

#### Exchanges under Health Care Reform and "Private" Exchanges: What Does My Nonprofit Need to Know?

Tuesday, December 11, 2012 12:30 p.m. – 2:00 p.m. EST

Venable LLP Nonprofit Organizations Practice Washington, DC

Moderator: Jeffrey S. Tenenbaum, Esq., Venable LLP Panelists: Alan Cohen, Chief Strategy Officer and Co-Founder, Liazon Corporation Christopher E. Condeluci, Esq., Venable LLP



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#### **Upcoming Venable Nonprofit Legal Events**

January 8, 2013 - <u>Exempt or Non-Exempt? The Ten Most</u> <u>Common Employee Classification Pitfalls Faced by Nonprofits</u>

February 12, 2013 - Top Ten Federal Grant and Contract Pitfalls for Nonprofits (details coming soon)

March 12, 2013 - <u>Preparing an Online Social Media Policy: The</u> <u>Top Ten Legal Considerations for Your Nonprofit</u>





Exchanges under Health Care Reform & "Private" Exchanges

#### Christopher E. Condeluci, Esq., Of Counsel, Venable LLP



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## The Drivers of Health Care Reform?

- Reform Insurance Laws
  - Mandate certain insurance standards
    - For example, "Essential Health Benefits," Cost-Sharing Limitations, and "Actuarial Value"
- Coverage Priority #1
  - Expand Medicaid
  - Provide premium subsidies to help low-to-middle income people purchase health insurance
    - The new health insurance Exchanges created under PPACA became the mechanism through which these subsidies could be accessed.



# VENABLE<sup>®</sup> The Exchange under PPACA

- The original intent of the Exchange created under PPACA was not to deliver the subsidies, but rather to serve as a *marketplace*.
  - It was believed that the Exchange would reduce administrative costs.
  - In addition, it was believed that the Exchange would attract multiple insurance carriers, which would promote competition.
  - Achieving these two goals could translate into lower premiums.
- Early on in the drafting process, it was "private" exchanges that served as the model, not the Massachusetts Connector.



## VENABLE<sup>®</sup> State-Based Exchanges

- Initially, the Exchanges will service (1) individuals and families in the individual market and (2) employees of small employer.
  - In 2017, a State may elect to permit the sale of large group plans through the Exchange, but a State is not required to do so.
- An Exchange may be structured as (1) a governmental agency or (2) an independent non-profit entity.



## **State-Based Exchanges**

- The Exchange is directed to perform specific functions:
  - Determine eligibility for an advance-refundable tax credit for health insurance and cost-sharing subsidy (i.e., premium subsidies)
  - Establish and maintain a web site
  - Set up a call-center to field questions from consumers
  - Screen for Medicaid eligibility and enroll people in Medicaid if eligible
  - In some States, the Exchange may prohibit a carrier from offering a plan through the Exchange if premium increases are "unreasonable"



## VENABLE<sup>®</sup> Federal Exchange

- If, by January 1, 2013, HHS determines that a State is not in a position to get its Exchange up and running by January 1, 2014, HHS will step in and run the State's Exchange.
- In effect, the "Federally-Facilitated Exchange" or "Federal Exchange" will step in the shoes of the State-Based Exchange and do exactly the same thing.
  - Congress intended that the Federal Exchange would perform all of the functions that the statute directs the State-Based Exchange to perform.
  - Unsurprisingly, the statute is not "clean," and therefore, questions have arisen
    - Can a Federal Exchange deliver the premium subsidies?



## VENABLE<sup>®</sup> Federal-State Partnership

- HHS has proposed a Federal-State Partnership where those States that cannot get their Exchange up and running by January 1, 2014 will share the Exchange functions with the Feds.
- Under this model, States will perform the following functions:
  - Plan management functions (e.g., certifying QHPs)
  - Consumer assistance functions (e.g., in-person assistance in filing an enrollment form and comparing coverage options)



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## **Federal-State Partnership**

- The Federal government will perform all of the other functions:
  - Medicaid screening and enrollment
  - Eligibility determinations for (1) enrollment in a QHP and (2) receipt of a premium subsidy
  - Management of a web-site and call center



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## **Important Deadlines**

- December 14, 2012
  - States must submit letter of intent and a "blueprint" for its own State-Based Exchange to HHS.
- February 15, 2013
  - States can submit letter of intent and a "blueprint" to enter into a Federal-State Partnership.
- October 1, 2013
  - Open enrollment in Exchanges begins
- January 1, 2014
  - Exchanges launch date (start of subsidies)



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## What Have the States Decided?

- Generally, you can put the States into 4 categories:
  - Category #1 Federal Exchange
    - AK, AL, AZ, GA, IN, IA, KS, LA, ME, MI, MO, MT, NE, NH, ND, OH, OK, SC, SD, TX, VA, WI, WY (23)
  - Category #2 Federal-State Partnership
    - AR, DE, IL, MI, NC (5)
  - Category #3 Undecided
    - FL, ID, NJ, PA, TN, UT, WV (7)
  - Category #4 State-Based Exchange
    - CA, CO, CT, DC, HI, MD, MA, MN, MS, NV, MN, NY, OR, RI, VT, WA (16)



## VENABLE<sup>®</sup> What Are the Challenges?

- Information Technology
  - Shortage of skilled vendors
  - Creating, implementing, and testing IT systems have a protracted time horizon.
- Lack of Guidance
  - This isn't political, this is practical.
  - Even the Insurance Commissioners for States moving ahead are concerned.
    - NV Insurance Commish, "We're going to make it, I think." "It'll be tight."



## 

# The Subsidies Offered Through the Exchange under PPACA

- GENERAL RULE An individual is NOT eligible for subsidies offered through the Exchange if he or she is "eligible" for employer-sponsored coverage.
  - So, even if your employees are subsidy-eligible, they CANNOT opt out of employer coverage, go to the Exchange, and access the subsidies.
- EXCEPTION The employer-sponsored coverage is (1) "unaffordable" (i.e., the employee's portion of the premium for self-only coverage exceeds 9.5% of the employee's income) or (2) pays for less than 60% of the costs under the plan (i.e., the plan is not 60% "actuarial value").
  - In this case, depending upon an employee's income, an employee may opt out of employer coverage, go to the Exchange, and access the subsidies.



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# Small Employer Interaction with the Exchange under PPACA

- Small employers (generally firms with 100 employees of less) may access the SHOP Exchange and offer *fullyinsured* health coverage made available through the SHOP Exchange to their employees.
- Small employers must be able to select a "level of coverage" (i.e., bronze, silver, gold, or platinum) from which their employees may choose a plan.



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# Small Employer Interaction with the Exchange under PPACA

- A SHOP Exchange may also allow a small employer to choose one or all of the following options:
  - Allow employees to choose any plan offered in the SHOP at any level of coverage;
  - Allow employers to select specific levels of coverage from which an employee may choose a plan;
  - Allow employers to select specific plans from different levels of coverage from which an employee may choose a plan; or
  - Allow employers to select a single plan to offer employees.



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# Large Employer Interaction with the Exchange under PPACA

- Notification of Employer Penalties:
  - Beginning in 2014, a large employer is subject to a penalty tax if an employee(s) of the employer accesses the subsidies through the Exchange on account of the employer's plan (1) being "unaffordable" or (2) failing to meet the 60% actuarial value standard.
  - In general, the Exchange shall make this determination based on information provided to the Exchange by the employee(s).
  - If the employee(s) is indeed determined to be eligible for the subsidies, the Exchange will notify the employer that (1) one or more of the employer's employees have accessed the subsidies and (2) the employer may be subject to the employer penalties.



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# Large Employer Interaction with the Exchange under PPACA

- Notification of Employer Penalties:
  - HHS will establish an appeals process for employers who are notified by the Exchange.
  - For purposes of planning around these employer penalties, recent guidance allows an employer to make sure its lowest cost self-only plan does not exceed 9.5% of the employee's "W-2 income," instead of "household income."



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#### **2017 – Large Employers and the Exchange under PPACA**

- In 2017, a State may elect to permit the sale of *fully-insured* large group coverage through the Exchange, but a State is not required to do so.
- If a State makes such an election, fully-insured large group plans could be subject to the same insurance standards that apply to individual and fully-insured small group plans beginning in 2014.
- As a result, it is advisable that large employers with fullyinsured plans understand the new insurance standards that apply to plans sold inside *and* outside of the Exchange well before any such election is made.



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## Insurance Standards Inside and Outside of the Exchange

- IMPORTANT The new "insurance standards" apply to plans sold inside AND outside of the Exchange.
- What are the insurance standards?
  - "Essential health benefits package."
    - "Essential health benefits."
    - Limits on cost-sharing under the plan
    - Specified "levels of coverage."
  - Premium rating rules.
    - Prohibited from rating premiums based on health status.
    - Rates may only vary by: (1) age (but by no more than a 3 to 1 ratio); (2) tobacco use (but by no more than a 1.5 to 1 ratio); (3) single or family coverage; and (4) rating area.



## **VENABLE** What Is a Private Exchange?

- At its core, a private exchange is a private business typically operated by insurance brokers, benefit consultants, or insurers – that sells insurance products to health care consumers through an on-line product.
- What makes private exchanges unique is their ability to enable the health care consumer to shop from among a wide-variety of major medical health plans and supplemental insurance products through the use of creative, interactive technology.
- Private exchanges offer:
  - The use of defined contribution health plans
  - Expanded "employee choice"
  - Decision support (e.g., "recommendation technology")
  - End-to-end transactional services



## VENABLE<sup>®</sup> Private Exchange Strategies

- Single Employer, Single Carrier Under this strategy, a single-employer could work with a private exchange and offer a wide-variety of fully-insured or self-insured group health plans to their employees through a single insurance carrier or third party administrator funded through an HRA or some other funding mechanism.
- Multiple Employers, Multiple Carriers Under this approach, multiple employers band together, effectively increasing the employers' risk pool, and fund through an HRA or some other funding mechanism the purchase of fully-insured group health plans made available by multiple insurance carriers through a private exchange.



## **Private Exchange Strategies**

Individual Market Plans and HRAs – Finally, employers are examining a model where – through a private exchange – the employer allows its employees to purchase a health plan in the fully-insured individual health insurance market, funded through an HRA. This model generally will not be viable until 2014 (because of the HIPAA nondiscrimination rules).



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# VENABLE<sup>®</sup> Defined Contribution

- What is a defined contribution health plan?
  - Under a defined contribution health plan, the employer makes fixed contributions that employees may use to purchase a "defined benefit."
    - This defined benefit is the underlying health plan, which in 2014, will likely meet all of the ACA requirements.
- Advantages?
  - Employers can better manage their costs by deciding how much they want to spend on health insurance each year.
  - Then, the employer may determine the rate at which the fixed contribution would increase each year (e.g., based on increases in the Consumer Price Index ("CPI") as opposed to increases in premium costs).

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## "Employee Choice"

- Many private exchange enable the health care consumer to shop from among a wide-variety of major medical health insurance products with varying plan designs.
  - This includes offering up to 10 to 20 different major medical health plans, ranging from high-cost sharing plans down to low- or no-cost-sharing plans with a cost differential of up to 60%.
  - Offering this "inventory" promotes choice and consumerism, which has been proven to reduce health care spending and improve customer satisfaction.



## "Employee Choice"

- Offering a wide-variety of major medical plans is a departure from the current model.
  - This approach also differs from the offerings under, for example, the new State-Based or Federally-facilitated Exchanges.



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## "Employee Choice"

- Private exchanges also allow the consumer to purchase supplemental products alongside their major medical plan.
  - This affords a consumer the opportunity (1) to purchase a low-cost health plan and (2) to add specified coverage to insure against, for example, catastrophic health events.
  - These supplemental insurance products often range from stand-alone dental and vision plans and hospitalization insurance to specified disease coverage, disability insurance, and wellness programs.
  - This aggregation of insurance products typically costs less than a major medical plan that provides "rich" benefits or benefits/services a consumer may not need or want or need.

## VENABLE<sup>®</sup> Decision Support

 A sophisticated decision support system helps the consumer determine what major medical health plan or health insurance package is best for them to purchase.

- "Recommendation technology"

- The health care consumer is asked a series of questions and the technology essentially develops a "profile" of the consumer.
- The technology synthesizes the answers to these questions and recommends a plan or an insurance package that may best fit the consumer's needs.



## VENABLE<sup>®</sup> Comprehensive Customer Support

- Private exchange will provide:
  - Customer services that seamlessly facilitate the purchase of health insurance, and
  - Customer support from the time the consumer enters the private exchange, all the way through to the actual purchase of a health plan and/or supplemental insurance product(s).
- A private exchange company will often:
  - Serve as a benefits administrator, or
  - Serve as a resource to health care consumers with questions about the inventory of health plans offered, or questions about the health coverage they have elected through the private exchange.



## VENABLE<sup>®</sup> The Future?

- Are private exchanges the future?
  - As health care costs continue to rise, more and more individuals are likely to look to private exchanges.
    - Why? Because private exchanges provide a consumerfriendly way to choose a health plan.
  - In the case of employers, it is likely that private exchanges will help those employers who want to hold on to employer-sponsored coverage to continue to provide such coverage.
    - Why? Because of the advantages we discussed: (1) employers can better manage costs, (2) employees are able to choose their health insurance as opposed to employers deciding on plan options every year, and (3) the customer service found only in a private exchange.

## VENABLE<sup>®</sup> The Future?

 Regardless of whether PPACA stays or goes, private exchanges will play a critical role in the future of health care.





#### **DISCOVER THE VALUE OF A PRIVATE EXCHANGE**

#### ALAN COHEN, CHIEF STRATEGY OFFICER AND CO-FOUNDER

December 2012

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#### **DISCOVER THE VALUE OF A PRIVATE EXCHANGE**

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#### **GOALS FOR TODAY**



#### This is what you should expect to learn from me:

- Who is Liazon
- What are Exchanges and how to differentiate them
- > What problem do Exchanges solve and why do they work
- What you should expect from an Exchange
- A view of the Bright Choices Exchange



#### **COMPANY OVERVIEW**



#### Liazon is the market leader in private benefits exchanges

- Founded 5 years ago by benefits/insurance experts
- > 4 years of experience with live Private Exchanges
- > 2,000+ customers
- Working with selected brokers, nationwide
- Award-winning technology



#### HERE'S A WAY TO SORT IT OUT





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# WHY ARE THESE THE ONLY CHOICES YEAR AFTER YEAR?





## **BENEFITS PROCESS IS BROKEN**



Selecting insurance isn't about finding the "best" plan out there, it's about finding the right coverage for specific risks and needs.

# Companies don't buy what people would buy themselves

- Most companies force-fit people into exactly the benefit plans they offer...or don't offer.
- Research shows this creates substantial inefficiencies (higher costs!)
- Medical insurance alone is inefficient and insufficient

# Does everyone in your company have the same retirement portfolio?

WHY

## **IMAGINE A BETTER WAY**

# Employer makes only one strategic decision

You decide how much to spend this year per employee and set a predictable budget for 3-5 years

# **Employees buy the benefits they need**

- Shop in an online benefits store
- Technology combines products to yield better, more personalized coverage
- Personal recommendations based on individual needs and live support

Your role for all benefits starts to look more like how you manage your 401k







# BENEFITS TO EMPLOYERS AND EMPLOYEES





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## SUCCESSFUL DC/EXCHANGE STRATEGY

- What are the components of a defined contribution/exchange solution?
  - Funding/Money
  - Store
  - Decision support / purchasing system
  - End-to-end transaction processing
  - Ongoing service
- > The key is personalization through technology and service
  - Recommendations based on individual needs and complex scenario analysis
  - Automated eligibility and enrollment
  - Robust employer and employee service





# EMPLOYEES GET TO CHOOSE FROM A WEALTH OF OPTIONS



### Health

#### Health (10-40 choices)

#### **Supplemental Health**

(10+ choices) -Hospital -Accident -Critical Illness -Etc.

Dental (3-5 choices)

Vision (2-4 choices)

#### **Health programs**

*(many choices)* -Wellness -Telemedicine

-Alternative healthcare

-Personal medicine

## Wealth \$

## HSA

#### FSA -Medical -Dependent Care -Transit/Parking

#### Other Financial Programs -401k -College Savings 529

-Supplemental retirement

## Protection 1

#### Life

- -Personal, Partner, Child
- -Term, Variable

#### Disability

-STD (choose your level) -LTD (3+ choices)

#### Long Term Care (many)

**Pet Insurance** 

#### Other risk protection

### **BRIGHT CHOICES DEMO**





#### Key Product Features

➤ 1 billion+ insurance product combinations can be purchased online through Bright Choices<sup>TM</sup>.

Decision support to help people choose the right benefits for them.

Personalized education with videos, articles, and alerts.

Completely automated enrollment & benefits management.

## THE BRIGHT CHOICES EXCHANGE





## **HELP CENTER**





## INTRODUCTION





## **PERSONAL PROFILE**



rightChoices	<i>Prepared for:</i> Acme Demo John Smith			sword Settings My In	
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	City	Buffalo		*	
	State	New York 💌 *			
	Zip/Postal Code	14230 *			
	Country	United States of Ame	erica 💌 *		
	Email Address	derek@acme-email.c	om		
Home	Phone Number				
Mobile	Phone Number				
Work	Phone Number	(866)542-9661	Extension		
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## PERSONAL PROFILE



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About Me		5 of 6			• Why do w	e ask for this	information?
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I worry about the cost of dental services.		۲	•	۲		۲	
There are people, such as family members, who depend on * my income.		•	۲	۲	۲	۲	
My spouse earns an income which we rely on.		۲	•	۲	۲	۲	
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#### RECOMMENDATION **BrightChoices** Prepared for: Acme Demo EXCHANGE John Smith Enrolment is OPEN until Tuesday, October 16, 2012 Intro Profile Recom **Recommended Portfolio** $\checkmark$ We've put together the combination of plans that best n told us about in your profile. As you're shopping on the we chose each plan.



nded Shop	Checkout
ches your preferences and the life at page, you'll find more details a	
Cost Summary (Weekly	
Viewing figures as We	eklv
🗘 Health:	\$300.77
Money:	\$120.19
Protection:	\$8.93
Total Plan Value:	\$429.89
Employer Contribution:	\$153.85
My Responsibility:	\$276.05
This total includes \$276.05 towards the portfolio includes \$120.19 you contribut Savings Account). This money is available	towards your accounts (Health

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#### V HEALTH

Category	Plan / Program	Coverage	Weekly Cost
Medical Insurance	Aetna - New York Open Access EPO 5-12 HSA	Employee + Family	\$253.38
Accident Insurance	Waive		\$0.00
Critical Illness Insurance	Waive		\$0.00
Dental Insurance	MetLife - Dental High Plan	Employee + Family	\$43.34
Vision Insurance	United Healthcare - Vision Plan	Employee + Spouse	\$4.04
Doctor Tele-Consults	Consider		\$0.00

#### MONEY

Category	Plan / Program	Recommended Contribution
Health Savings Account	HealthEquity - Health Savings Account	\$120.19

LIAZ

## SHOP FOR BENEFITS





#### Accident Insurance

## **YEAR-ROUND HELP AND SUPPORT**



Contact Us Password Settings Sign Out Prepared for **BrightChoices** Acme Demo John Smith Enrollment is OPEN until Tuesday, October 16, 2012 EXCHANGE Upcoming Portfolio **My Portfolio** Jan 1, 2013 - Dec 31, 2012 Welcome Back! You bought the plans, now use them! Reference plan details, monitor and manage your spending, and learn about being even more active in managing your health costs here throughout the year. **Change My Enrollments** -Viewing figures as Weekly **Portfolio Diversity** Cost Summary (Weekly) V Health: \$337.80 Money: \$76.92 **O** Protection: \$7.94 **Total Plan Value:** \$422.66 LIF **Employer Contribution:** \$153.85 My Responsibility: \$268.82 This total includes \$268.82 towards the cost of all your plans. This portfolio includes \$76.92 you contribute towards your accounts (Health Savings Account). This money is available to you for various expenses. MED Manage your costs powered by Simplee YOUR RESPONSIBILITY TOTAL HEALTH YOUR MEDICAL YOUR 2012 HSA DOCTORS CARE COSTS DEDUCTIBLE BALANCE VISITS \$600 \$631 29 \$8,258 <sup>\$</sup>2.819 Since Oct 2011 Out of pocket since Oct Since Oct 2011 Used for family Available for medical. 2011 services Rx, and dental transactions Plan: 78% 100% You: 22% Prem.: 35% OOP: 65% My Profile

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**Help Center** 

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## FINALLY, SOMETHING THAT MAKES SENSE



#### **From Our Customers**

"For the first time, we have a benefits program that meets the high standards by which Trans Dynamics operates ."

> - Jeff Gaskin, Controller

"The whole concept is phenomenal." - Bill Wagner,

CFO

NEW

TRANS DYNAMICS NC We've accomplished what we set out to accomplish — in particular, controlling our benefits costs and giving employees more options." - Nicole Ebersole, HR Manager

Atwood

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## **Questions**

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