

North Carolina Department of Insurance
Market Reform Technical Advisory Group In-Person Meeting #5
Friday, March 30, 2012
FINAL version – approved by the TAG at its April 9, 2012 Meeting

Meeting Attendees	Organization
TAG Members and NC DOI 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
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
Gerry Smedinghoff (<i>by phone</i>)	Mercer
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
Allen Feezor	NC Department of Health and Human Services
Ben Popkin	NC Department of Insurance
Jean Holliday	NC Department of Insurance
Julia Lerche	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
Adam Linker	NC Justice Center
Conor Brockett (<i>by phone</i>)	NC Medical Society
Mark Hall	Wake Forest University
Peter Chauncey	Wellpath/Coventry
Interested Parties	
Andy Landes	H-PACT
Barbara Foley	Maximus

Meeting Attendees	Organization
Amy Jo Johnson	NC General Assembly
Robert Keis (<i>by phone</i>)	United Healthcare
Cheryl Harris (<i>by phone</i>)	Wellpath Select, Inc.
Robert Paschal	Inclusive Health

Agenda

- Welcome and Introductions
- Project Timeline, Goals/Objectives of Today's Discussion, and Statement of Values for TAG
- Issues for Discussion in TAG Meeting #5
 - Risk Adjustment
 - *Should North Carolina administer the federal risk adjustment model in the state for the first year or monitor the federal risk adjustment process for future administration?*
 - *If the state elects to administer, should the NC DOI or another entity take on these administration responsibilities?*
 - *If the state elects to administer, should the state use a distributed model in the first year?*
 - Reinsurance
 - *Should North Carolina administer reinsurance in the state or defer administration to the federal government?*
 - *If the state elects to administer, should the NC DOI or another entity be tasked with establishing the reinsurance entity?*
 - Group Participation Requirements
 - *Should North Carolina have an employer participation rate in the SHOP exchange?*
 - *If North Carolina has an employer participation rate in the SHOP, who should determine that rate?*
- Review Points of Consensus from Prior TAG Meetings & TAG #4 Meeting Minutes
- Discussion on Most Favored Nation (MFN) Issue
 - *Should the TAG review the implications of MFN clauses in health care provider/insurer contracts in the North Carolina marketplace in light of the ACA?*
 - *If MFN requires TAG review, what items should specifically be addressed by the TAG during that review to assess the impact of MFN on the post-ACA marketplace?*
- Wrap Up and Next Steps

Please refer to the March 30 "TAG In-Person Meeting #5" 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 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. 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 noted that the TAG would be meeting next on April 9 to discuss a process for developing a benchmark plan that will meet the ACA's

essential health benefits requirements. Ms. Woda then reviewed the goals for the day's meeting which included:

- Confirm options and decision points for each of the policy questions related to risk adjustment, reinsurance and group participation
 - Identify considerations for each policy option
 - Identify any points of consensus within each policy options
- Review existing consensus points in light of final regulations
- Confirm TAG 4 meeting minutes
- Address Most Favored Nation issue

Ms. Woda briefly reviewed the TAG Statement of Values, reminding the group that the statement is meant to inform their assessment of the policy options under consideration, while recognizing that any given policy option will not necessarily be capable of meeting every value listed.

Ms. Woda then turned to Joel Ario of Manatt to facilitate the discussion of administration of a risk adjustment program for the state. (Note that risk adjustment and reinsurance were also addressed in TAG meeting #3.)

Issues for Discussion in TAG Meeting #5

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 #6 Meeting Notes.

Issue #1: Risk Adjustment

Should North Carolina administer the federal risk adjustment model in the state for the first year or monitor the federal risk adjustment process for future administration? If the state elects to administer, should the NC DOI or another entity take on these administration responsibilities? If the state elects to administer, should the state use a distributed model in the first year?

Mr. Ario briefly reviewed background information on risk adjustment, including relevant law and regulations, noting changes to ACA requirements resulting from the recently issued final rule (*see slide deck for additional details*). Mr. Ario then turned to a discussion of the related policy options for consideration by the group.

- The TAG discussed the relative advantages and disadvantages of administering the risk adjustment program at the state level and agreed that the benefits were insufficient to merit taking on administration, particularly in light of the resources required and the resulting potential to distract from other areas of health reform implementation. Members also noted that the state would retain the option in future years to assume responsibility for program administration should it be deemed necessary or desirable, and that deferring administration responsibilities to the federal government in the first year would allow the state to monitor the federal risk adjustment process for potential future administration.

- The group asked representatives of the NC DOI whether the Department would have the capacity to administer the risk adjustment program at the state level. The NC DOI responded that with the proper resources and personnel the Department would have the capacity, but that it does have concerns about securing sufficient resources to operate the program.

Consensus Point:

Administration of the Risk Adjustment Model

- The TAG **reached consensus** that the state should defer administration of the risk adjustment program to the federal government for the first year, and monitor the federal risk adjustment process for potential state administration of the program in the future.

Mr. Ario then turned to discuss policy options related to development of a reinsurance program.

Issue #2: Reinsurance

Should North Carolina administer reinsurance in the state or defer administration to the federal government? If the state elects to administer, should the NC DOI or another entity be tasked with establishing the reinsurance entity?

Mr. Ario briefly reviewed the relevant background information, including relevant laws and regulations, again noting any instances where the final rules changed or otherwise impacted relevant program requirements (*see slide deck for additional details*). Mr. Ario then began the discussion of policy options and related considerations for a reinsurance program in North Carolina.

- The TAG discussed various aspects of the final rules that make administering the reinsurance program at the state level more feasible, particularly the stipulation that the federal government will act as a collection agent for state reinsurance programs, collecting contributions funds from self-insured plans and giving states the option to have the federal government collect contributions from fully insured plans in the state, as well. The group noted that having the federal government assume responsibility for collecting carrier assessments would significantly ease the ability of the program to be administered in the state.
- The group discussed provisions in the final regulation that provide flexibility to states that administer reinsurance, including provisions that allow these states to 1) collect carrier assessments above the national contribution rate set by the federal government in order to provide funding for administrative expenses or reinsurance payments and 2) modify the payment model to adjust the reinsurance cap, attachment point and reinsurance rate.
- The group generally agreed that having the option to modify the payment model is beneficial to the extent that it allows the state to tailor the reinsurance program to meet North Carolina's specific needs. However, some members expressed concern over increasing the assessment above what the federal government will require, noting the particular concerns from groups who must contribute to the assessment (e.g.- self funded groups) but do not receive any benefits from the program.

- Members noted that the TAG had reached consensus at TAG Meeting #3 that authority to increase the assessment beyond what is federally required should lie with the North Carolina General Assembly (NCGA), and discussed the length of time it might take to make such program changes through legislation (particularly since the reinsurance program is temporary).
- The group also noted that the final rules require states to collect any contributions above the federal assessment rate for reinsurance payments from self funded and fully insured plans. Thus, choosing to increase the assessment for reinsurance payments would limit the benefit of having the federal government serve as a “collection agent” and increase the cost of program administration (since the state would be required to collect and enforce compliance with additional fees).
- Though some members expressed concern over limiting the ability of the state to increase the assessment or of the reinsurance entity to collect fees, the group noted that the state would still have the option to increase the assessment beyond the federal minimum (and assume collection responsibilities) if deemed necessary and agreed that relieving the state from the responsibility to collect fees in the first year was desirable.
- The TAG discussed provisions in the final rule that would allow states that establish reinsurance programs the flexibility to modify the reinsurance cap, attachment point and co-insurance rate within their reinsurance programs. Though recognizing that establishing these caps/rates may prove contentious as different carriers will likely have varying perspectives on where the exact numbers should be set, members agreed that the ability to “tinker” with these program components would be a valuable tool for ensuring that the reinsurance program is tailored as much as possible to meet North Carolina’s specific needs and, as such, is perhaps one of the biggest benefits associated with administering the program at the state level.

Consensus Point:

Administration of the Reinsurance Program

- The TAG **reached consensus** that North Carolina should administer the reinsurance program within the state, while deferring the responsibility to collect contributions to the federal government.
- The group recognized that deferring fully-insured collections responsibility to the federal government, combined with requiring NCGA action to increase the assessment beyond the federal amount, would likely have the effect of setting the carrier contribution amount at the federally-established minimum.
- The TAG next discussed which entity should be tasked with facilitating the establishment of the reinsurance entity and agreed that the NC DOI was likely best suited for this task. Members again asked representatives from the NC DOI to weigh in on whether the Department would have the capacity to assist in the establishment of a reinsurance entity (e.g., to identify an entity to administer the program and to have some ongoing oversight authority over the entity). Department representatives again responded that the NC DOI would be able to administer the program if provided with appropriate resources and personnel.

- The group raised questions about whether the NCGA or the NC DOI has the authority to establish a non-profit reinsurance entity. Accordingly, any points of consensus or recommendations will need to make clear that the NCGA would be tasked only with establishing parameters for the structure of the entity and giving NC DOI the authority to select and contract with an appropriate entity that meets those parameters.

Consensus Point:

Establishment of the Reinsurance Entity

- The TAG **reached consensus** that the NCGA should grant the NC DOI statutory authority to facilitate the establishment, through a selection and contracting process, of a reinsurance entity to administer North Carolina's reinsurance program.

Mr. Ario then turned to Ms. Woda to facilitate the discussion of group participation requirements in the SHOP exchange.

Issue #3: Group Participation Requirements in the SHOP Exchange

Should North Carolina have an employer participation rate in the SHOP exchange? If North Carolina has an employer participation rate in the SHOP, who should determine that rate?

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

- The TAG discussed the extent to which setting a participation rate in the SHOP would help mitigate adverse selection by limiting employer participation in the SHOP to those seeking coverage for a certain threshold number of their employees, rather than for only a few high risk individuals. Members agreed that a participation rate was necessary and appropriate to limit adverse selection in the SHOP, thereby strengthening the prospects for the SHOP's long-term sustainability. Members noted that individuals whose employers do not meet participation requirements would still be able to seek subsidized individual coverage through the Exchange, thereby maintaining access to coverage.
- One member asked whether it would be necessary to make participation rate requirements in the SHOP applicable to the outside market to mitigate adverse selection between the SHOP and non-SHOP markets. The group was hesitant to limit the existing ability of carriers to set their own employer participation rate requirements outside of the SHOP, though the group also acknowledged that adverse selection may result between the SHOP and non-SHOP markets if carriers outside the SHOP are allowed to set higher employer participation rate requirements than the SHOP requires.
- The TAG turned to a discussion of which entity would be best suited to establish the employer participation rate in the SHOP. The group agreed that the Exchange board should have the authority to set participation rate requirements, in consultation with the NC DOI, within the SHOP, informed by data and feedback from insurance carriers on the appropriateness and effectiveness of related rates. The group emphasized, however, that if a decision is made at a later time to impose uniform employer participation rate requirements in both the SHOP and

non-SHOP markets, the NC DOI (in consultation with stakeholders and the Exchange) would be the more appropriate entity to determine the participation rate.

- In light of concerns raised related to adverse selection between the SHOP and non-SHOP markets, the group also concluded that the NC DOI should actively monitor participation rate requirements inside and outside of the SHOP to determine whether adverse selection is occurring.

Consensus Points:

- The TAG **reached consensus** that North Carolina should have an employer participation rate requirement in the SHOP to reduce adverse selection.
- The TAG **reached consensus** that the Exchange board, in consultation with the NC DOI, should be granted the authority to determine employer participation rate requirements within the SHOP.
- The group noted that if the state later decides to align employer participation rate requirements across the SHOP and non-SHOP markets, the NC DOI would become the more appropriate entity to determine the participation rate requirements.
- The TAG **reached consensus** that the NC DOI should actively monitor participation rate requirements inside and outside of the SHOP to determine whether adverse selection or other unintended consequences are occurring.

Ms. Woda then turned the floor to Melinda Dutton of Manatt for the TAG's review and confirmation of the points of consensus from prior TAG meetings and approval of the TAG Meeting #4 meeting minutes.

Review Points of Consensus from Prior TAG Meetings, TAG #4 Meeting Minutes

Ms. Dutton asked members to review the points of consensus from prior TAG meetings, particularly with regard to whether any points of consensus need to be modified in light of relevant changes in the final exchange rules (*see slide deck for additional details*) and with the recognition that these finalized points of consensus will be incorporated into the forthcoming issue briefs on related topics.

1.) Small Group Market – Points of Consensus/Recommendations as Currently Drafted

- *The TAG recommends that the small group and individual markets maintain separate risk pools at this time.*
- *The TAG recommends the small group market definition remain at 50 or less employees until required to change in 2016.*
- *The TAG recommends that employers should not be prohibited from restricting employee choice of plans down to one or more specific plan(s) within a single metal level in the Small Business Health Options Program (SHOP) Exchange. The TAG also recommends further consideration of the extent to which the employer should be allowed to offer expanded choice.*
- *The TAG recommends that North Carolina align the methodology for determining employer group size with the ACA effective January 1, 2014.*

- *The TAG recommends that North Carolina's treatment of sole proprietors align with the ACA effective January 1, 2014, allowing sole proprietors with no employees to be eligible for individual but not small group market coverage.*

TAG Feedback:

- The group agreed that the final regulations do not require modifications to related points of consensus/ recommendations.
- Accordingly, the TAG approved the small group market points of consensus and recommendations as drafted.

Ms. Dutton asked the group to review the points of consensus related to geographic rating areas and insurer participation requirements in parallel with the TAG Meeting #4 meeting notes, as the notes capture the group's relevant discussion around these topic areas.

2.) Rating Areas – Points of Consensus/Recommendations as Currently Drafted

- *The TAG recommends that the North Carolina Department of Insurance, in consultation with health insurance carriers, be responsible for the establishment of geographic rating areas for the individual and small group markets.*

TAG Feedback:

- The group agreed that the final regulations provide only clarifying information on the establishment of rating areas and do not require modifications to related points of consensus/ recommendations.
- The group also noted that the final regulations make a distinction between service areas and rating areas and briefly discussed the implications of aligning service and rating areas. The TAG agreed to revisit the issue of service areas at a future TAG meeting.

3.) Insurer Participation – Points of Consensus/Recommendations as Currently Drafted

Insurer Participation in the Exchange Market

- *The TAG recommends that additional insurer participation requirements are not advisable in 2014 and 2015.*
- *The TAG recommends the exchange board have the authority to develop a policy regarding insurers' re-entry into the individual and small group exchanges after exiting either exchange market.*

Insurer Participation in the Non-Exchange Market

- *The TAG recommends that the NC DOI have the authority to actively monitor the individual and small group markets, including the interplay between the Exchange and non-Exchange markets, and to make recommendations to the NCGA, in consultation with the Exchange as appropriate, if insurer participation or other adjustments are needed to minimize adverse selection in the individual and small group markets.*

TAG Feedback:

- The group agreed that the final regulations do not require modifications to the insurer participation points of consensus/recommendations.
- The TAG discussed the recommendation related to insurer participation requirements inside the Exchange, based on concerns raised by a TAG member that the issue was too “exchange-specific” to fall under the TAG’s market reform scope of work, and was more appropriately addressed by the NCIOM work group. The NC DOI clarified that the recommendations were meant to apply only to whether the Exchange should require carriers to offer products on additional metal levels/benefit tiers due to the implications for adverse selection (thus falling under the TAG’s scope of work), and were not meant to apply to broader requirements, such as network adequacy requirements. The TAG agreed that the recommendations related to insurer participation requirements inside the Exchange should be modified to make clear that they apply only to requiring carriers to offer plan(s) on a given metal level.
- The TAG approved all related points of consensus and recommendations, pending a revision to the recommendation regarding insurer participation in the exchange to make clear that it applies only to the issue of whether carriers must offer plans certain metal levels/benefit tiers.
- The TAG also approved the TAG Meeting #4 meeting minutes, including the points of consensus, pending the revision described above.

4.) Risk Adjustment & Reinsurance – Points of Consensus/Recommendations as Currently Drafted

Development of NC-Specific Risk Adjustment Model/Methodology

- *The TAG reached consensus to defer to the federal risk adjustment model for now, but evaluate a state-specific model later.*

Administration of Reinsurance in North Carolina

- *The TAG reached consensus that the NCGA should establish the reinsurance entity and determine the assessment amount on carriers/TPAs.*
- *The TAG reached consensus that the list of required technical and operational capabilities for the reinsurance entity was complete, including authority to collect contributions, transparency to build carriers’ trust and ability to perform tasks quickly and efficiently.*
- *The TAG reached consensus that the reinsurance entity should have a board composed of insurers eligible to receive reinsurance payments and insurers/TPAs subject to assessment but not eligible for payments.*
- *The TAG reached consensus regarding the role of the DOI in relation to the reinsurance entity, agreeing that the DOI should be legislatively authorized to serve in a technical advisory capacity and to enforce the collection of carrier assessments, as necessary.*

TAG Feedback:

- The TAG approved the risk adjustment point of consensus/recommendation as drafted.
- The TAG approved the following revisions to the reinsurance points of consensus/recommendations:
 - Add the new points of consensus that were agreed upon during today’s meeting:

- The TAG **reached consensus** that North Carolina should administer the reinsurance program within the state, while deferring the responsibility to collect contributions to the federal government.
- The group recognized that deferring collections responsibility to the federal government would in effect set the carrier contribution amount used for reinsurance payments (but not administrative costs) at the federally-established minimum.
- The TAG **reached consensus** that the NCGA should grant the NC DOI statutory authority to facilitate the establishment, through a selection and contracting process, of a reinsurance entity to administer North Carolina's reinsurance program.
- Modify the points of consensus to remove any references to the collection of carrier assessments, based on the TAG's recommendation that the reinsurance entity should defer collections to the federal government (which has the effect of setting the carrier contribution amount applicable to reinsurance payments at the federally-established minimum).
- Modify the first point listed above to make clear that if at a later time the state decides to raise the assessment amount above the federal minimum (and, consequently, assume collection responsibilities for any additional fee to be used for reinsurance payments), the NCGA should be the entity tasked with determining the assessment amount on carriers.

Discussion of Most Favored Nation Issue

Should the TAG review the implications of Most Favored Nation (MFN) clauses in health care provider/insurer contracts in the North Carolina marketplace in light of the ACA? If MFN requires TAG review, what items should specifically be addressed by the TAG during that review to assess the impact of MFN on the post-ACA marketplace?

- The TAG discussed whether the group should address the issue of MFN clauses in health care provider/insurer contracts in the North Carolina marketplace in light of the ACA. A significant majority of members expressed a strong desire for the TAG to address the issue of MFN clauses, arguing that because ACA-required market reforms eliminate the ability of carriers to underwrite, the impact of such clauses in the market will be intensified. TAG members noted that in a post-ACA environment, MFN will severely limit: competition among carriers; consumer choice; the ability to implement innovations in benefit design, payment and care delivery; and could impact the long-term success and sustainability of the Exchange. Because the TAG is charged with addressing ACA-required reforms that impact the market, and because MFN clauses are inconsistent with the TAG's statement of values, these members asserted that MFN clauses should fall within the TAG's scope of work.
- A minority of members did not believe MFN clauses should fall within the TAG's scope of work. These members countered that the issue is being addressed in several other forums, including in an ongoing investigation by the Department of Justice and in the context of a bill currently before the NCGA, and thus does not necessarily need to be evaluated by the TAG. These

members also posited that there are a variety of other market reforms that impact TAG values, and noted that the purpose of the values is not to define the TAG's scope of work, but to assess policy options for those matters that have been determined appropriate and necessary for TAG consideration. These members also expressed concern about expanding the TAG's scope of work in such a way that too many issues that are indirectly impacted by the ACA could be considered worthy of consideration by the group.

- The group was unable to come to a full consensus on the topic and agreed that in the interest of time, the TAG would draft a statement capturing the group's discussion of and concerns about MFN clauses which would then be voted on at the next TAG meeting. If the statement about MFN clauses is endorsed by the group, it will be included in Issue Brief #2 (which addresses the need to "level the playing field" to mitigate adverse selection in the exchange and between the exchange and non-exchange markets).

Wrap Up and Next Steps

Ms. Woda reviewed activities 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.
- Review Issue Brief #3 Upon Distribution to TAG. Ms. Woda noted that the brief would focus on Reinsurance and Risk Adjustment and would incorporate the points of consensus reached during today's discussion.
- TAG In-Person Meeting #6 on Monday, April 9, 2012 from 12:30 PM – 3:30 PM at the NCIOM, which will be focused on essential health benefits requirements and the validation of a process for selection of a benchmark plan. Ms. Woda reminded members that there will **not** be a webinar held in advance of the meeting.

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.

Prior to adjournment, a TAG member asked whether the NC DOI planned to analyze the state's existing small group statute to identify how it will need to change/what of it will remain after implementation of the ACA's required reforms, as well as whether the TAG would have the opportunity to partake in the assessment of the statute. The NC DOI responded that the Department does plan to undertake such an analysis and though it will not necessarily be undertaken by the TAG, there will be opportunities for stakeholder input/collaboration.

The meeting was adjourned at 12:40 pm.