

Exchange fight over, but maybe not permanently

By: [Jeremy Duda](#) November 30, 2012



Gov. Jan Brewer's decision to forgo a state-based health insurance exchange headed off a potential battle in the Legislature, but that fight may not be over for good. Under the Affordable Care Act, states have the option of running their own insurance exchanges, having the federal government run them, or operating them in partnership with the U.S. Department of Health and Human Services. Those decisions, however, are not permanent, and states have the option of switching from one to another at any time.

Brewer shut the door on a state-based exchange that most observers believe had little, if any, chance of getting through the Legislature in the first place. But advocates of a state-run model are hoping that things will be different in the future.

The exchanges are online marketplaces where individuals and businesses will be able purchase health insurance coverage.

Lobbyist Gibson McKay said the desire for local control of important health care choices will eventually sway policymakers who are currently opposed to a state-based exchange. McKay represents the Coalition for an Arizona State Exchange, a 37-member coalition that urged Brewer to adopt a state-run exchange.

McKay said the coalition isn't going away now that Brewer has made her decision and will continue to advocate for a state-based exchange.

"I don't believe it's over," McKay said. "At a certain point, we have to acknowledge and try to work within the system that was unfortunately handed down."

Pete Wertheim, vice president for strategic communications at the Arizona Hospital and Healthcare Association, a member of the coalition, said his organization will stop lobbying for a state-based exchange now that Brewer has made her decision. But he was hopeful that Arizona policymakers would change their minds in future years if it becomes clear that a state-based exchange is preferable, or

if the U.S. Department of Health and Human Services provides more guidance to the state.

"We do hope that the option to implement a state-based exchange could be revisited if, let's say, circumstances change," Wertheim said. "We may find, for example, that states that have implemented their own state-based exchanges have been able to do it at a cheaper cost or with less resources or it's less disruptive to their marketplace, maybe more in line with sort of our open-market, free-market approach that we have to health care in Arizona." The exchanges are not yet up and running anywhere in the country, which leaves states without a basis for comparison. Arizona Chamber of Commerce and Industry spokesman Garrick Taylor said Brewer and Don Hughes, her health policy and insurance exchange adviser, weren't able to compare the two types of exchanges side by side. "They didn't have those two exchanges in front of them, federal and state, to make an apples-to-apples comparison. So maybe when that time comes, maybe that option will emerge," said Taylor, whose organization was part of coalition as well.

Lobbyist and consultant Chuck Coughlin, who represents the Arizona Council of Human Service Providers, also said he's optimistic that policymakers in Arizona will be more amendable to a state-run exchange as more information becomes available.

"It can come back around and I'm confident over the next two years as these questions get answered with regards to the exchange that there will be greater flexibility to perhaps adopt something," said Coughlin, a longtime adviser to Brewer. "Like anything in government, it's never final." Brewer said she is a strong supporter of local control over federal control, but rejected a state-run exchange nonetheless because of concerns over the cost to the state and the lack of information from the feds about how it would operate. In a letter to HHS, she said the feds failed to provide information the state needed to determine whether a state-based exchange would be best for the state.

“There simply remains too much we don’t know about how a state-based exchange would function and its ultimate cost to taxpayers,” Brewer said in a press statement.

Gubernatorial spokesman Matthew Benson attributed Brewer’s opposition partly to the fact that the feds themselves don’t seem to know exactly how the exchanges will operate.

“What we’ve seen from the federal government is they’re sort of making stuff up on the fly here. They’re writing and rewriting rules as they go, and it appears that they’re in a mad scramble to try to get things ready on time,” Benson said.

Benson said the governor isn’t interested in revisiting the exchange issue later on. Even before she announced her decision, Brewer didn’t seem to be considering the option of changing courses later on.

“I don’t have a crystal ball. Theoretically I guess you could do that. But the bottom line is that we need more information to know what’s going to happen in the future,” Brewer said on Nov. 27, the day before she announced her decision.

House Minority Leader Chad Campbell said he hopes Arizona switches to a state-run exchange at some point, but was pessimistic. Even if Arizona makes that change in future years, Brewer’s decision already cost the state, the Phoenix Democrat said.

“If you’re not going to do it now when the feds are offering to pay for the start-up costs and everything else, I’m not sure why you would do it later on,” Campbell said. “Either way, if that were to happen later on down the road ... it’s going to cost us more money, and the reason it’s going to cost us more money is because Jan Brewer decided not to do it now.”

Arizona has spent about \$9 million of a \$30 million federal grant to help lay the groundwork for the exchange. The grant money was primarily spent on IT development and design, consulting and salaries for four employees involved in the planning for the exchange.

Indeed, if Arizona needs more funding to prepare for a state-based exchange, it will be out of luck. Martha Salazar, a staffer with the National Conference of State Legislatures, said the grant money will only be available to states through December 2013.

“The only sort of drawback on that that states have seen is that there aren’t federal funds to assist with building that exchange in the state after 2014,” Salazar said.

In the end, any push for a state-based exchange will likely run into the same problem it has now — fierce opposition in the Legislature.

House Speaker Andy Tobin said there’s absolutely no support among GOP lawmakers in Arizona for a state-based exchange.

“I didn’t have a single member pick up the phone and call me and say ‘Hey, I’m a yes vote on the state exchange.’ Not a single one,” said Tobin, R-Paulden.

Some Republicans and conservative organizations, such as the Goldwater Institute and Americans for Prosperity, also believe that businesses in states with federally facilitated exchanges won’t be subject to what they view as one of the

Affordable Care Act’s more onerous provisions. They say the wording of the law stipulates that the \$2,000- per-employee fine levied against businesses that don’t provide health care coverage to their employees would only apply under a state-based exchange.

The Internal Revenue Service implemented a rule in May that applies the employer mandate and tax credits to federally run exchanges. A lawsuit filed against the Affordable Care Act by the state of Oklahoma seeks to have the IRS rule overturned.

Hughes, who oversaw the state’s planning for an insurance exchange, said the Affordable Care Act’s employer mandate and the subsidies still apply to states with federally run exchanges.

“There is ambiguity in the ACA, but until a court overturns the IRS regulations, they stand,” he said.

But if a federal court does throw out the IRS rule, a state-run exchange will become more important than ever for insurance companies that want federal subsidies that run through the exchanges. Goldwater Institute attorney Christina Sandefur said the Affordable Care Act’s subsidies were set up that way in order to get insurance companies on board and create pressure on state governments to run their exchanges themselves.

“The insurance companies have a lot of money riding on these exchanges. So yes, I expect that fight to continue going on in Arizona,” Sandefur said.