

State Health Reform Assistance Network

Charting the Road to Coverage

ISSUE BRIEF

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Qualified Health Plan Review in Marketplaces With State Plan Management: An Analysis of the Division of Labor Between State Exchanges and Other State Agencies

Prepared by *Gabbie Nirenburg, JD, MS, and Arthur Thourson Jones, PhD, Leonard Davis Institute of Health Economics*

Introduction

States have implemented a variety of different methods to handle the review and certification of qualified health plans (QHPs). The processes developed divide review and certification functions between the marketplaces and state agencies. Except in cases where the federal marketplace handles both QHP review and certification completely, the marketplaces perform few plan management functions. Prior to delving into the division of labor between the marketplace and other agencies, we conducted preliminary research to familiarize ourselves with the process of QHP certification.¹ In doing so, we found that states break this process down into various plan management functions.

In order to determine the role of the marketplace in plan management, we identified and collected eight components of plan management functions for 31 marketplaces. We excluded federally-facilitated marketplaces (FFMs) without state plan management functions and focused on state-based marketplaces (SBMs), state partnership marketplaces (SPMs), supported state-based marketplaces (SSBMs), and FFMs with state plan management. Hawaii was excluded from our analysis because it is in the process of transitioning from an SBM to an SSBM. Accordingly, our total number of observations is 30 rather than 31.

The functions included in the survey are reviews of: issuer solvency, network adequacy, essential community provider inclusion, geographic service areas, benefits, prescription drug formularies, non-discriminatory marketing practices, and rates. Where the marketplace itself was not responsible for reviewing these variables, our team of researchers attempted to identify the agencies responsible for the review of each of the plan management functions for the most recent plan year available. These data are based on instructions published on the websites of marketplaces, Departments of Insurance (DOIs), and other state agencies. Ideally, these instructions concerned the plan year 2016 certification process. In cases where such instructions were not available, we relied on instructions from previous years, relevant portions of a state's insurance code, and state statutes.

ABOUT STATE NETWORK

State Health Reform Assistance Network, a program of the Robert Wood Johnson Foundation, provides in-depth technical support to states to maximize coverage gains as they implement key provisions of the Affordable Care Act. The program is managed by the Woodrow Wilson School of Public and International Affairs at Princeton University. For more information, visit www.statenetwork.org.

ABOUT THE LEONARD DAVIS INSTITUTE

The Health Insurance Exchanges (HIX) Research Group at the Leonard Davis Institute of Health Economics at Wharton (LDI) leverages Penn's strengths across a variety of health and policy-related disciplines to conduct high-quality research directed at understanding the impact of exchanges on health care markets and improving marketplace performance, as measured by the accessibility, cost, and quality of health care delivered through health plans purchased on and off the marketplace. It is directed by Tom Baker, JD, William Maul Measey Professor of Law and Health Sciences at Penn Law, and Robert Town, PhD, Professor of Health Care Management at The Wharton School of the University of Pennsylvania. For more information, visit: <http://ldi.upenn.edu/hix>.

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For more information, please contact Gabbie Nirenburg at gni@wharton.upenn.edu or 215.898.4748.

¹ We later added these three questions to the end of the resulting dataset—questions numbered 9 through 11.

For the instances in which the marketplace did not perform plan management functions, our team captured the names of the particular state agencies that perform plan management functions. We organized these data into a separate variable. In most states, the DOI conducts plan management functions. We found that DOIs encompass insurance divisions within larger state agencies and agencies that regulate multiple industries, including the insurance industry. In some states, the Department of Health (DOH) performs plan management functions. There are several cases in which agencies collaborate, or agencies other than the DOI or DOH conduct plan management functions.

Definitions

Solvency refers to the ability of insurers to fulfill their financial obligations. To be certified as a QHP under the Affordable Care Act (ACA), insurers must be certified that they are in good standing, which includes compliance with state solvency requirements.

Network adequacy review is the review of proposed plan networks to ensure that they comply with federal and state standards concerning patient access to care and access to information about the network.

States review *essential community providers (ECPs)* to ensure that plan networks include a sufficient number and geographic distribution of providers offering services for “low-income, medically underserved individuals in the QHP’s service area, in accordance with the Exchange’s network adequacy standards” (45 C.F.R. § 156.235). While many states rely on the ECP definition and standards set forth by the Centers for Medicare & Medicaid Services (CMS) in its annual Letter to Issuers, others developed their own definition and standards for ECPs.

Regulators review the *geographic service areas* proposed by potential QHP issuers to ensure that the suggested service area covers the minimum geographical area defined by the marketplace, and that the service area is not designed to discriminate against any population.

Benefit review ensures that potential QHPs cover the federal essential health benefits (EHBs) and any state health insurance mandates. Benefit review is also known as EHB review, mandated benefits review, mandates evaluation, or benefit design.

Formulary review ensures that formularies are abiding by the following excerpt from federal regulations: QHPs “must cover at least the greater of one drug in every U.S. Pharmacopeial Convention (USP) category and class or the same number of drugs in each category and class as the base benchmark plan” (45 C.F.R. 156.122). To attest to compliance, issuers must report this information and other usage data as defined in Federal Standards 45 CFR 156.120 & 45 CFR §156.295 to regulators.

As part of the QHP certification process, regulators may review an issuer’s compliance with all federal and state *non-discriminatory marketing standards*. In addition to being non-discriminatory, marketing practices must not discourage “the enrollment of individuals with significant health needs” (45 C.F.R. § 156.225).

Rate review is the process by which regulators review any proposed rate increase to ensure that the rate increases are not unreasonable. Under the ACA, federal and state regulators pay particular attention to individual or small group market insurers that propose rate increases greater than or equal to 10 percent.

Methodology

If the marketplace conducted the above plan management functions or there was collaboration between the marketplace and another state agency, then “Yes” was entered as the answer. If the marketplace did not conduct the specific plan management function, then “No” was entered. The answer choice “Other” was used in cases where neither “Yes” nor “No” fit. “Other” was also used in cases where it was unclear which agency conducted a review, or whether any review was conducted at all. Descriptions of these situations were entered in the notes section. “No Information Found” was used when an extensive search found no relevant information. A description of locations searched was included in the notes.

For the purposes of this analysis, DOI refers to any agency whose primary responsibilities include insurance regulation. “DOI” was selected for agencies that regulate all types of insurance, including health insurance policies. The agency may be a Division of Insurance within an overarching regulatory agency (e.g., South Dakota’s Division of Insurance within its Department of Labor Relations). We also used this answer choice when the agency regulates multiple industries, including insurance (e.g., Montana’s Commissioner of Securities and Insurance regulates both the securities and insurance industries). The agency, therefore, may have a name other than Department of Insurance. “DOI” was also selected when the agency regulated health insurance policies in collaboration with a separate agency, with the exception of collaborations with the marketplace or the Department of Health (e.g., DOI was selected for California where both its DOI and Department of Managed Health Care regulated health insurance policies). “DOI” was not selected for stand-alone agencies that regulated health insurance, but

operated entirely separately from an existing DOI (e.g., Rhode Island’s Office of the Health Insurance Commissioner handles health insurance matters, but its Department of Business Regulation regulates all other types of insurance and could typically be considered a DOI in its own right). In that case, we labeled the agency as “Other.”

“CMS/HHS” was selected if the Centers for Medicare & Medicaid Services/Department of Health and Human Services (HHS) conducted review functions.

“Marketplace” was selected if the entity was identified as the sole performer of a review function. This answer choice also included instances where the marketplace collaborated with the DOI to perform a review function.

“DOH” was selected if the entity performing the review regulated public health matters and was involved in health insurance regulation. This answer choice also included instances where the DOH collaborated with the DOI.

“Other” was selected when the entity that regulated health insurance policies was not the DOI, the DOH, the marketplace, or any other agency not encompassed by these answer choices. For example, Vermont’s Green Mountain Care Board is not a DOI, DOH, or marketplace, but conducts benefit review for health insurance policies.

“No Information Found” was selected when it was unclear which agency conducted review. This answer choice was also selected when the information found was unclear as to whether a review was conducted, or when there was no information available about the particular plan management function in question.

Findings

State-Based Marketplaces — Within the fourteen SBMs, the DOIs and the marketplaces play the largest role in plan management. All SBMs except Colorado certify QHPs. The DOIs conduct the majority of reviews. For example, in Colorado and the District of Columbia, the DOIs conducted all plan management activities.

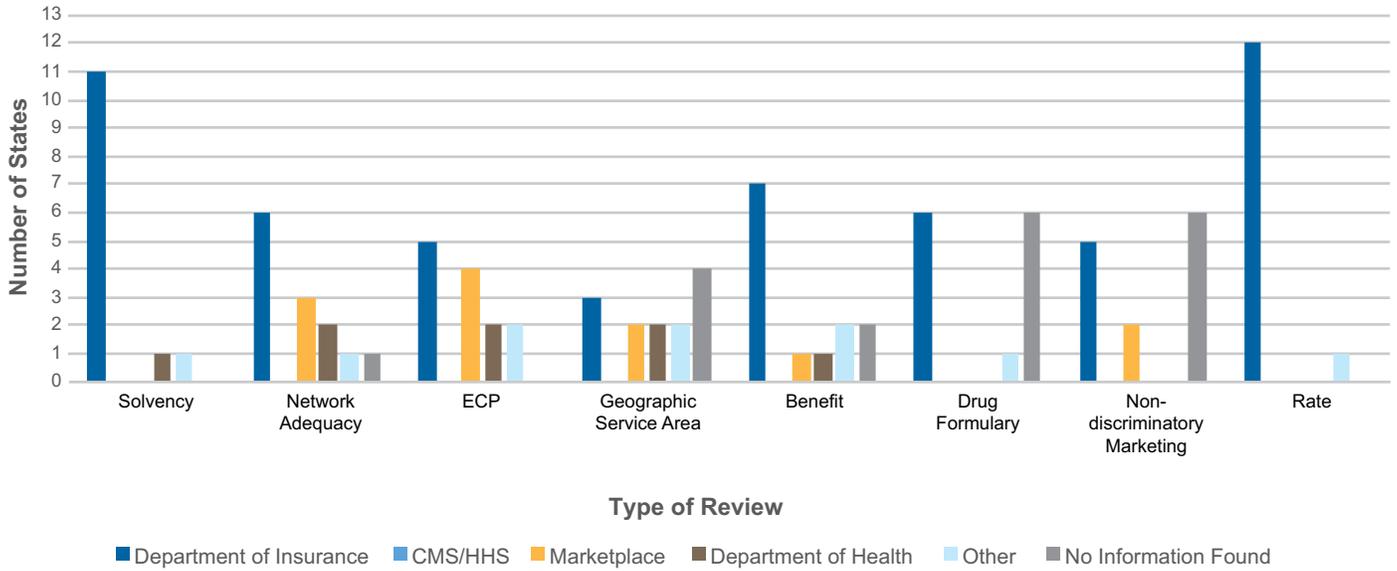
In some instances, the DOIs partner with other agencies. In Idaho and Massachusetts, the DOIs collaborated with their state marketplaces, while in California, New York, Minnesota, and Vermont, the DOIs partnered with other agencies to conduct reviews.

In other instances, the state marketplace conducted one or more of the eight reviews. This happened in California, Connecticut, Kentucky, Maryland, Massachusetts, and Washington state.

Out of all the marketplace models, the SBMs conduct the most plan management functions. Moreover, the SBMs conduct the highest number of reviews for ECP inclusion (4 of the 13 states). The SBMs did not conduct solvency review or prescription drug formulary review.

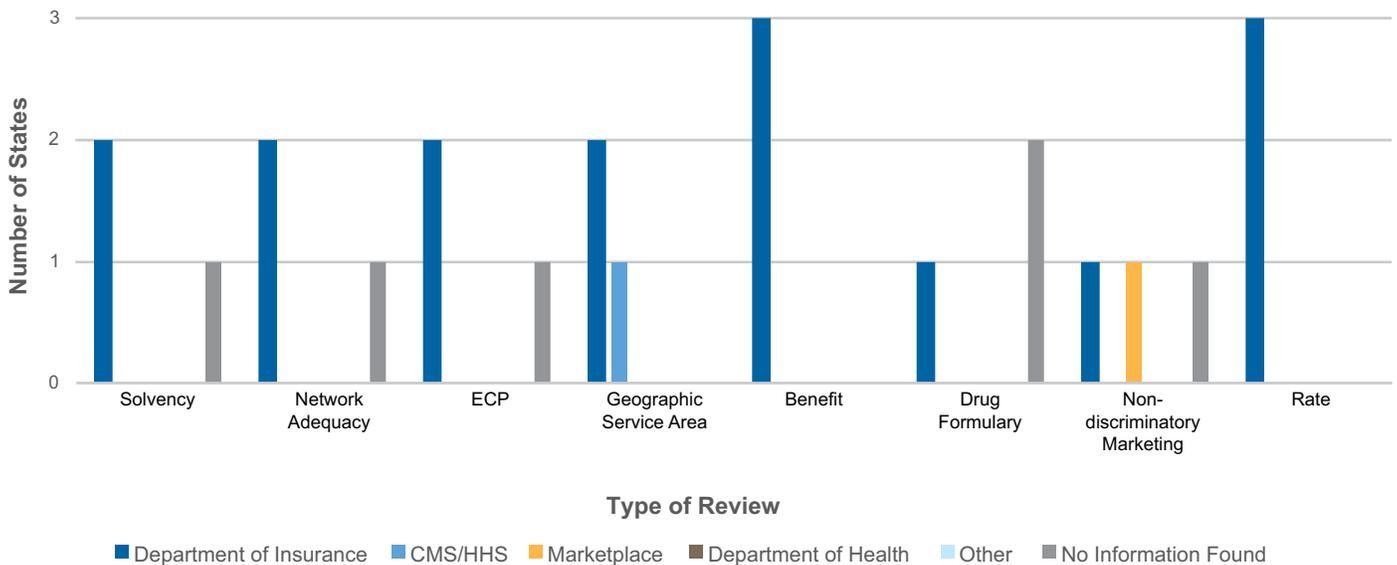
Overall, SBMs conduct six of the eight plan management functions we studied: network adequacy, essential community providers, geographic service area, benefits, non-discriminatory marketing, and rate review.

State-Based Marketplaces



Supported State-Based Marketplaces — There are three states that have an SSBM. **We found no pattern in how SSBMs divide plan management responsibilities.** Only Nevada’s marketplace participates in any of the reviews. Nevada’s marketplace collaborates with the DOI to conduct non-discriminatory marketing review. New Mexico’s DOI is responsible for all eight of the plan management functions we studied. Up-to-date information is difficult to find for Oregon following its transition from an SBM to an SSBM. There is no indication of network adequacy, ECP, drug formulary, and non-discriminatory reviews. The DOI certifies plans in Oregon, Nevada’s marketplace certifies QHPs, and New Mexico’s DOI passes its determinations to CMS.

Supported State-Based Marketplaces

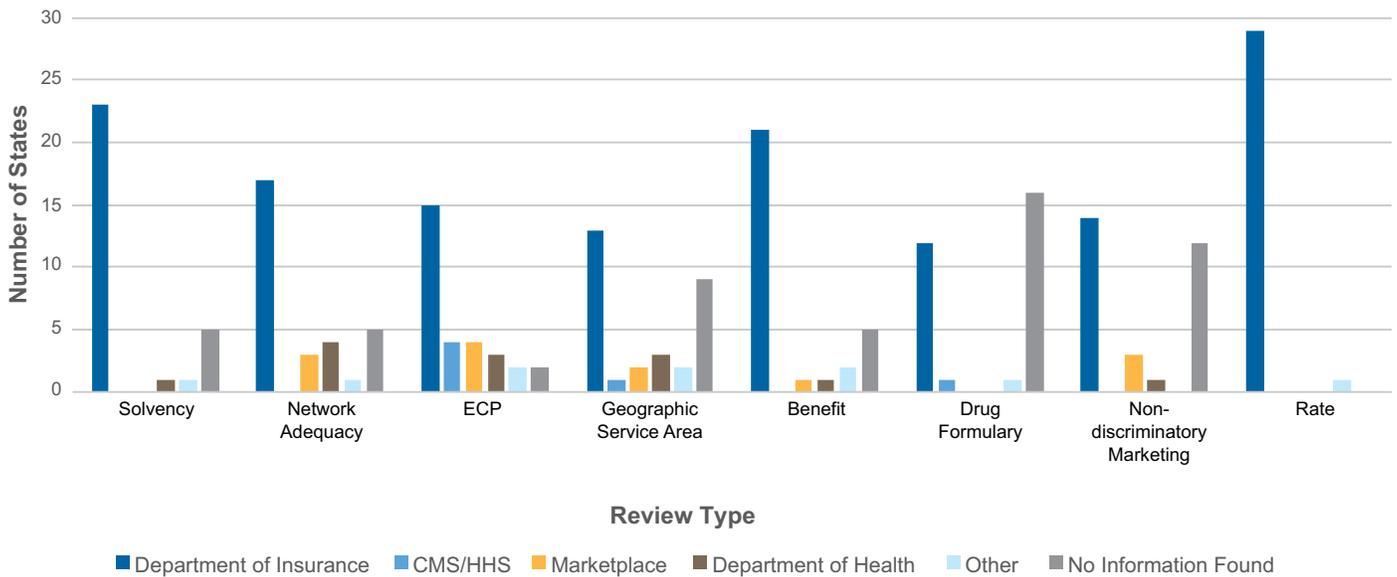


State Partnership Marketplaces — There are seven states that operate as SPMs. In all seven SPMs, CMS certifies QHPs, and the DOIs are responsible for a majority of plan management functions. Delaware and West Virginia delegate all eight of their reviews solely to their state DOIs. In only one SPM state does the DOI collaborate with another agency: In Illinois, the DOI works with the Illinois Department of Public Health to review network adequacy. In two SPM states—Arkansas and Michigan—CMS conducts the drug formulary review and the essential community provider review, respectively.

Federally-Facilitated Marketplaces with State Plan Management — There are seven states in which the federal government controls the marketplace while plan management functions are left to the state’s discretion. In the majority of these states, the DOI handles the bulk of the QHP review process, but CMS certifies QHPs in all FFMs (even those without state plan management). CMS also conducts essential community provider review for Kansas and Maine. Kansas, Maine, and Virginia’s DOIs collaborate with other agencies to conduct reviews.

For several FFMs with state plan management, we were often unable to find any data to shed light on how a plan management function is handled within the state. We found the highest concentration of answers with no specific information or identifiable agency in FFMs. This is likely because in all FFMs, CMS certifies QHPs. Because FFMs did not have to assume responsibility for operating marketplaces, these states had no need to restructure their health insurance regulatory processes. Thus, they likely permitted their DOIs to continue their health insurance regulatory functions for QHPs. Moreover, FFMs may rely on instructions, guidance, and standards issued by CMS in its annual Letter to Issuers. This may account for the lack of detailed instructions issued by these states.

Division of Labor



OTHER FINDINGS NOT RELATED TO EXCHANGE TYPE

1. Functions of the Marketplace

- **The marketplace does not seem to take an active role in plan management and the various aspects of QHP review overall.** The marketplace performs reviews of ECPs in collaboration or on its own in four states, network adequacy and non-discriminatory marketing in three states, geographic service area in two states, and health benefits in one state. The marketplace has no active role in reviewing solvency, drug formularies, and rates. In states where the marketplace is not solely responsible for any review, the marketplace may take part in plan management functions. In these cases, the marketplace may collaborate with the state insurance department or similar state entity to prepare filing instructions. For example, Colorado’s DOI and marketplace—Connect for Health Colorado (C4HCO)—jointly prepare filing instructions for issuers; the DOI and C4HCO then identify and correct errors, and finally the DOI reviews and approves plans.
- **The marketplaces of Washington state and Connecticut review QHPs for discriminatory marketing practices.** However, Washington, D.C. and Idaho do not seem to have a proactive review. In the District of Columbia, complaints concerning marketing are reported to the DOI, and in Idaho, the marketplace and DOI jointly monitor complaints. Neither Washington, D.C. nor Idaho seem to have a pre-certification review process of proposed marketing materials. Furthermore, the only plan management function performed by Washington state’s marketplace is the non-discriminatory marketing review. This is somewhat of an outlier because Washington state’s insurance department conducts the seven other plan management functions in this data set.
- **Idaho stands out as the only state that has established its own state-based marketplace following the first open enrollment period.** Idaho’s marketplace has a role in the greatest number of plan management functions. It is solely responsible for geographic service area review and collaborates with the DOI for network adequacy, health benefits, non-discriminatory marketing practices, and rate reviews.

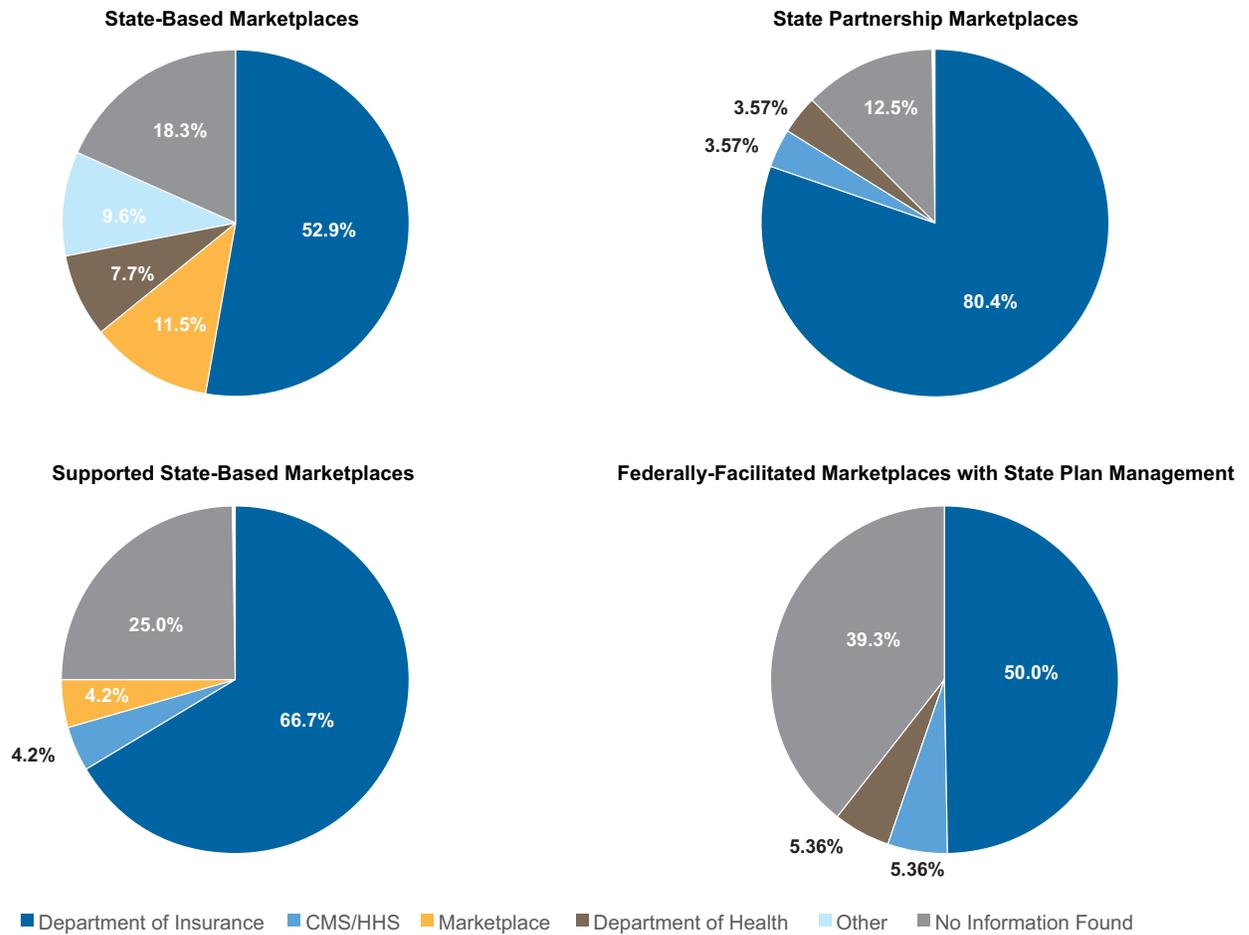
2. Collaboration Among State Agencies

- New York state, Vermont, California, Minnesota, Virginia, and Illinois are the only states where multiple state agencies other than the marketplace (with the exception of California on one variable) collaboratively perform the eight plan management functions studied in this data set. Of these six states, Virginia and Illinois are the only two non-SBMs.
- In New York state, the Department of Financial Services and the Department of Health conduct plan management functions. In some instances, both agencies perform a single function collaboratively, such as geographic service area review. In other instances, each agency will conduct a particular plan management function on its own.
- Vermont has three agencies involved with plan management: the Department of Financial Regulation, the Department of Vermont Health Access, and the Green Mountain Care Board. Like New York state, some agencies collaboratively perform plan management functions, while a single agency performs other functions.
- California has two state agencies that are responsible for plan management functions in addition to its marketplace: the California Department of Managed Care and the DOI. California differs from New York state and Vermont in terms of allocating plan management functions among its state agencies. In California, the marketplace itself conducts ECP review. Both the California Department of Managed Health Care and the DOI conduct other plan management functions collaboratively.
- In Minnesota, the Department of Commerce and the Department of Health conduct plan management functions. Each agency handles different functions except for benefit review, which both agencies perform collaboratively.
- Virginia, an FFM, has two agencies that conduct plan management functions: the Bureau of Insurance and the Virginia Department of Health. These agencies conduct ECP review collaboratively. Either the Bureau of Insurance or the Department of Health handles the other plan management functions alone.
- Finally, Illinois, an SPM, has both its DOI and Department of Public Health involved in plan management. The two departments collaboratively perform only network adequacy and non-discriminatory marketing review. The Illinois DOI conducts the remaining plan management functions studied in this data set.

3. Analysis by Type of Agency

- **DOI** — Departments of Insurance perform the majority of reviews, likely because such agencies were already responsible for the same or related functions prior to the enactment of the ACA. The DOIs are responsible for conducting rate review in 29 of the states we observed. Rhode Island is the only state that conducts review through an agency that only regulates health insurance—its Office of the Health Insurance Commissioner. In West Virginia, New Mexico, Washington, D.C., Delaware, and Colorado, the DOI performs all eight QHP plan management review functions. Of the five, only Colorado and the District of Columbia have SBMs. None, however, have FFMs.
- **DOH** — There are instances of the DOH taking part in all plan management functions except formulary and rate review. Of these, there are seven instances when the DOH acts alone in a review and five when the DOH collaborates in a review with another agency. In Minnesota, the DOH is involved in four QHP review functions. Minnesota's DOH solely reviews network adequacy, essential community providers, and geographic service areas, while the DOH collaborates with the Department of Commerce for benefit review. New York, Illinois, and Virginia also utilize collaborations between their DOH and other agencies to perform reviews.
- **CMS** — CMS conducts reviews for ECP standards in three FFM states and Michigan, an SPM. Furthermore, CMS only takes part in formulary review in Arkansas. CMS does not oversee any other plan management functions for the states under discussion.
- ECP review is the most diversified function across states with regard to what entity conducts reviews. DOIs conduct reviews in 15 states, while CMS conducts four reviews, state marketplaces conduct four reviews, state Departments of Health conduct three, and two states (Rhode Island and Vermont) have other state agencies conduct reviews.

Review by Agency Type



Concluding thoughts

There are fifteen states that have stand-alone Departments of Insurance that regulate insurance policies. Eight states have a Division of Insurance within a larger agency that regulates policies. Only five states have a department that both regulates health insurance policies and oversees other industries.

State marketplaces rarely conduct reviews on their own. Instead, they rely on their DOIs or similar regulatory agencies to oversee plan management functions. One possibility for this choice is that it avoids redundancy; these agencies were already equipped for plan management responsibilities long before the ACA took effect.

Among FFMs and SPMs, there are no marketplaces that conduct reviews; they rely on other state agencies. We did attempt to capture which agency within the state conducts reviews and found that the DOI conducts nearly all aspects of QHP plan management. **However, only in two SSBM states—Oregon and New Mexico—does the DOI certify QHPs.** Furthermore, it seems that while the prescription drug formulary information is *collected* by a number of states, we were unable to find if an agency is *reviewing* this data in every state where it is collected.

Limitations

We did not include FFMs without plan management functions; these functions are all handled by CMS/HHS. CMS reviews and certifies QHPs for these states.

As mentioned above, Hawaii was excluded from our analysis because it is in the process of transitioning from an SBM to an SSBM. As of July 2015, the state is in the process of shutting down its marketplace and has not specified which entities will be responsible for QHP review and certification.

In some states, we could not find any relevant information; we marked these data points as “No Information Found.” For example, after searching Kentucky’s websites for both its DOI and marketplace, we did not find adequate information regarding the entities responsible for any review of plan management functions. In certain cases, we could not find which state entity conducted the review, although we knew that a review was taking place. In others, it was impossible to tell whether a review took place at all, as was the case for most states’ prescription drug formulary review.

Accompanying data

Data collected for this brief can be accessed publicly on the Robert Wood Johnson Foundation’s website at the following link: <http://www.rwjf.org/en/library/research/2015/09/division-of-labor-dataset.html>.

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