Under the federal Affordable Care Act (ACA), each state is given the option of establishing its own exchange for the individual and small group market. States that do not set up an exchange or have an exchange certified by HHS by January 1, 2014, will have the exchange in relative jurisdiction operated by the federal government.

Creation and Authority

SB 408, which was introduced as a modified version of the NAIC exchange model, creates a new article in the WV Code, 33-16G, to establish a health benefit exchange. This bill authorizes the establishment of the exchange within the OIC as a governmental agency.

The Exchange Board has legislative and emergency rule making authority.

The Exchange is exempted from the rules of State Purchasing and State Personnel and is expressly permitted to enter into contracts with state or federal agencies as well as other state exchanges.

The legislation creates the WV Health Benefit Exchange Fund in the State Treasury, which is created for the purpose of paying for the operations of the Exchange.

Exchange Board

The bill, sets up a 10 person governing board – 4 agency heads (OIC, HCA, Medicaid and CHIP); 4 governor appointees (individual consumers, small employers, labor and producers) and 2 selected by advisory committees of the group represented by the member (provider and payer); the governor appoints the chair.

- Governor appointed members will serve staggered terms and after the first series of terms will serve 4 year terms. Board members are to be made with advice and consent of senate.

- Members of the board are not entitled to compensation for services performed as members but are entitled to reasonable reimbursement for costs incurred while performing Board duties.

- Seven members of the board constitute a quorum, and the affirmative vote of six members is necessary for any action taken by vote of the board.

- The Board must undergo ethics training within 6 months of appointment and every 2 years thereafter.

Exchange Duties

The specified duties outlined by the legislation require the exchange to:

- Consult with stakeholders, including but not limited to consumers, carriers, producers, providers and advocates for hard to reach populations;

- Meet specified financial integrity requirements;

- The bill also requires the exchange to pursue federal funds and promulgate rules to achieve federal certification.

- The Exchange Board may establish ad hoc or standing advisory committees of consumers and other stakeholder groups or interested parties to study particular policy issues and to advise the board.

- The Exchange board must make an annual report to the Governor and also file it with the Joint Committee on Government and Finance.

Fees

After July 1, 2011, the board is authorized to assess fees on health carriers selling qualified dental plans or health benefit plans in this state, including health benefit plans sold outside the exchange, and shall establish the amount of such fees and the manner of the remittance and collection of such fees in legislative rules. Fees shall be based on premium volume.

State Flexibility to Address Federal Changes

Exchange development activities are contingent upon sufficient federal resources.

If ACA were to be invalidated or repealed, the Exchange Board will issue recommendations to the Legislature for amendments to this article as necessary.