

North Carolina Department of Insurance
Market Reform Technical Advisory Group In-Person Meeting #7
Tuesday, July 31, 2012
FINAL version – approved by the TAG via email

Meeting Attendees	Organization
<i>TAG Members and NC DOI Project Team</i>	
George Teague	Aetna Health Inc.
Joe Winn	Aetna Health Inc.
Barbara Morales Burke	Blue Cross Blue Shield of North Carolina
Jeff Tindall	CIGNA Healthcare of North Carolina, Inc.
Peter Chauncey	Coventry Health Care of the Carolinas, Inc.
Tracy Baker	Coventry Health Care of the Carolinas, Inc.
Ken Lewis	FirstCarolinaCare Ins. Co. Inc.
Craig Humphrey <i>(by phone)</i>	FirstCarolinaCare Ins. Co. Inc.
Stephanie Everts <i>(by phone)</i>	Humana, Inc.
David Contorno	Independent Insurance Agents of NC
Joel Ario	Manatt
Allison Garcimonde	Manatt
Melinda Dutton	Manatt
Sharon Woda	Manatt
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
Carla Obiol	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	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 <i>(by phone)</i>	NC Justice Center
Conor Brockett	NC Medical Society
Linwood Jones	NC Hospital Association
Dee Greenman <i>(by phone)</i>	United HealthCare

Meeting Attendees	Organization
Mark Hall	Wake Forest University
<i>Interested Parties</i>	
Andy Landes	H-PACT
Rep. Verla Insko	NC General Assembly
Ryan Blackledge	NC General Assembly
Robert Keis <i>(by phone)</i>	United Healthcare
Ann Lore	Duke University Health System
Kent Woodson	NC DHHS – MH/DD/SAS
Adolph Simmons	NC DHHS – MH/DD/SAS
Joy Reed	NC DHHS
Maryann Chap	NC DHHS
Sarah Allen	NC DOI
Alex Harris	NC Community Health Center Association

Agenda

- Welcome and Introductions
- Project Timeline, Goals/Objectives of Today's Discussion, Statement of Values for TAG
- Update on Federal and State Action
- Topics for Phase II Consideration and Input
- Discussion of Network Adequacy
 - *Should issuers of plans outside the Exchange be required to have Essential Community Providers in network?*
 - *Should North Carolina's network adequacy standards be changed?*
- Discussion of Enrollment Rules
 - *Should enrollment requirements in the Exchange be applied outside the Exchange in the Individual Market?*
- Wrap Up and Next Steps

Please refer to the July 31 "TAG In-Person Meeting #7" 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 noted that the TAG was now shifting into its second phase of work during which the group will address those items identified in its first phase of work as "Tier 2" issues (i.e., issues that were not critical to resolve in advance of the 2012 NCGA legislative session) and provided a brief update on NC DOI and NCGA activity that had taken place since the TAG's last meeting, including the NC DOI's submission of its report to the NCGA.

Mr. Hamby also noted that the NC IOM's Health Benefits Exchange and Insurance Oversight Workgroup does not plan to reconvene such that the TAG might take up some exchange-related issues as needed in the future; however, for now the group will remain focused on implementation of the ACA's market reform requirements and dynamics inside and outside the Exchange markets. Because these issues must be considered regardless of which Exchange model is chosen in North Carolina, the TAG would not spend time discussing the relative merits of the Exchange model options during the July 31 meeting. Mr. Hamby then turned the floor over to Melinda Dutton 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

Ms. Dutton reviewed the past and future 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:

- Update on relevant Federal guidance/ initiatives

- Solicit TAG input regarding Phase 2 Topics for Consideration
- Begin to discuss whether certification requirements should apply outside the Exchange market
 - Network adequacy requirements with a focus on Essential Community Providers, mental health providers and overall regulations
 - Enrollment rules/regulations in the individual market

Ms. Dutton briefly reviewed the TAG Statement of Values, developed by the TAG during its first phase of work, and reminded the group that the statement is meant to guide their deliberations and serve as a lens through which to assess the policy options under consideration.

Update on Federal and State Action

Ms. Dutton provided a high-level overview of recent federal actions and reports that have taken place since the TAG last met in April 2012 (*see slide deck for additional details*). This included a brief review of the Supreme Court's ruling on the Affordable Care Act (ACA) and details on three key federal reports/guidance: the Cooperative Agreement to Support the Establishment of the ACA's Health Insurance Exchanges; Draft Blueprint for Approval of Affordable State-Based and State Partnership Insurance Exchanges; and General Guidance on Federally-Facilitated Exchanges ("FFE"). During the discussion, one TAG member noted the importance of the Medicaid expansion decision for the success of the Exchange and other health system reform efforts in the state, and encouraged TAG members to express their views on the issue to the NCGA. Further discussion of the Medicaid expansion option will occur in a reconvening of the Overall Advisory Committee facilitated by the NCIOM.

Ms. Dutton next reviewed the three Exchange model options available to states. In response to questions from TAG members, Ms. Dutton confirmed that states can at any time move along the continuum of exchange model options such that the state starts as an FFE or partnership model and moves toward a state-based Exchange ("SBE") model but noted that there are deadlines to receive federal funds to assist in this transition (states must apply for grants by October 15, 2014 which – at HHS's discretion – can be extended for a maximum of five years past the date of the award).

While acknowledging that the TAG is not being asked to weigh in on the relative merits of the Exchange model options, one TAG member emphasized the importance of carriers knowing as soon as possible which model the state will choose so they can meet plan management and other system requirements within an extremely tight timeline. Louis Belo of the NC DOI noted that the Department recognizes the urgency around timing and asked carrier representatives to submit feedback to the DOI on the issue, including any specific analyses of what carriers need to connect to Exchange – regardless of whether an FFE or partnership model is adopted – and the "drop dead" date by when such items are needed. The Department will use this input to educate the NCGA on carriers' technical and timing needs.

Ms. Dutton next briefly reviewed state actions and reports issued since the TAG last met, including the North Carolina Institute of Medicine's (IOM) report containing recommendations related to implementation of the ACA in the state and the NC DOI's report to the NCGA on insurance-related

provisions of the ACA. Ms. Dutton noted that while the TAG would not revisit report recommendations, the group may refer to them in future discussions.

TAG Phase 2 Topics for Consideration

Ms. Dutton provided an overview of the potential topic Phase 2 areas for TAG consideration, noting that some topics would be addressed by the full TAG while other topics would be taken up by smaller subgroups of TAG members (*see slide deck for additional details*). These small group discussions will be held on an as needed basis to address issues of a technical nature. Recommendations generated by TAG workgroups will be put before the full TAG for consideration.

Ms. Dutton reviewed the potential topic areas for full TAG consideration and asked members to comment on the list of topics, including whether any items should be added to the list.

- A TAG member asked whether additional federal guidance was anticipated on the rating implementation and agent/broker compensation issues. Ms. Dutton and NC DOI representatives responded that additional guidance on rating implementation was expected, but not much on agent/broker compensation. Mr. Joel Ario of Manatt noted that even without federal guidance, the TAG could still consider guiding principles for agent/broker compensation that would not be impacted by additional detailed federal guidance (e.g., should compensation be the same inside and outside the Exchange?).
- A TAG member noted that when evaluating the policy options under consideration during the next phase of work it would be helpful to know where the authority for implementing a related decision lies to inform the group's assessment of the issue (e.g., Would a policy option under consideration require legislative or regulatory action, and for the latter does the NC DOI have the authority to take action?, etc.).
- TAG members agreed that the list of Phase 2 topics for full TAG consideration were the correct priorities for the TAG and should be prioritized in the order listed on Slide 22.

Ms. Dutton next reviewed the list of potential topics areas for TAG workgroup consideration.

- Several TAG members expressed the opinion that stop-loss requirements should not be a high priority for Phase 2 consideration based on the TAG's assessment of the issue in its first phase of work and subsequent recommendation that the group not address the issue in the near-term. These members also noted that the NAIC is currently assessing the stop-loss issue and that it might be premature for the state to take it up before the NAIC issues related findings.
- The NC DOI noted that substitution of essential health benefits (EHB) might become an issue that a workgroup will want to consider if the additional federal guidance expected on EHBs includes new options for states in this area. The NC DOI also noted that the federal government will issue details on the default option small group plan, which is BCBS North Carolina Blue Options PPO.
- Several TAG members agreed that the issue of geographic rating areas should be a high priority among the areas for workgroup consideration due to timing considerations (i.e., it is a complex issue that will require time to resolve and carriers need the information as soon as possible).

- TAG members agreed that: geographic rating areas is a high-priority topic; substitution of EHBs should be added to the list if relevant future guidance offers new opportunities for state decision-making; and the stop-loss issue should be removed from the Phase 2 workgroup topic list.

Consensus Points:

- The TAG **reached consensus** that the list of Phase 2 topics for full TAG consideration were the correct priorities for the TAG and should be prioritized in the following order: QHP Certification Requirements; Rating Implementation; Agent/Broker Compensation. The TAG noted that the release schedule of relevant federal guidance may dictate prioritization.
- The TAG **reached consensus** that geographic rating areas is a high-priority topic for TAG workgroup consideration; substitution of EHBs should be added to the list of topics if needed and pending relevant future guidance; and the stop-loss issue should be removed from the Phase 2 workgroup topic at this time.

Ms. Dutton then asked Mr. Ario of Manatt to lead the discussion on issues related to network adequacy.

Issues for Discussion in TAG Meeting #7

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 #8 meeting notes.

Issue #1: Network Adequacy

Should issuers of plans outside the Exchange be required to have Essential Community Providers (ECPs) in network? Should North Carolina’s network adequacy standard be changed?

Mr. Ario briefly reviewed the relevant background information, including relevant laws and regulations, information on ECPs in North Carolina, and other states’ approaches to ECPs and network adequacy requirements (*see slide deck for additional details*). Mr. Ario then began the discussion of policy options and related considerations for network adequacy.

Requiring ECPs in Provider Networks Outside the Exchange

- The TAG discussed the relative advantages and disadvantages of requiring that issuers outside the Exchange contract with ECPs under the same ACA rules and provisions of QHPs. TAG members noted that the definition of ECP is particularly broad and encompasses a very wide range of provider types. One TAG member highlighted that defining the types of providers with which carriers must contract would represent a significant shift from current practice as carriers currently define network adequacy in terms of sufficient availability of specific types of services or broad provide categories (e.g. PCPs, hospitals, etc) and not specific types of providers.
- Members agreed on the importance of facilitating continuity of care and ensuring that individuals can maintain existing relationships with ECPs. However, others noted that individuals who seek

care through ECPs are among those who will primarily be buying coverage through the Exchange because of premium tax credits, such that rules requiring that qualified health plans (QHPs) contract with a sufficient number and geographic distribution of ECPs may adequately address this population's needs. One member noted that there may also be individuals and families enrolling in small group coverage that are currently seeing an ECP. Several members also expressed that carriers should be given flexibility outside the Exchange to offer a variety of products with differing networks, and that contracting with ECPs outside the exchange should be driven by market demand not regulatory requirements.

- The NC DOI noted that in 2011 the Department received zero complaints from consumers regarding network adequacy issues and only five from providers who complained that they were not allowed into a carriers' network. This may or may not indicate that the current network adequacy standard is sufficient to ensure access. Some TAG members expressed concern about relying on a lack of network adequacy complaints as an indication of the effectiveness of current standards due to the possibility that some consumers may be unaware of to whom or how to register a complaint.
- Other TAG members noted the existence of a NC law that requires health plans cover at in-network levels services received from out-of-network providers when the use of such providers was the result of the plan's network not providing reasonable access without unreasonable delay. This requirement protects plan members from adverse financial effects of networks that do not adequately meet their needs in a particular instance. These TAG members further stated that this consumer protection provides incentive for insurers to have an adequate network.
- TAG members agreed that it is not possible to know how implementation of ACA reforms in 2014 will impact the market, including with regard to there being sufficient inclusion of ECPs in provider networks, such that it may be premature for the state to act on this issue before these reforms are implemented and their impact better understood. Accordingly, the group agreed that the NC DOI should actively monitor the impact of reforms on the market with respect to all categories of ECPs to determine if future action is necessary to ensure an adequate number of ECPs in provider networks.
- In response to this agreement, a TAG member expressed concern over what precisely the group means by "monitoring" and emphasized the need for a proactive, robust market monitoring process rather than reactively waiting for complaints to be submitted to the DOI. Though some TAG members felt that using complaints as a means to gauge adequacy might be sufficient, others countered that consumers might not be sufficiently educated on to whom and how to submit a complaint and asked that the group revisit the specifics of the monitoring process for the several instances in which the TAG has recommended that the NC DOI monitor an issue.

Consensus Points:

- The TAG **reached consensus** that the NC DOI should actively monitor the impact of 2014 market reforms with respect to all categories of ECPs to determine if future action is needed to facilitate an adequate number of ECPs in provider networks outside the Exchange.
- The TAG may consider revisiting the specifics of the monitoring process for the several instances in which the group has recommended that the NC DOI monitor an issue.
- NCDI should provide outreach and education around who to call for complaints related to network adequacy.

Assessing North Carolina's Network Adequacy Standard

- TAG members noted that because current network adequacy standards vary across plans, there is a lack of clarity around the specifics of existing standards and limited ability to compare and assess the effectiveness of current standards. Several members noted a need for increased transparency on measures of network adequacy, such as by making measures more widely available (e.g., on individuals plans' or the Exchange's website) or standardized for ease of comparison/analysis.
- TAG members also re-iterated that NC statute requires in-network levels for out-of-network services if a plan's network can not provide reasonable access without unreasonable delay, which provides incentives for insurers to have adequate networks.
- The group discussed current requirements for plan reporting on network adequacy measures, noting that plans are required to report some network adequacy targets and actual experience to the NC DOI which are subsequently made available to the public on the NC DOI's website (http://www.ncdoi.com/MR/MR_MC_Annual.aspx). The TAG reviewed copies of the current summary report in which the NC DOI makes available the results of HMO plans' reporting on access standards and agreed that the information was not presented in a consumer-friendly way that would allow individuals to make meaningful comparisons across plans.
- A number of members expressed their view that changes brought about by health reform and new dynamics in the marketplace (e.g., surge in demand as newly insured seek care, narrowing provider networks, ACOs, Centers of Excellence) may make this a particularly ripe time to revisit issues of network adequacy, as standards that were once relevant may become less so in this "new world." However, the group noted that it will be difficult to meaningfully assess the adequacy of standards before these changes are implemented and their effects on demand for and access to care better understood.
- TAG members agreed that the group should focus on increased transparency around network adequacy standards as a starting point on this issue by collecting information on current standards, assessing how they vary across plans, and considering additional ways to increase transparency (e.g., where should standards be made available? how should plan-developed standards be presented to the consumer such that they allow for meaningful comparisons across plans?). After this initial information gathering and preliminary assessment, the group may want to recommend a study on the effectiveness of current network adequacy standards, particularly in a post-2014 marketplace, including whether requirements should be standardized across plans.

Consensus Points:

- TAG members **reached consensus** that as a first step in assessing the effectiveness of North Carolina's current network adequacy standard, the TAG should focus on increased transparency around existing plan-developed standards, including by collecting information on standards, assessing how they vary across plans, and considering additional ways to increase transparency of or consistency between standards.
- After this initial information gathering and preliminary assessment, the group acknowledged that it may consider whether to recommend a detailed study on the effectiveness of current network

adequacy standards, particularly in a post-2014 marketplace, including whether requirements should be changed in any way or standardized across plans.

Issue #2: Enrollment

Should enrollment requirements in the Exchange be applied outside the Exchange in the individual market?

Enrollment Requirements

- *Open Enrollment.* In response to TAG members' questions, Ms. Woda and NC DOI clarified that carriers will likely be prohibited from offering a more restrictive open enrollment period than the federal standard such that they will either have to allow enrollment with guarantee issue year round or meet the minimum requirement for open enrollment periods. Members agreed that to limit the risk of adverse selection, open enrollment period requirement should be aligned across the Exchange and non-Exchange individual markets.

Special Enrollment Requirements

- *Birth, Adoption or Placement for Adoption.* In response to a TAG member's question, NC DOI clarified that the state may choose to maintain the current state standard as it more expansive than the minimum federal standard (by allowing for special enrollment periods in cases of placement in a foster home). Members agreed that the state standard on special enrollment for birth/adoption should remain in place and apply both in and out of the Exchange market since the current state standard is more expansive than the minimum requirement in the Exchange.
- *Grace Periods for Non-Payment.* Members acknowledged that aligning grace periods for non-payment inside and outside the Exchange would support administrative streamlining and simplification efforts, but expressed concern over the longer grace period established by the minimum federal standard (90 days for individuals receiving APTC compared to the current state standard of 30 days). These members fear that a longer grace period for non-payment has the potential to create scenarios in which carriers are pending a claim for which the provider incorrectly thinks an individual has coverage and would have a negative impact on the account receivables of carriers and, even more so, providers. Based on these concerns, the group agreed that the existing state requirement relating to grace periods remain the same in the non-Exchange market. The group further agreed that, to the extent permissible under federal law, the grace periods for non-APTC populations in the Exchange mirror existing state statute.

Termination of Coverage Requirements

- *Notice.* Members agreed that the state standard for providing 45 days advance notice of termination of coverage should remain in place and apply both in and out of the Exchange since the current state standard of 45 days is more expansive than the 30 days minimum requirement in the Exchange.

- *Effective Date of Termination.* Members agreed that Exchange rules on effective date of termination should not be applied to the non-Exchange individual market such that carriers can maintain current policy outside of the Exchange.

Consensus Point:

- The TAG **reached consensus** that the open enrollment requirements in the Exchange should be applied outside the Exchange in the individual market.
- The TAG **reached consensus** that the state requirement for special enrollment for Birth, Adoption, Placement for Adoption be maintained in the non-Exchange market and applied to the Exchange market, as it includes a provision for adoption placement which is more expansive than Federal requirements.
- The TAG **reached consensus** that the state should maintain its existing standards for several termination of coverage provisions, which could also be applied inside the Exchange, as permissible under Federal requirements:
 - Notice Requirement
 - Grace Periods for Non-Payment
 - Standard Effective Date of Termination

Ms. Woda then turned to wrap up the meeting, including a review of next steps.

Wrap Up and Next Steps

Ms. Woda reviewed next steps as follows:

- Send ideas for discussion for TAG Phase 2 Topics. Ms. Woda asked members to submit any additional comments regarding TAG Phase 2 topics.
- 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.
- Attend next in person meeting on August 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.

The meeting was adjourned at 12:30 pm.