2-6507 of the Code provides opportunity for a health carrier to appeal a decertification decision or the denial of certification as a QHP or qualified dental plan. The opportunity will include a hearing, if necessary, conducted by the State Corporation Commission in accordance with its rules of practice and procedure. The Bureau of Insurance under its plan management functions pursuant to § 38.2-326 of the Code of Virginia will provide information to support any decertification it recommends to the Exchange.

The Exchange uses the timelines for QHP issuer accreditation in accordance with 45 CFR 155.1045. The Bureau of Insurance supports the issuer accreditation process per § 38.2-326 of the Code of Virginia, with the assistance of VDH, for the Exchange. The Exchange will make the final determination of compliance with accreditation requirements pursuant to § 38.2-6506 of the Code.