

North Carolina Department of Insurance  
Market Reform Technical Advisory Group In-Person Meeting #8  
Thursday, August 30, 2012  
*FINAL version – approved by the TAG via email*

Meeting Attendees	Organization
<b><i>TAG Members and NC DOI Project Team</i></b>	
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 ( <i>by phone</i> )	CIGNA Healthcare of North Carolina, 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.
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
Allen Feezor ( <i>by phone</i> )	NC Department of Health and Human Services
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
Ted Hamby	NC Department of Insurance
Walter James	NC Department of Insurance
Michael Keough	NC Health Insurance Risk Pool, Inc./dba Inclusive Health
Pam Silberman	NC Institute of Medicine
Dee Greenman ( <i>by phone</i> )	United HealthCare
Mark Hall ( <i>by phone</i> )	Wake Forest University
Peter Chauncey	Coventry Health Care of the Carolinas, Inc.
<b><i>Interested Parties</i></b>	
Andy Landes	H-PACT
Amy Jo Johnson	NC General Assembly
Ryan Blackledge	NC General Assembly
Erin O'Quinn ( <i>by phone</i> )	Planned Parenthood of Central North Carolina

## Agenda

- Welcome and Introductions
- Project Timeline, Goals/Objectives of Today's Discussion, Statement of Values for TAG
- Review of Notes for TAG #7
- Background for Discussion of Agent/Broker Compensation
- Questions for Discussion in TAG Meeting #8
  - *To what extent, if any, should agent/broker commissions be standardized when the Exchange comes online?*
  - *Should there be requirements to ensure that consumers served by agents/brokers have equal access to the selection of all QHPs? If so, how should this be enabled?*
  - *What other options should be considered with respect to agent/broker compensation?*
  - *Should North Carolina prevent the option for web-based brokers to participate in the Exchange?*
- Wrap Up and Next Steps

*Please refer to the August 30 "TAG In-Person Meeting #8 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 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:

- Discuss agent/broker compensation issues under the ACA and potential impacts on the marketplace
- Address specific measures that North Carolina could consider to manage agent/broker compensation both in and out of the Exchange
- Discuss the role of web brokers in the marketplace

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. Ms. Dutton then asked Sharon Woda of Manatt to review relevant background information to inform the group's discussion of agent/broker compensation issues.

## **Background for Discussion of Agent/Broker Compensation**

Ms. Woda provided a high-level overview of background information on agent/broker compensation. This included a brief review of relevant federal and state law and regulations, the role of agent/brokers in the exchange, and concerns related to agent/broker appointments and compensation alignment in the Exchange (*see slide deck for additional details*). Ms. Woda then asked Joel Ario of Manatt to kick off the group's discussion of policy options related to agent/broker compensation.

## **Issues for Discussion in TAG Meeting #8**

**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 #9 meeting notes.**

*To what extent, if any, should agent/broker commissions be standardized when the Exchange comes online?*

Mr. Ario briefly reviewed emerging models for agent/broker programs in Exchanges and approaches that have thus far been adopted in other states (*see slide deck for additional details*). Mr. Ario then began the discussion of policy options and related considerations for agent/broker commissions.

- The TAG extensively discussed the status quo environment for agent/broker compensation in North Carolina. Members noted that in the current market carriers use agent/broker<sup>1</sup> compensation as a mechanism to steer better risk to their products and avoid business that they view as less desirable. For example, many carriers pay very low compensation rates to agents for enrolling small groups of 1-5 individuals, as enrollment for these groups is complex and the profit margin limited. As a result, these groups are often underserved by the agent/broker community. Additionally, some members expressed concern that aggressive carrier competition for agents has driven up premiums in North Carolina. Members also noted that flexibility in agent/broker compensation results in administrative complexity that would be mitigated by standardization. For these reasons, several members voiced strong support for standardizing agent/broker compensation.
- In response to a TAG member's question, the group discussed the impact of current agent/broker compensation practices on consumers. The group noted that from the consumer perspective, as much standardization as possible is desirable to ensure that agents are fairly presenting options rather than driving people to plans based on compensation structures. However, they also noted that current state regulations and business processes do not currently facilitate standardization and that moving toward standardization could result in unintended consequences for carriers, agents and consumers. The group agreed on the need to strike a balance between standardization and the business needs of carriers and agents.
- TAG members representing the agent/broker community noted that current business practices around compensation have been partly driven by carriers offering bonuses and other forms of

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<sup>1</sup> For the purposes of these notes, "agent" and "broker" are used interchangeably.

compensation to drive enrollment in particular plans, rather than by agents pushing to make those bonuses available. They also observed that carriers in North Carolina pay significantly lower base compensation rates than surrounding states, such that agents are often compelled to forge alliances with carriers who will pay them bonuses that allow them to “fill the gap” in compensation. These members stated that based on outreach to the state’s agent/broker community, they believe that agents would not be opposed to standardization of compensation so long as it did not represent a decrease in compensation overall. In fact, agents would likely be in favor of the predictability in payments and reduced administrative complexity that standardized compensation would facilitate, provided that such standardization was not used to further drive down base compensation and that the standardized rate provides sufficiently reasonable income for agents to be able to continue to offer their services.

- One TAG member expressed concern that compensation is one way for small carriers in the market to compete with larger carriers and that as long as they meet medical loss ratio (MLR) requirements, they should be allowed to compete in this way. This member also posited that products in the 50 and under group market are very similar (and will be further standardized post 2014 through Essential Health Benefit and cost-sharing requirements), such that using compensation structures to drive people into certain plans does not necessarily result in their being enrolled in inferior products. Additionally, this TAG member questioned whether bonuses truly serve as an incentive for agents to push a particular plan, as in his experience plans that are not competitive on quality and cost do not sell, regardless of whether they are tied to bonuses. Finally, this TAG member noted that as has been the case with other issues under the TAG’s consideration, it is impossible to determine how 2014 reforms will play out in the market, and that the TAG should recommend that the NC DOI monitor the market after reforms are implemented in order to determine if action on the agent/broker compensation is needed.
  - Several TAG members expressed disagreement with the assessment that all products in the under 50 market are close to the same, noting that there are carriers in the state that have innovated in that market. These members also disagreed with the notion that compensation does not act as an incentive for agents to push clients toward particular plans. These members posited that in alignment with the goals of health care reform and the principles of the TAG, plans should be encouraged to compete on quality and innovation, not through agent compensation. Finally, these members expressed concern with waiting until reforms were implemented to assess if action is needed, stating that the “damage would already be done” if carriers were permitted to offer large incentives to gain market share in the post-2014 environment, rather than by offering high quality products.
- TAG members agreed that considerations for agent/broker compensation vary across the individual and group markets, and that current compensation tactics primarily take place in the group market since it makes little sense to offer incentives to enroll small numbers of individuals.
- The group discussed whether the information that will be provided to consumers through the Exchange web portal, coupled with the existence of Navigators, would be sufficient to ensure that consumers have access to the type of information with which agents would also provide them. Several members noted that this would likely be insufficient and posited that in the absence of making reasonable compensation available or allowing agents to add fees to serve this market it would likely remain significantly underserved by the broker community.

**Consensus Point:**

- The TAG **reached consensus** that the case for standardizing agent/broker commissions is strong enough that a process should be developed for further examining the full range of standardization options to confirm the desirability of standardization and determine which solutions are most feasible.

Mr. Ario then turned the floor over to Ms. Woda to lead the discussion on ensuring consumers' equal access to the selection of all QHPs.

***Should there be requirements to ensure consumers served by agents/brokers have equal access to the selection of all QHPs? If so, how should this be enabled?***

Ms. Woda introduced the discussion by describing the potential options and related action steps for enabling equal access to the selection of all QHPs (*see slide deck for additional details*).

- TAG members discussed the current agent appointment process in North Carolina to inform the discussion of whether it should be modified to ensure that consumers served by agents have equal access to the selection of all QHPs offered through the Exchange. Carrier representatives reported that the appointment process is time-consuming, costly and a significant administrative burden. These members noted that potentially requiring the Exchange to act as a managing general agent would result in a significantly simplified business model and reduced administrative complexity and cost. However, members noted that this arrangement would create new issues for carriers, as the appointment and oversight process for agents selling their products would be out of their control.
- Agent representatives weighed in with their perspective noting that it recently has become more difficult to secure and maintain carrier appointments, particularly in light of new MLR requirements that incentivize carriers to work with a smaller number of agents in order to reduce administrative costs subject to the MLR. Carriers noted that in addition to reducing administrative complexity and costs, it is also beneficial to an individual carrier to work with a smaller number of agents so that it can be sure those agents appointed are well-informed regarding the carriers' products and representing the carrier appropriately.
- The TAG discussed the option of requiring carriers to appoint all licensed agents to do business in the Exchange. Members noted that it would be unfair to require that carriers appoint all licensed agents, and that agents likely would be similarly displeased if everyone with a license to sell insurance was automatically appointed to sell all carrier products in the Exchange. However, the group noted that it would reduce access to and choice among products sold on the Exchange if agents were appointed by only a few carriers and thus not able to offer the consumer the full range of QHP options available for selection in the Exchange. This led the group to consider allowing agents to do business in the Exchange in spite of not being appointed by all carriers offering QHPs, but requiring that agency disclose to consumers upfront which products they are appointed to sell out of the full range of all QHPs available through the Exchange.
- The group also discussed the option of requiring agents to secure appointments from all carriers offering QHPs as a condition of doing business in the Exchange, but noted that this could prove

impossible for agents if carriers continue to face incentives to appoint only a small number of agents.

- To balance the range of considerations discussed, the group proposed that 1) agents who do not have appointments with all carriers be permitted to sell in the Exchange but required to disclose to clients which products they are appointed to sell out of the full range of available QHPs and 2) that the Exchange be prohibited from referring clients to agents outside of the Exchange who are not appointed by all carriers. A number of members seemed to support this proposal; however, some in the group expressed concern that requiring agents to disclose their appointments would not result in sufficient transparency regarding the full range of QHP options and that this would run counter to the goal of broadening consumers' access to and information about QHP quality and price to allow for a meaningful choice among available products.

### **Consensus Points:**

- TAG members **reached consensus** that requirements should be developed to increase consumers' ability to understand and evaluate their choices across the full range of QHPs available in the Exchange but, due to the complexity of related operational issues, was not able to reach consensus on how this should be enabled. Accordingly, the TAG agreed that the issue should be subject to the group's further consideration.
- The group expressed a desire to ensure that any requirements that are developed take into account implications for carrier liability and do not impede brokers from doing business in the Exchange.

Ms. Woda then turned the floor over to Ms. Dutton to lead the discussion on other potential options related to agent/broker compensation.

### ***What other options should be considered with respect to agent/broker compensation?***

Ms. Dutton introduced the discussion by reviewing potential options and related action steps for additional regulations regarding agent/broker compensation (*see slide deck for additional details*).

- The group focused its discussion on whether additional regulations should be established to provide incentives to enroll specific target populations, such as those individuals or groups who were previously uninsured. Some members noted that if a core aim of reform efforts is to expand coverage to those who were previously uninsured, the group might propose incentives to ensure that agents actively seek to serve this population (e.g., tax incentives). Other members countered that the Exchange and related subsidies represented a significant investment of resources in expanding coverage to the previously uninsured and should serve as sufficient incentive for this population to seek coverage in the Exchange.
- Several TAG members noted that this issue again pointed to the need for standardized compensation, as there very likely would be agents who would be willing to focus on this population if they knew they would be reasonably compensated for doing so. The group discussed how this currently plays out within the context of the Inclusive Health program in which agents are paid a fee for each application they refer to Inclusive Health.

**Consensus Points:**

- The TAG did not reach consensus regarding whether additional requirements should be considered with respect to agent/ broker compensation. The group noted that the availability of subsidies to purchase coverage through the Exchange and the existence of Navigators will serve as incentives to enroll individuals not previously insured.

***Should North Carolina prevent the option for web-based brokers to participate in the Exchange?***

Mr. Ario introduced this topic by describing the HHS rule that allows states, in state or federal exchanges, to permit web brokers to compete with the exchange's web portal by enrolling consumers in QHPs through alternative web portals under certain conditions. Those conditions include disclosure about the availability of the exchange web portal, coordination with the exchange over eligibility determinations, and compliance with fair play rules, such as displaying all QHPs in even-handed manner.

- The group discussed the specific role that web-based brokers would play in the Exchange. One member noted that if a web-based broker acted much like a local broker who actively provided outreach and assistance to clients to help them select from available plans (i.e., and performed this activity electronically or by phone), then they should still be permitted to participate in the Exchange (though it would require a definitional distinction in statute or regulation). However, this member and others in the group noted that to the extent that a web-based broker is merely a web portal that aggregates and standardizes information about the cost and quality of available coverage options, then it would be duplicative of the same services that will be offered by the Exchange.
- Carrier members of the TAG were generally skeptical of what value web brokers would bring simply by offering competing web portals, especially if they were paid by commissions that might impact their impartiality and increase carrier costs .
- There was discussion of whether current North Carolina law "permitted" web brokers and what steps, if any, would be required to prevent web brokers from being empowered to operate web portals in competition with the exchange web portal.

**Consensus Points:**

- The TAG **reached consensus** that North Carolina should prevent the option for web-based brokers to participate in the Exchange.

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:

- TAG review of meeting minutes. Because the group agreed to push review of the TAG Meeting #7 minutes to the end of the agenda to ensure the group had time to cover all of the issues under consideration but subsequently ran out of time to do so, the NC DOI will recirculate the minutes from the TAG Meeting #7 to the group and solicit their feedback/approval via email. The group was also asked to review the TAG Meeting #8 minutes once made available in advance of the next meeting. 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 (date and time of meeting is TBD).

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

The meeting was adjourned at 12:30 pm.