

North Carolina Department of Insurance
 Market Reform Technical Advisory Group In-Person Meeting #4
 Friday, March 9, 2012

FINAL version – approved by the TAG with revisions at its March 30, 2012 Meeting¹

Meeting Attendees	Organization
TAG Members and NC HBE Project Team	
George Teague	Aetna Health Inc.
Joe Winn (<i>by phone</i>)	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
Teresa Gutierrez	NC Assoc. of Health Underwriters
Fred Joyner	NC Assoc. of Insurance and Financial Advisors
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
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
Conor Brockett	NC Medical Society
Mark Holmes	UNC/Cecil G. Sheps Center
Mark Hall	Wake Forest University
Peter Chauncey	Wellpath/Coventry
Interested Parties	
Andy Landes	H-PACT
Amy Jo Johnson	NC General Assembly
Cheryl Harris (<i>by phone</i>)	Wellpath Select, Inc.

¹ Approved revisions to these meeting notes are captured in the notes from TAG Meeting #5.

Agenda

- Welcome and Introductions
- Project Timeline, Goals/Objectives of Today's Discussion, and Statement of Values for TAG
- Review of TAG #3 Meeting Minutes
- Discussion of Issue Briefs
- Issues for Discussion in TAG Meeting #4
 - *How should rating areas be defined?*
 - *Should QHP issuers be required to offer products on more coverage levels than Gold and Silver to mitigate adverse selection in the exchange?*
 - *Should NC adopt any other participation rules to limit selection issues between the exchange and the outside market?*
- Wrap Up and Next Steps

Please refer to the March 9 "TAG In-Person Meeting #4" 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 Melinda Dutton of Manatt for a review of the overall project timeline/objectives of the day's meeting discussion.

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

Ms. Dutton 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. Dutton noted that following a short break the TAG's work would continue beyond the timeline pictured, and would be focused in part on the "Tier 2" issues that have been identified by the group. Ms. Dutton then reviewed the goals for the day's meeting which included:

- Confirm TAG #3 Meeting Minutes
- Confirm options and decision points for each of the policy options related to leveling the playing field in today's discussion
- Identify considerations for each policy option
- Identify any points of consensus within each policy question

Ms. Dutton next reviewed the TAG Statement of Values, reminding the group that the statement is not to be viewed as a list of goals but rather as guiding principles to inform the TAG's deliberations. Ms. Dutton also acknowledged the tension that exists among some of the values listed and noted that language recognizing this tension has been added to the draft TAG Issue Brief

for the group's review. The TAG Statement of Values will be incorporated into TAG meeting slide decks moving forward as a reference point for members as they assess the remaining issues for consideration.

Review of TAG Meeting #3 Minutes

Ms. Dutton then turned to review the TAG Meeting #3 meeting minutes, reminding the group of the importance of confirming each of the draft points of consensus as these will form the basis of the TAG Issue Briefs. The TAG #3 meeting minutes, including the points of consensus, were approved pending the following revisions:

Risk Adjustment

- Revise the last bullet describing the group's considerations in relation to administration of the risk adjustment program (p.7 of meeting minutes) to read: *"The TAG discussed additional benefits that may accrue if the risk adjustment program were to be administered at the state level. For example, an all-payer claims database (APCD) could be created to facilitate the administration of risk adjustment. The data from the APCD could be used to advance other state health policy goals, such as population health assessments or quality measurement and improvement activities."*
- For the points of consensus related to administration of a risk adjustment model (p.7 of minutes), clarify that the TAG believes additional information is needed on the extent of the state's decision-making authority over the program, if North Carolina decides to administer the risk adjustment program at the state-level. The second bullet under the risk adjustment administration points of consensus should instead read: *"Members agreed that additional information on the relative costs of administering the risk adjustment model at the federal vs. state level were needed to inform the TAG's recommendation, as well as clearer federal guidance regarding the specific tasks for which the state would be responsible and the extent of decision-making authority the state would have were it to decide to administer the program at the state level."*

Reinsurance

- Revise the first bullet describing the group's considerations related to designing the state's reinsurance program (p.8 of minutes) to reflect that the core consideration in granting the reinsurance entity the authority to make decisions that affect only those market carriers participating in the program is that they will be the ones impacted by these decisions. The last sentence of the bullet should be revised to read: *"Members agreed that policy decisions that affect the market broadly or impact a large number of stakeholders should be the province of the NCGA (such as initial establishment of the reinsurance entity and decisions regarding the carrier assessment amount to fund the reinsurance program), but that decisions that affect only individual market carriers participating in the reinsurance program (i.e., operational considerations of the program) should be the province of the reinsurance entity. This ensures, those entities most impacted have the opportunity to influence these decisions and has the*

added benefit of ensuring that operational issues can be addressed more quickly and nimbly than would be possible through the legislative process.”

- Revise the first bullet under the points of consensus related to the governance characteristics of the reinsurance entity (p.9 of minutes) to state that the TAG agreed that future deliberations are needed to define additional governance and operational details. The TAG further agreed that there was no deliberation on whether the entity should be a non profit entity or a non-profit subsidiary of a for profit entity. The bullet should be moved to the bottom of the governance characteristics points of consensus and should instead read: “Members agreed that additional deliberation is needed to further define governance and operational details, including whether the entity should be an existing entity versus a newly created entity, or a single state entity versus a multi-state entity (for administration purposes).”

Ms. Dutton then turned to the process for the TAG’s review of draft issue briefs.

Discussion of Issue Briefs

Ms. Dutton reviewed the process for TAG review and finalization of the issue briefs that will describe the group’s deliberations and related points of consensus developed during its first phase of work (*see slide deck for additional details*). Members have been provided with a draft of the TAG Issue Brief # 1 electronically and in hard copy at the meeting and are asked to submit any comments on the draft brief by Friday, March 16. Ms. Dutton asked members to focus on substantive review and comments, rather than focusing on line edits. Ms. Dutton also noted that the TAG will only engage in further discussion of final briefs if needed due to conflicting comments or viewpoints between members. Such discussion, if needed, will be held either before or during the March 30 TAG meetings.

- The group discussed that the Issue Briefs should make clear that the TAG’s deliberations and related recommendations are focused primarily on ACA-required reforms to the small group insurance market and, as such, address issues beyond just the health benefits exchange. Accordingly, the deliberations and recommendations captured in the Issue Briefs will remain relevant and useful to policymakers and stakeholders regardless of whether the state decides to operate a state-based exchange or to choose a federally-facilitated or partnership exchange model. TAG members also noted that the group’s broader focus on market reforms beyond just exchange-related issues similarly needs to be more clearly emphasized in internal and external communications. In line with this effort, TAG members asked Manatt and the NC DOI to revise the standard title of the TAG meeting slide deck to more accurately capture the group’s broader focus on market reforms.
- A TAG member asked how issues had been chosen for inclusion in the briefs. Ms. Woda and Ms. Dutton explained that each brief will generally align with issues discussed at a given TAG meeting (e.g., the first issue brief focuses on the small group market reform issues addressed at the TAG’s related meeting), and that the issues under consideration at each meeting were established based on feedback provided by the TAG at its kick-off meeting. TAG members are encouraged to contact Manatt or the DOI with suggestions regarding additional issues that the TAG should be addressing.

- TAG members discussed how best to address issues of critical importance that fall out of the scope of the TAG's (or other health reform-focused committees in the state, such as the North Carolina Institute of Medicine's – NC IOM – exchange workgroup) current work. The group discussed as an example the issue of provider contracting, noting that it was an issue of critical importance to a broad range of stakeholders with implications for the success of other ACA reforms (such as care delivery and payment reforms) that is not being addressed by the TAG or other groups. The DOI agreed that additional issues remain to be addressed but noted that these issues seem to fall outside of the scope of the grant that is funding the TAG's current work (and the related contract with Manatt).

Ms. Woda then began the discussion of issues related to the ACA-required development of standardized geographic rating areas for North Carolina's individual and small group markets.

Issues for Discussion in TAG Meeting #4

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 #5 Meeting Notes.

Issue #1: Development of Geographic Rating Areas

How should rating areas be defined?

Ms. Woda very briefly reviewed background information on rating areas, including relevant law and regulations, how rating areas are currently defined in North Carolina, and rating variances in the state's individual and small group markets under the current definition (*see slide deck for additional details*). Ms. Woda then turned to a discussion of the related policy options for consideration by the group.

- The TAG asked for clarification on what is meant by the term "regions" as required by the ACA. While noting that relevant federal guidance is still forthcoming, the DOI stated that it understands the ACA to define "regions" to mean what some carriers currently refer to as "rating areas" and to require that the state establish regions in which everyone would be subject to a single rate factor. The group also discussed how "regions" are currently constructed in the state, noting that they are comprised of various counties grouped together under a common rating factor and are not necessarily geographically contiguous.
- The DOI also clarified that insurers would still be able to establish their own rating factor within a rating area.
- TAG members asked whether the DOI already has the authority to define rating areas or if the authority would need to be granted by the NCGA. The DOI responded that the Department does not do this now beyond what is currently required by state statute (i.e., medical system rating in the small group market). Members agreed that the NC DOI, in consultation with insurers who can provide important technical assistance in determining the most appropriate place to draw regional lines, was best-suited to develop the geographic rating areas. The group noted that other stakeholders would be able to provide input through public comment if the

rating areas are developed via a formal rulemaking process. The group reviewed, and expressed support for, the proposed process for development of geographic rating areas included in the meeting slide deck (*see Slide 18*).

- The group also addressed how the rating areas should be configured, with most of the discussion focusing on the question of whether the rating regions should be more or less segmented. Members pointed out that higher segmentation generally leads to a more accurate pairing of cost to premiums, noting that this breeds innovation by allowing for pricing to reflect innovations in care delivery and improvements in quality of care. The group also agreed that if regions are defined broadly so that rating areas are less segmented, carriers will lose some of their ability to price accurately which may limit their willingness to offer products in certain areas.
- Accordingly, TAG members discussed the importance of evaluating the issue of rating area segmentation with an eye toward ensuring that all areas of the state, particularly rural areas, have a variety of coverage options. The group noted the tension inherent to preferring more highly segmented areas in order to allow carriers to more accurately reflect costs but wanting to provide sufficient coverage options to rural areas (whose costs may be prohibitively high if not grouped with other areas under less segmented rating areas).
- Ultimately, TAG members agreed that more, rather than less, segmentation was generally more appropriate for the North Carolina marketplace. However, the group noted that additional analysis on the impact of rating area configuration on premium costs and access to coverage was required to further inform the development of rating areas.

Consensus Points:

Development of Geographic Rating Areas

- The TAG **reached consensus** that rating areas should be developed using the following process:
 - The NC DOI, in consultation with insurers, should be responsible for the establishment of geographic rating areas for the North Carolina individual and small group markets pursuant to the ACA.
 - The NC DOI should commission a study analyzing the impact of different rating area options on premiums and risk distribution in the individual and small group markets.
 - At the conclusion of this study, the NC DOI should establish rating areas.
 - Rating areas should be set by December 31, 2012 and reassessed by the DOI on an as-needed basis.

Configuration of Rating Areas

- The TAG expressed a preference for more segmented geographic rating areas, which is the current practice of most major carriers in the state, to more accurately reflect geographic variation in pricing. However, the TAG also found that additional analysis on the impact of different rating regions on premium costs and access is needed.

Ms. Woda then turned the floor over to Joel Ario of Manatt to discuss policy options related to mitigating adverse selection in the exchange.

Issue #2: Mitigating Adverse Selection in the Exchange

Should QHP issuers be required to offer products on more coverage levels than Gold and Silver to mitigate adverse selection in the exchange?

Mr. Ario briefly reviewed the relevant background information, including relevant laws and regulations and the reasons why a need to mitigate adverse selection exists both within the exchange and between the exchange and non-exchange markets (*see slide deck for additional details*). Mr. Ario then began the discussion of policy options and related considerations for adverse selection issues.

- Mr. Ario noted that the NC IOM Exchange Workgroup recently recommended that the exchange board should have the authority in 2016 and later to evaluate and impose as necessary additional participation requirements on carriers in the exchange (beyond the minimum requirement under the ACA that issuers offer at least one silver and gold level plan), the spectrum of which are included in the meeting slide deck (*see Slide 30*). The TAG is being asked to provide input on whether the board, if granted the authority, should elect to exercise any of the possible options for additional participation requirements. Members familiar with the NC IOM workgroup's deliberations explained that the group had made the recommendation to grant the exchange board the authority to make these decisions in the future because it was too difficult to make any decisions about participation requirements now, with no information on how the exchange would operate or how the market would be impacted.
- Mr. Ario 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.
- Mr. Ario reminded the group that these requirements would apply only within the exchange (the next item for TAG discussion will address potential requirements for carriers across the exchange and non-exchange markets).
- The group discussed whether it would be desirable for the exchange board to require that carriers participating in the exchange offer a platinum plan (in addition to the ACA-required silver and gold plans). Members noted that past regulations that required issuers to offer specific plans ultimately proved unsuccessful and several members seemed to agree that there would be limited value in requiring carriers to offer platinum plans as an exchange participation requirement.
- The TAG discussed imposing requirements on carriers in the exchange related to their offering of bronze plans (such as requiring them to offer a bronze plan, or requiring them to offer a platinum plan if they also offer bronze). Members agreed that carriers will likely want to offer bronze plans, and thus will likely not need to be required to do so. Other members noted that regardless of whether carriers are likely to offer bronze plans, they should not be forced to do so should they for some reason not want to.
- The TAG next discussed whether the board should limit the number of benefit plans that a carrier can offer on a particular level within the exchange. Members noted that this would probably not be necessary since experience dictates that carriers will be more likely to

constrict rather than expand the number of plans offered, so that the concern here may actually be ensuring that a sufficient number of plans are offered within a given level, rather than having too many.

- The group seemed in general to favor limiting the imposition of additional participation requirements in the exchange, due to uncertainty about how the exchange will operate and impact the market and a desire to avoid any unintended consequences associated with additional requirements. However, the group acknowledged that in the future a need to impose additional participation requirements to mitigate adverse selection within the exchange may arise, and agreed that the exchange board should monitor for signs of adverse selection in the exchange and recommend additional participation requirements after 2016 as necessary.

Consensus Points:

- The TAG **reached consensus** that it would be premature to make recommendations on plan participation requirements at this time beyond what the ACA already requires.

Mr. Ario then turned to a discussion of potential mechanisms to limit adverse selection between the exchange and non-exchange market.

Issue #3: Limiting Adverse Selection Issues Between the Exchange and Non-Exchange Market

Should NC adopt any other participation rules to limit selection issues between the exchange and the outside market?

Mr. Ario briefly reviewed the relevant background information (*see slide deck for additional details*) before beginning the discussion of the policy options under consideration.

- Mr. Ario asked the TAG whether any policy options should be added or removed from the list of options under consideration (*see slides 36 and 37*); the group agreed that the list of policy options was complete.
- The group discussed past experiences with mandatory offerings. TAG members noted that even when carriers have been required to offer certain products, if the carrier does not have an interest in selling a particular plan, they will find loopholes to avoid doing so (e.g., they might offer the product but not actively market it or devote minimal resources to ensuring its success). The group acknowledged that this may limit the effectiveness of using mandatory offering requirements to mitigate adverse selection. The group also discussed that products offered through the exchange will be actively marketed by the exchange. This may give more strength to a mandate requirement for products in the exchange.
- TAG members discussed the need to strike a balance between ensuring the success and long-term sustainability of the health benefit exchange while preserving the viability of the non-exchange market. Members noted that a key to facilitating a sustainable exchange will be to ensure that the exchange can attract “good risk” (i.e., ensure that bronze and catastrophic plans are offered and purchased in the exchange). Members also agreed that from an actuarial perspective, the more that the exchange and non-exchange markets can be tied to one

another, the higher the chance for developing a successful exchange. However, members strongly cautioned against moving aggressively to strengthen the exchange market at the expense of the non-exchange market, particularly in light of the uncertainty that still surrounds the ACA, noting that additional requirements imposed on small carriers operating outside of the exchange may prove too burdensome and result in their leaving the market/state entirely.

- The group discussed that the reinsurance, risk adjustment and risk corridor provisions within the ACA would mitigate some of the adverse selection issues between the exchange and non-exchange marketplaces, although it was acknowledged that it would not eliminate these risks.
- The group discussed whether bronze and catastrophic plans can be grouped together when considering the impact on adverse selection from requiring either type of plan. Some members believe that the plans can be grouped together since for one section of the market (over 30 years old), bronze is the plan with the lowest actuarial value considered to meet the individual coverage mandate. Others felt that because catastrophic plans are not yet well-defined, these plans should not be considered together.
- TAG members emphasized the “law of unintended consequences” and the group’s recognition that insufficient data exists at this time to know how required reforms will play out and the impact that any additional requirements for carrier product offerings both inside and outside the exchange will have on the market. Accordingly, the group agreed that the best option would be to grant the NC DOI the authority to actively monitor the exchange and non-exchange markets for signs of adverse selection between the two markets and make recommendations to the NCGA as needed regarding additional mechanisms to mitigate selection issues.
- The TAG concluded its deliberations with a discussion of whether a “re-entry” policy should be established that would prohibit insurers that exit either the individual or small group exchange in North Carolina from re-entering said exchange for a given period of time (i.e., the carrier could continue to operate in the non-exchange market but would be barred from reentering the exchange for a specified time period). Members agreed that there was reason to limit insurers’ exit and re-entry in order to mitigate the incentive for carriers to figure out ways to actuarially game the system by exiting and re-entering the exchange. However, members cautioned against making this policy overly stringent, especially with regard to the length of time that carriers would be prohibited from re-entering the exchange, as the exchange will be a new entity that may face operational challenges in early years which could drive many carriers out of the exchange (limiting carrier options within the exchange for an extended period of time due to the re-entry bar). Accordingly, members agreed that the re-entry policy should also include parameters for exclusions to the re-entry bar. The TAG ultimately reached consensus that some restrictions on re-entry would be appropriate, but that the extent of those restrictions (i.e., length of time for the re-entry bar and exclusions to the re-entry policy) should be defined by the exchange board when additional information is available on the potential impact of a prohibition on re-entry.

Consensus Points:

- The TAG **reached consensus** that the NC DOI should be given the authority to actively monitor for adverse selection between the exchange and non exchange markets and to

make recommendations to the NCGA if plan participation requirements are needed between the exchange and non-exchange markets to mitigate adverse selection. The TAG discussed that monitoring should be conducted, and recommendation(s) to the NCGA developed, by the NC DOI in consultation with the exchange, as appropriate. The TAG also discussed the need for a particular focus on participation requirements related to catastrophic and bronze level plans, but ultimately decided to defer identification of the need for and development of recommendations for such requirements in the future to the NC DOI.

- The TAG **reached consensus** that the health benefit exchange board should be granted the authority to develop a policy regarding carriers' re-entry into the individual and small group exchanges after exiting either exchange market. This policy should address the time period during which re-entry is prohibited, as well as the parameters for any exceptions to the re-entry policy.

Wrap Up and 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. Ms Woda reiterated that the minutes reflect points of consensus and considerations discussed during the meeting which will be used for developing related issue briefs, and that accordingly it is important that members carefully 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 #5 on Monday, March 26 which will cover any areas that require final wrap-up prior to the legislative session and other Tier 2 issues related to adverse selection. Dial-in information for the webinar is forthcoming from the NC DOI.
- TAG In-Person Meeting #5 on Friday, March 30, 2012 from 9:30 AM – 12:30 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.

Before adjourning the meeting, Mr. Hamby stated that TAG member, Mr. Fred Joyner, had prepared a statement on the issue of Most Favored Nation clauses and had asked for permission to read his statement to the TAG. Mr. Hamby then turned the floor over to Mr. Joyner to read his statement to the group.

Mr. Joyner started his statement by emphasizing that his comments represented his own perspective and were not being made on behalf of the organizations he represents. Mr. Joyner stated his concern that despite being brought up at previous meetings of the TAG and the NCIOM exchange workgroup and seeming consensus that it is a critical topic in need of further analysis, the issue of carriers' use of "Most Favored Nation" (MFN) clauses in network provider contracts has not made it onto either group's agenda for discussion. As one of the goals of the exchange will be to increase competition and provide more choice to the consumer and he believes MFN clauses

can negatively impact this effort, Mr. Joyner thinks that this issue is an integral component of each group's ongoing deliberations.

Further, Mr. Joyner posits that if the TAG and NCIOM exchange workgroup were to take up the issue in a public forum and possibly develop related recommendations, it would allow for increased transparency on the issue and provide guidance to the NCGA as they contemplate Senate Bill 517. Mr. Joyner stated his belief that these most-favored nation clauses can negatively impact network expansion and produce an unlevel playing field, while prohibiting them would encourage new competitors to enter the marketplace, aid consumers by promoting competition and lower rates, and help providers diversify their insurer mix and enjoy increased autonomy. For these reasons, Mr. Joyner concluded his statement by asking the TAG to set aside time before its work concludes to discuss the issue of MFN clauses and develop related recommendations to be shared in a TAG issue brief or final report.

Mr. Hamby thanked Mr. Joyner for sharing his statement. Mr. Hamby went on to reference a letter to him from the North Carolina Association of Health Plans, Inc. in which similar interest in the MFN was voiced. The letter requested that the subject of SB-517 (i.e. MFN) be added to the TAG agenda for discussion. Mr. Hamby acknowledged receipt of the requests and stated that SB-517 on the matter of MFN was already being considered in the North Carolina General Assembly. Mr. Hamby further indicated that consideration would be given for inclusion in discussions at the next meeting of the TAG. Without further discussion, Mr. Hamby adjourned the TAG meeting.

The meeting was adjourned at 12:40 pm.