

North Carolina Department of Insurance
Market Reform Technical Advisory Group In-Person Meeting #2
Friday, January 27, 2012
FINAL VERSION – approved by the TAG at its February 16, 2012 Meeting

Meeting Attendees	Organization
<i>TAG Members and NC HBE Project Team</i>	
Joe Winn	Aetna Health Inc.
David Hill	Assurant
Barbara Morales Burke	Blue Cross Blue Shield of North Carolina
Patrick Getzen	Blue Cross Blue Shield of North Carolina
Jeff Tindall	CIGNA HealthCare of North Carolina, Inc.
Tracy Baker	Wellpath/Coventry
Ken Lewis	FirstCarolinaCare Ins. Co. Inc.
Craig Humphrey	FirstCarolinaCare Ins. Co. Inc.
David Contorno	Independent Insurance Agents of NC
Allison Garcimonde	Manatt
Joel Ario	Manatt
Melinda Dutton	Manatt
Sharon Woda	Manatt
Sudha Shenoy <i>(by phone)</i>	Mercer
Gerry Smedinghoff <i>(by phone)</i>	Mercer
Jeff Barnhart	NC Assoc. of Health Plans
Teresa Gutierrez	NC Assoc. of Health Underwriters
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
Carla Obiol	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
Louis Belo	NC Department of Insurance
Mike Wells <i>(by phone)</i>	NC Department of Insurance
Rosemary Gillespie	NC Department of Insurance
Ted Hamby	NC Department of Insurance
Walter James	NC Department of Insurance
Yolanda Fonville	NC Department of Insurance
Michael Keough	NC Health Insurance Risk Pool, Inc./dba Inclusive Health
Pam Silberman	NC Institute of Medicine
Adam Linker	NC Justice Center
Conor Brockett	NC Medical Society

Meeting Attendees	Organization
Linwood Jones	North Carolina Hospital Association
Mark Holmes	UNC/Cecil G. Sheps Center
Mark Hall	Wake Forest University
Peter Chauncey	Wellpath/Coventry
Interested Parties	
Amy Jo Johnson	NC General Assembly
Ryan Blackledge	NC General Assembly
Chuck Stone	State Employees Association NC
Rep. Verla Insko	NC General Assembly
Cheryl Harris (<i>by phone</i>)	Wellpath Select, Inc.
Andy Landes	Benefit Consultant

Agenda

- Welcome and Introductions
- Review of TAG #1 Meeting Minutes
- Project Timeline and Goals/Objectives of Today's Discussion
- Issues for Discussion in TAG Meeting #2
 - *Should the Individual and Small Group Markets be Merged?*
 - *Should the Definition of Small Group Market be Expanded?*
 - *Should the Self-Insurance Statute Change in Light of the ACA?*
 - *What is the Appropriate Definition of "Employee" in Light of the ACA?*
 - *How Should "Groups of 1" be Handled in Light of the ACA?*
 - *How Much Choice Should Employers Have the Option to Give Employees in SHOP?*
- Next Steps

Please refer to the January 27 "TAG In-Person Meeting #2" Slide Deck.

Welcome and Introductions

Ted Hamby of the North Carolina Department of Insurance ("DOI" or "the Department") convened the meeting at 9:30 AM 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 Sharon Woda of Manatt for a review of the TAG #1 meeting minutes and of the overall project timeline/objectives of the day's meeting discussion.

Review of TAG #1 Meeting Minutes

Ms. Woda asked TAG members whether any changes or clarifications needed to be made to meeting notes from the TAG's last in-person meeting (TAG In-Person Meeting #1). No members of the TAG suggested changes to the meeting minutes.

Project Timeline and Goals/Objectives of Today's Discussion

Ms. Woda briefly reviewed the overall project timeline and the work plan for the TAG's first phase of work (*see slide deck for additional details*). Ms. Woda then reviewed the goals for the day's meeting which included:

- Resolve TAG values
- Confirm options for each of the policy questions under consideration related to the small group market
- Identify considerations for each option in the policy question
- Identify any points of consensus within each policy question

Ms. Woda then turned the floor over to Melinda Dutton of Manatt to review the draft statement of TAG values with the group and discuss members' suggestions for revisions.

Statement of Values for TAG

Ms. Dutton clarified that the TAG value statement is meant to serve as a "measuring stick" against which the group can assess the policy options under consideration and the extent to which the TAG values are advanced by each policy option, and are not a list of goals to be achieved by the group. Ms. Dutton reminded members that the draft value statement had been developed based on member input at the last TAG meeting and could now be modified by the group prior to finalization.

TAG members made the following changes to the draft statement of TAG values:

- The TAG agreed that the first draft bullet "expand coverage" should be split into two stand-alone bullets – the first should remain "expand coverage" and the second should be "affordability of coverage."
- In order to make clear that 1) the TAG values empowering consumers to make informed choices both in and out of the exchange and 2) the focus is on providing "high-value options" specifically within the exchange, the TAG agreed that the second bullet should be split into two separate bullets – the first should be "provide high-value coverage options in the exchange" and the second should be "empower consumers to make informed choices."
- The TAG agreed that the third bullet did not need to be modified.
- The TAG agreed that the fourth bullet should be modified to say "support" rather than "allow" and to include innovations in "benefit design," in addition to payment and care delivery – "Support innovations in benefit design, payment and care delivery that can control costs and improve the quality of care".
- The TAG agreed that the final bullet did not need to be modified.

Ms. Dutton stated that the TAG Statement of Values would be revised based on the group's input.

Ms. Dutton then turned to the discussion of issues related to the small group market currently under consideration by the TAG.

Issues for Discussion in TAG Meeting #2

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; any modifications to these draft consensus points by the TAG prior to TAG approval will be detailed in the TAG Meeting #3 Meeting Notes.

Issue #1: Should the Individual and Small Group Markets be Merged?

Ms. Dutton briefly reviewed the background information related to the question of whether the individual and small group markets should be merged, including relevant law and regulations, policy options and considerations of potential impact for each option (*see slide deck for additional details*) before opening the floor for discussion.

- Ms. Dutton asked the TAG whether any policy options should be added or removed from the list of options under consideration; the group agreed that the list of policy options was complete.
- TAG members felt strongly that because North Carolina's individual and small group markets are currently so different and the impacts of merging the markets unknown, merging the markets could cause significant disruption and was not desirable at this time.
- A TAG member noted that Option 2 and Option 3 were not mutually exclusive and the group discussed whether recommending a future study of the issue required deferring the TAG's decision. Ms. Dutton clarified that the TAG could make a recommendation to not merge the markets in 2014 while still noting that circumstances are likely to change with the implementation of the ACA's small group market reforms and that continued monitoring/future study of the issue may be desirable.
- TAG members suggested keeping a running list of issues that potentially should be actively monitored or studied in the future. The group will review the running list at the close of its first phase of work and decide which issues it might recommend for future study or ongoing monitoring.

Consensus Points:

- The TAG reached consensus around Option 2 – Do Not Merge the Individual and Small Group Markets.
- The TAG acknowledged that circumstances were likely to change over time as the ACA's market reform provisions are implemented and that, accordingly, future study of this issue may be desirable. The group agreed that the TAG should keep a running list of issues that may merit future study to be revisited at the conclusion of its first phase of work (i.e., at TAG #5 Wrap-Up Meeting) and that the issue of merging the individual and small group markets should be included on the list for consideration.

Ms. Dutton then turned the floor over to Ms. Woda to discuss the issue of whether the definition of the small group market should be expanded.

Issue #2: Should the Definition of Small Group be Expanded?

Ms. Woda briefly reviewed the relevant background information (*see slide deck for additional details*) before opening the floor for discussion.

- Ms. Woda asked the TAG whether any policy options should be added or removed from the list of options under consideration; the group agreed that the list of policy options was complete.
- A TAG member asked whether the group's discussion of the small group definition expansion should be separate from discussions related to the medical loss ratio. DOI confirmed that the Department views them to be independent questions and that the latter would not be addressed by the TAG.
- Some TAG members stated that the group should prioritize preventing rates from rising rather than lowering rates for any given group and that the former should take precedence as the stronger component of the group's decision making. Other TAG members expressed concern with this prioritization.

- The TAG discussed the impact of an expansion on carriers that currently are not in the 51-100 market, including what impact the expansion might have on their risk base, etc. The group expressed concern that for some carriers these changes will require significant internal changes and may cause significant disruption in the market. The group noted that this highlights a need to consider the impact of any changes not just at the employer level, but also across insurance carriers that may or may not be in various markets.
- TAG members expressed interest in gaining a better understanding of what proportion of the market would see premiums rise (and, conversely, fall) if the definition were expanded to get a more nuanced sense of the impact of any changes.
- The TAG agreed that the market should be given time to adjust to the reforms that will be implemented in 2014 before considering changes to the small group definition prior to 2016.

Consensus Point:

- The TAG reached consensus around Option 2 – Do Not Expand the Small Group Market Definition Until Required in 2016.

Ms. Woda then turned the floor over to Joel Ario of Manatt to lead the discussion of whether North Carolina's self-insurance statute should change in light of the ACA.

Issue #3: Should the Self-Insurance Statute Change in Light of the ACA?

Mr. Ario briefly reviewed the relevant background information including related laws and regulations and the spectrum of policy options under consideration (*see slide deck for additional details*) before opening the floor for discussion.

- Mr. Ario asked the group whether any policy options should be added or removed from the list of options under consideration; the group agreed that the list of policy options was complete.
- The TAG agreed that there is not currently a compelling need to modify the self-insurance statute. Accordingly, the group agreed that this issue might be better taken up as Tier 2 issue in the TAG's next phase of work.
- The TAG extensively discussed the potential future impact of the ACA's market reforms on self-insurance for small groups, and had differences of opinions on how these changes once implemented will affect the market. Some TAG members felt that because North Carolina currently has relatively stringent requirements in place that make self-insuring difficult to implement for small groups, market changes resulting from the ACA will not necessarily increase the demand among small groups to self-insure and, consequently, the issue is of less importance than it might be for other states with less stringent self-insurance requirements. Other TAG members countered that several of the market reforms under the ACA, in fact, will likely drive more small groups to self-insure, which could negatively impact the small group market and raise rates for less healthy groups.
- The TAG discussed at length whether new ACA requirements for the small group market should be incorporated into the state's current self-insurance statute (thereby becoming applicable to self-insured plans). Some members stated that these provisions should be incorporated into the state's self-insurance requirements to mitigate the impetus for small groups to self-insure. Other TAG members countered that if the new ACA requirements for the

small group market were brought to bear, such an action would essentially amount to a ban on self-insurance as the new requirements eliminate most financial incentives for small employers to self-insure. The group agreed that further assessment of the ACA requirements is necessary before a decision could be made regarding which (if any) of the ACA's small group market reform provisions should be incorporated into the state's self-insurance requirements.

- The group also discussed the appropriate statutory mechanism for implementing any new small group market requirements on self-insured plans if the TAG ultimately decides such a move is desirable (i.e., should new ACA requirements for the small group market be a stand-alone statute or should the requirements be referenced in the existing self-insurance statute).

Consensus Points:

- The TAG reached consensus that there is not yet a compelling need to change the state's self-insurance statute. However, the TAG also recognized that changes to the market resulting from implementation of the ACA's reforms in 2014 will likely influence this decision; accordingly, **the TAG agreed that the impact of reforms on the self-insurance market should be actively monitored and this topic reconsidered as a Tier 2 issue for consideration.**

Issue #4: What is the Appropriate Definition of "Employee" in Light of the ACA?

Ms. Woda then turned to a discussion of the appropriate definition of "employee" in light of the ACA, including related laws and regulations and the range of policy options under consideration (*see slide deck for additional details*).

- Ms. Woda asked the group whether any policy options should be added or removed from the list of options under consideration; the group agreed that the list of policy options was complete.
- TAG members discussed the proportion of small groups that would be impacted by aligning the state's definition of "employee" with the ACA's definition of the term. DOI and TAG members representing insurance carriers stated that the number of groups that would be impacted by a change in the definition of employee would be a relatively small percent of the market.
- The group also discussed the option of a state "exemption" to the federal definition for plans that currently exist. The group then also discussed the complexity of administering insurance when there are multiple definitions of an "employee" in the market place.
- The group agreed that, particularly for carriers operating in multiple states, it is more desirable to have as little variation as possible in the definition of employee across markets, states and between the state/federal definition in order to reduce complexity and administrative burden.

Consensus Point:

- The TAG reached consensus around Option 1 – Act Now to Comply with ACA definition – with the caveat that the change in definition would not become effective until January 1, 2014 and that plans the federal government considers as "grandfathered" are excluded from this definition.

Issue #5: How Should “Groups of 1” be Handled in Light of the ACA?

Mr. Ario introduced the discussion of how “groups of 1” should be handled in light of the ACA, including related laws and regulations and the range of policy options under consideration (see *slide deck for additional details*).

- Mr. Ario asked the group whether any policy options should be added or removed from the list of options under consideration; the group agreed that the list of policy options was complete.
- The group noted that while some sole proprietors may be negatively impacted by a change to treatment of “groups of 1” (as they will have to seek coverage in the individual market rather than the small group market), the number of people that will be impacted is relatively small.
- Some TAG members noted that moving sole proprietors into the individual market would improve rates for small businesses, as well as make rates more accurate.
- The group reiterated its belief that it is more desirable to have as little variation as possible in definitions across markets, states and between the state/federal definition in order to reduce complexity and administrative burden.

Consensus Point:

- The TAG reached consensus around Option 1 – Mirror ACA definitions and methodology – with the caveat that the related changes would not become effective until January 1, 2014 and that plans the federal government considers as “grandfathered” are excluded from this definition.

Issue #6: How Much Choice Should Employers Have the Option to Give Employees in SHOP?

Mr. Ario concluded the assessment of small group market issues by turning to a discussion the level of choice that employers should be able to give employees when choosing a plan in the SHOP (see *slide deck for additional details*).

- TAG members discussed the extent to which employers will face increased complexity and administrative burden if employees are given extensive choice of plans in the SHOP. While recognizing that extensive choice might be logistically complex, some TAG members felt that employers should be able to take on the increased administrative complexity if they want to do so. Members also noted that some of the issues related to administrative complexity might be addressed by requiring the exchange to be responsible for various components of administration, premium aggregation, etc. (Note: HHS proposed regulations require the exchange to do premium aggregation in order to make choice model work for employers.)
- TAG members discussed the impact of broad employee choice on rates. Members noted that an expansion of plan options (such as, for example, by allowing employees to choose a plan from among various metal levels) will result in increased selection load and, consequently, increased costs. One member asked whether increased costs would result from allowing employees to choose a plan from one of two contiguous metal levels; members agreed that the impact on rates would be lessened, but that costs would still increase. Further, risk adjustment mechanisms might not adequately address this issue as risk adjustment allows for exchange among carriers, but expanded options raise prices for the entire pool. The group also

acknowledged that an increase in rates inside the exchange might result in an increase outside of the exchange due to the ACA's rate parity requirements (i.e., if selection loads must be built into rates in the exchange, they must also be built into rates outside of the exchange).

- The TAG discussed whether it would be desirable to put baseline parameters in place for employer/employee choice and then allow the SHOP to design the choice model (vs. legislatively mandating how much choice employers should be permitted to give employees). Some members of the group stated that they were not comfortable with leaving the design of the employer/employee choice model to the SHOP at this time.
- Ultimately, the TAG was not able to agree on the extent to which employee choice should be expanded. A number of TAG members concluded that employees should not be given flexibility in plan choice beyond what is required by the ACA and that employers should be able to limit employee choice to a specific plan or plans within a single metal level. Other members, while agreeing that employers should be given the option to limit employee choice to a specific plan or plans within a single metal level, concluded that giving employers the option to expand employee choice (such as by allowing employees to choose a plan from across adjacent metal levels) may be desirable and should be evaluated further.

Consensus Point:

- The TAG reached consensus that employers should be able to restrict employee choice of plans down to a single plan or plans within a single metal level. The TAG did not reach consensus regarding the extent to which employers should be allowed to expand employee choice beyond what is mandated by the ACA, primarily due to the impact that adverse selection would have on premium costs. The TAG also did not reach consensus on how much flexibility to give the SHOP in designing employer/employee choice models versus what should be legislatively mandated.

Next Steps

Ms. Woda reviewed next steps to take place in advance of the TAG's next meeting as follows:

- TAG review of meeting minutes. As minutes reflect points of consensus and considerations discussed during the meeting which will be used for developing related issue briefs, it is important that members review the meeting notes. The notes will be circulated for members' review prior to the next in-person TAG meeting and approved at the meeting.
- TAG Webinar #3 related to risk adjustment and reinsurance. Dial-in information for the webinar is forthcoming from the NC DOI.
- TAG In-Person Meeting #3 on Thursday, February 16, 2012 from 9 AM – 12 PM.

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

The meeting was adjourned at 12:30 pm.