

North Carolina Department of Insurance  
Market Reform Technical Advisory Group In-Person Meeting #11  
Wednesday, December 12, 2012  
*FINAL Version – Approved by the TAG via email*

| Meeting Attendees                                 | Organization                                  |
|---|---|
| <b><i>TAG Members and NC DOI Project Team</i></b> |   |
| Barbara Morales Burke                             | Blue Cross Blue Shield of North Carolina      |
| Jeff Tindall ( <i>by phone</i> )                  | CIGNA Healthcare of North Carolina, Inc.      |
| Tracy Baker                                       | Coventry Health Care of the Carolinas, Inc.   |
| Peter Chauncey                                    | Coventry Health Care of the Carolinas, Inc.   |
| Ken Lewis   | FirstCarolinaCare Ins. Co. Inc.               |
| Allison Garcimonde                                | Manatt  |
| Joel Ario   | Manatt  |
| Sharon Woda                                       | Manatt  |
| Fred Joyner                                       | NC Assoc. of Insurance and Financial Advisors |
| Mike Kelly  | NC Business Group on Health                   |
| Vinny Longobardo                                  | NC Business Group on Health                   |
| Rebecca Whitaker                                  | NC Community Health Center Association        |
| Ben Popkin  | NC Department of Insurance                    |
| Ernest Nickerson                                  | NC Department of Insurance                    |
| Jean Holliday                                     | NC Department of Insurance                    |
| Julia Lerche                                      | NC Department of Insurance                    |
| Lauren Short                                      | NC Department of Insurance                    |
| Mike Wells  | NC Department of Insurance                    |
| Yolanda Fonville                                  | NC Department of Insurance                    |
| Rosemary Gillespie                                | NC Department of Insurance                    |
| Ted Hamby   | NC Department of Insurance                    |
| Walter James                                      | NC Department of Insurance                    |
| Adam Linker                                       | NC Justice Center                             |
| Conor Brockett ( <i>by phone</i> )                | NC Medical Society                            |
| Linwood Jones                                     | NC Hospital Association                       |
| Tammy Tomczyk                                     | Oliver Wyman                                  |
| Elizabeth Crabill                                 | United HealthCare                             |
| Mark Hall   | Wake Forest University                        |
| <b><i>Interested Parties</i></b>                  |   |
| Tom Vitaglione                                    | Action for Children                           |
| Chris Fitzsimmons                                 | Blue Cross Blue Shield of North Carolina      |
| Brian Tajlili ( <i>by phone</i> )                 | Blue Cross Blue Shield of North Carolina      |
| Cheryl Harris ( <i>by phone</i> )                 | Coventry Health Care of the Carolinas, Inc.   |
| Charlie Pitts ( <i>by phone</i> )                 | CIGNA   |
| Anna Lore   | Duke University                               |
| Andy Landes                                       | H-PACT  |

## Agenda

- Welcome and Introductions
- Project Timeline, Goals/Objectives of Today's Discussion, Statement of Values for TAG
- Questions for Discussion in TAG Meeting #11
  - *Habilitative Benefits – Should the state define habilitative benefits or leave it to insurers to define?*
  - *Benefit Substitution – Should North Carolina allow benefit substitutions?*
- Consideration of Draft Guidance and Previous TAG Recommendations/Rating Workgroup Report Out
- Wrap Up and Next Steps

*Please refer to the December 12 "TAG In-Person Meeting #11" Slide Deck.*

### **Welcome and Introductions**

Ted Hamby of the North Carolina Department of Insurance ("DOI" or "the Department") convened the meeting at 2:00 PM and welcomed meeting attendees. Mr. Hamby asked attendees, including those participating by phone, to introduce themselves to the group. Mr. Hamby then turned the floor over to Joel Ario of Manatt for a review of the objectives of the day's meeting discussion.

### **Project Timeline, Goals/Objectives of Today's Discussion, and Statement of Values for TAG**

Mr. Ario reviewed the project and regulatory timelines for the TAG's ongoing work (*see slide deck for additional details*) and objectives for the day's meeting which included:

- Review recent federal guidance related to Essential Health Benefits and make recommendations for state action, if any, on habilitative benefits and benefit substitution
- Review where new guidance intersects with previous TAG recommendations and address what action, if any, is needed to reconcile recommendations

Mr. Ario briefly reviewed the TAG Statement of Values before asking Sharon Woda of Manatt to begin the discussion related to habilitative benefits.

### **Issues for Discussion in TAG Meeting #11**

**Please note that the "Consensus Points" listed in this section are in DRAFT form only and will be reviewed by the TAG at its next meeting or via email; any modifications to these draft consensus points by the TAG prior to TAG approval will be detailed in the TAG #11 final meeting notes.**

*Should the state define habilitative benefits or leave it to insurers to define?*

Ms. Woda briefly reviewed newly-issued proposed rules related to Essential Health Benefits, previous TAG and NC DOI deliberations related to benchmark plan options, and proposed regulations around

habilitative benefits (*see slide deck for additional details*). Ms. Woda then began the discussion of policy options and considerations related to the state's potential selection of habilitative benefits.

- The TAG discussed the merits of the state selecting the habilitative benefit for the EHB package. The group agreed that allowing variation in the EHB package runs counter to the purpose of having a benchmark plan, observing that the point of the benchmark is to provide consumers with a transparent and predictable set of benefits.
- Some TAG members expressed concern about the impact that state selection of the habilitative benefit could have on premiums, noting that how the benefit is defined could have significant cost implications.
- Members also discussed issues related to the timeline for state selection and implementation of the habilitative benefit for the benchmark plan. TAG members representing insurers expressed concern regarding whether the state would be able to select the habilitative benefit in sufficient time to allow insurers to price it and build it into premium rates, particularly in light of the many competing reform-related priorities with which the state is currently grappling. The group also discussed the fact that state selection of the habilitative benefit would require action on the part of the NCGA, which may introduce additional delays or otherwise complicate the selection process. Representatives of the NC DOI noted that though the timeline for selection is tight, defining the habilitative benefit is not part of the CCIIO benchmark submission process such that it could be considered separate and apart from the submission timeline.
- A consumer advocate representing a coalition that advocates on behalf of children with special health care needs voiced strong support for the state's selection of the habilitative benefit. While recognizing the need for actuarial analysis to assess feasibility, the advocate encouraged the state to explore the possibility of adopting the current Medicaid habilitative benefit offering, as it is relatively robust, currently being incorporated into the CHIP benefit package, and tied to a well-tested set of medical criteria that ensure that only those children who require these extensive services receive them. The coalition representative also noted that TRICARE is currently one of the best plans available for individuals with autism or developmental disabilities and is used by many military families throughout the state such that it may also serve as a model for defining these benefits.
- The group discussed the option of recommending that the state require parity to the rehabilitative benefit in the plan. Several members observed that this appears to be a sensible approach, particularly in light of the tight timelines for selection and implementation, as it offers clear, established parameters for defining the habilitative benefit. Others countered that requiring parity with rehabilitative benefits does not necessarily resolve the timeline issue, as doing so would still require legislative action on the part of the NCGA. Consumer advocates also noted that the rehabilitative benefits contained in the benchmark plan are insufficient for individuals with special needs and that additional analysis is needed to determine whether parity is truly the best option. While acknowledging the short timeline for doing so, several members also suggested establishing a process for collecting stakeholder feedback on how habilitative benefits should be defined.
- Members briefly discussed whether state selection of habilitative benefits for the benchmark plan would be considered a state mandated benefit and thus subject to related ACA requirements. Manatt meeting facilitators and NC DOI representatives responded that this remains unclear and

could be clarified in future guidance. NC DOI representatives also stated that they would ask CClIO for guidance on this, directly.

### Consensus Points:

- The TAG **reached consensus** that the state should select habilitative benefits for the benchmark plan, but did not reach consensus on how such benefits should be defined.
- The group agreed that additional analysis was needed to assess potential options for defining habilitative benefits, including whether parity with rehabilitative benefits in the benchmark plan would be appropriate.

### *Should North Carolina allow benefit substitutions?*

Ms. Woda briefly reviewed newly issued proposed regulations regarding actuarial substitutions, considerations related to permitting substitutions of benefits in the benchmark package, including relevant key dates for the state in Year 1, and other states' approaches to the issue (*see slide deck for additional details*). Ms. Woda then began the discussion of policy options related to benefit substitution.

- TAG members representing insurers reported that insurers would likely prefer flexibility in meeting EHB plan requirements including to allow for product innovation, but noted that they have not had sufficient time to fully examine how benefit substitutions, specifically, would be used and need to perform additional analysis to fully assess the benchmark plan and identify instances in which benefit substitutions may be necessary. These members also expressed concerns about the difficulties of bringing highly complex IT systems into compliance with the benchmark requirements on a very short timeline, and noted that the ability to substitute benefits might mitigate some of these potential challenges. Representatives of insurers operating nationally noted that allowing for substitution may provide a "safety valve" in the event that the complexities of complying with benchmark requirements across multiple states, particularly across such a tight timeline, might prevent these insurers from dropping out of some markets in which compliance is impossible or cost-prohibitive in the near-term.
- Members discussed the drawbacks to allowing for benefit substitution in the benchmark plan, including the earlier discussed point that allowing for variation in the EHB package runs counter to the purpose of having a standardized benchmark plan. The group also acknowledged the NC DOI's limited resources and time constraints to operationalize this approach, noting the significant administrative and oversight challenges the DOI could face in determining the appropriateness of such substitutions, including the need to develop a new testing process to check for discrimination and to assess the potential for adverse selection and likely impact across the market. Representatives from the NC DOI noted that the Department would likely be heavily dependent on the information submitted by insurers regarding the actuarial equivalence and appropriateness of the substitution.
- TAG members representing the consumer perspective stated recognition of the need for flexibility, but expressed concern regarding the potential for too much variation across plans if many insurers attempt to substitute a large number of benefits. These members also suggested establishing a process through which stakeholders could comment on proposed substitutions.

- The group agreed that allowing for some flexibility within a specified set of parameters to prevent excessive amount of variation across plans seemed desirable, but also noted that defining what those parameters should be would be difficult and requires further analysis. Some suggestions for parameters included limiting the number of benefit substitutions allowed (e.g., permitting substitutions affecting less than a certain percentage of the premium or setting a cap on the maximum number of permissible substitutions) or only allowing substitutions if the insurer is able to demonstrate some form of hardship (e.g., if it is technically infeasible to bring systems into compliance with the benchmark plan).

#### **Consensus Points:**

- TAG members did not reach consensus regarding whether the state should allow benefit substitutions. However, many members seemed to agree that substitution should potentially be allowed subject to certain limitations, though further analysis was needed to determine what these limitations should be.

Ms. Woda then turned the floor over to Mr. Ario to lead the review of instances in which new federal guidance intersects with previous TAG recommendations and to address what action, if any, is needed to reconcile past recommendations with new requirements, as well as a report out regarding the Premium Rating Implementation Workgroup's recommendations generated at its morning meeting.

#### **Consideration of Proposed Guidance and Previous TAG Recommendations/Rating Workgroup Report Out**

Mr. Ario walked the group through prior TAG recommendations and related new federal guidance. The TAG agreed that no changes should be made to its previous recommendations, with the exception of one modification to its recommendation regarding the minimum participation rate in the SHOP.

#### **Consensus Points:**

- The TAG **reached consensus** that its recommendation regarding the minimum participation rate in the SHOP should be modified to require a 70% minimum participation rate outside the SHOP to align with proposed federal requirements in the SHOP. The revised TAG recommendation should read as follows:
  - The TAG recommends the establishment of a minimum participation rate of 70% in the SHOP and non-SHOP markets to mitigate adverse selection.

The group then reviewed the draft points of consensus from the Rating Workgroup's morning meeting regarding age bands/factors, tobacco rating, and establishment of geographic rating areas (*see meeting notes from Rating Workgroup's December 12 meeting*). The TAG and Rating Workgroup will be jointly convened in January to finalize recommendations to the NC DOI on these issues.

### **Wrap Up and Next Steps**

Ms. Woda reviewed next steps as follows:

- Review TAG meeting minutes once released to ensure that points of consensus have been accurately captured.
- Attend next in person meeting (date and time of meeting is TBD).

TAG members are encouraged to send any additional feedback or suggestions to Allison Garcimonde ([agarcimonde@manatt.com](mailto:agarcimonde@manatt.com)) or Lauren Short ([lauren.short@ncdoi.gov](mailto:lauren.short@ncdoi.gov)) of the NC DOI.

The meeting was adjourned at 4:45 pm.