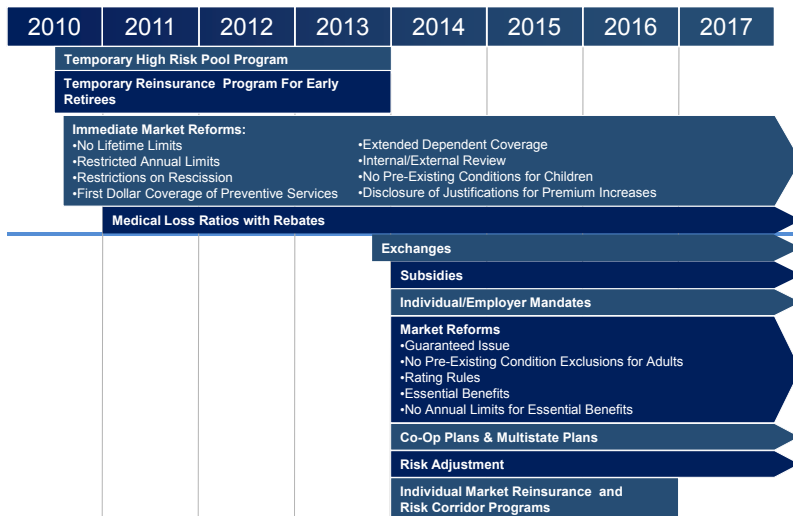


**JOSHUA GOLDBERG**  
**NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS**  
**MAY 4, 2013**

# ACA IMPLEMENTATION UPDATE



## IMPLEMENTATION TIMELINE



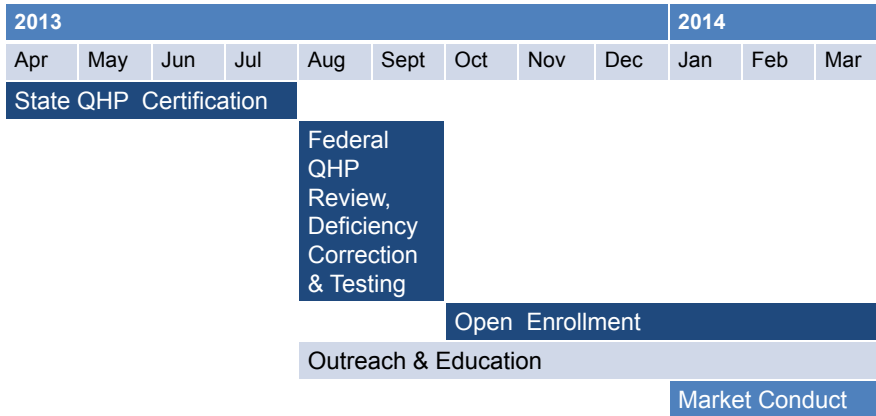
## NAIC ACTIVITIES

| Completed  | In Process  |
|--|---|
| <ul style="list-style-type: none"> <li>• Individual and Small Group Model Acts</li> <li>• SERFF Plan Management</li> <li>• Exchange Model Act</li> <li>• Plan Management White Papers</li> <li>• Early Reform Model Language</li> <li>• Summary of Benefits &amp; Coverage</li> <li>• MLR Formula &amp; Definitions</li> </ul> | <ul style="list-style-type: none"> <li>• Individual and Small Group Model Regulations</li> <li>• Consumer Assistance Materials</li> <li>• Market Conduct Updates</li> </ul> |

## EXCHANGE OPTIONS

| State Based   | Partnership<br>(Including "Quasi-Partner")  | Federally Facilitated  |
|---|---|--|
| <ul style="list-style-type: none"> <li>• State operates Exchange</li> </ul>   | <ul style="list-style-type: none"> <li>• Feds operate Exchange, but state makes many key decisions</li> </ul>         | <ul style="list-style-type: none"> <li>• Feds set standards and operate the Exchange</li> <li>• State maintains oversight of health plans and <u>may</u> coordinate with the federal Exchange</li> </ul> |
| <ul style="list-style-type: none"> <li>• Plans submitted through SERFF or other system designated by state</li> </ul> | <ul style="list-style-type: none"> <li>• Plans submitted through SERFF or other system designated by state</li> </ul> | <ul style="list-style-type: none"> <li>• Plans submitted through HIOS and SERFF if required by state</li> </ul>  |
|   |   |  |

# IMPLEMENTATION FOCUS



## PLAN MANAGEMENT

**QHP submission window has closed for FFEs and most state Partnership Exchanges**

**States will review QHP submissions using SERFF or HIOS.**

- At the conclusion of its review, state will report deficiencies in areas where it is reviewing plans.
- HHS will upload plan data from SERFF into HIOS in Partnership Exchanges.

**State Based Exchanges set their own timelines**

- All rates must be submitted to HIOS by 7/31 if issuer participates in the Exchange.

# CONSUMER ASSISTANCE

## Agents & Brokers

- State Based Exchanges can decide role of agents and brokers
- Producer role is more unclear in FFE and Partnership Exchanges.

## Navigators

- State Based Exchanges select and oversee Navigators
- Feds select Navigators in FFE and Partnership states.
  - States oversee Navigators in Consumer Assistance Partnership Exchange States
- Navigators subject to state producer licensing laws and certification and training requirements in all states

## State Assistors (Exchange grant funds available)

- State or Exchange employees who are trained to answer questions and assist consumers

## Application Assistors (Counselors)

- Primarily in hospitals and clinics
- Volunteers with training and certification
- Conflict of interest concerns remain

# PREEMPTION

Provisions of PPACA will potentially preempt state laws.

Similar to HIPAA:

**Nothing in this title shall be construed to preempt any State law that does not prevent the application of the provisions of this title.**

**PPACA §1321(d)**

Exceptions:

- Grandfathered plans: States may not require grandfathered plans to be pooled with post-reform plans.

## ***ENFORCEMENT***

### **Options for Enforcement of 2014 Market Reforms**

- Amend state rules to meet minimum federal standards
- Use general authority (form review, rate review, unfair trade practices) to enforce federal rules
- Enter into a “Collaborative Enforcement Agreement” with CCIO under which the state reviews for compliance, but CCIO uses federal penalties
- State enforces state rules; CCIO enforces federal rules

**Letter sent to commissioners on Feb 15 outlining where CCIO believes state enforcement authority exists – most states assumed to have authority**

**CCIO will inform carriers in AL, MO, OK, TX, and WY that they will be enforcing the ACA and that carriers must submit information to CCIO**

## ***FEDERAL ENFORCEMENT ACTIONS***

### **Penalties**

- The maximum amount of penalty imposed under this paragraph is \$100 for each day for each individual with respect to which such a failure occurs
- No penalties if “reasonable diligence” found
- Administrative review
- Judicial review

### **Deny Exchange Participation**

**Federal government may not prohibit the sale of a policy or use of a rate in a state**

# **CONSUMER ASSISTANCE**

## **Complaints and consumer questions will be received by Exchanges and State Departments of Insurance**

- Need to coordinate to ensure complaints go to right entities
- Need to ensure answers are correct
- Need to ensure that consumers are helped in a timely manner

## **Consumer outreach is critical to the health of the marketplace and Exchanges and Departments should work together**

# **CHALLENGES**

## **Time and Resources**

- All nongrandfathered plans in the state must be replaced or amended
- Review of forms and rates will be concentrated between now and August, straining state resources

## **Adverse Selection and Rate Shock**

- Abrupt transition to adjusted community rating will raise premiums on young and healthy
- Increasing use of self-insurance with low attachment point stop-loss coverage could destabilize small group market

## **Systems Development and Integration**

- Will Data Services Hub be ready in time?

## **Coordination**

- Dual regulation can add to administrative costs if Exchange and DOI requirements are not coordinated

## **Role of Agents and Brokers**

- Mechanism for consumer assistance by licensed agents and brokers in an FFE is still unclear

## ***QUESTIONS?***

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