

# Market Reform and Policy Issues for Implementation of Health Reform in North Carolina

*In-Person TAG Meeting #8*

August 30, 2012



MERCER

OLIVER WYMAN

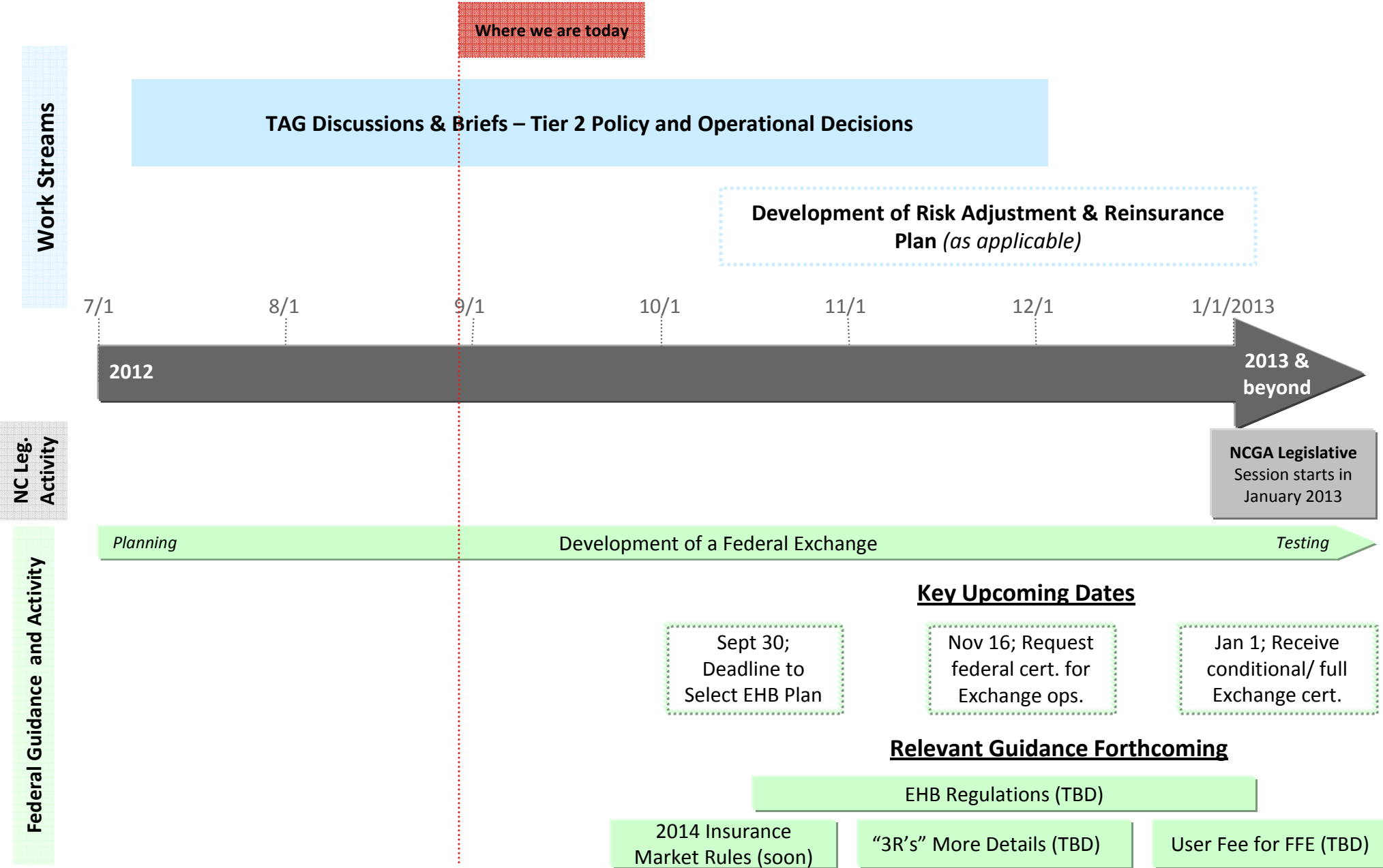
# Agenda

<b>9:30 – 9:35</b>	<b>Welcome and Introductions</b>
<b>9:35 – 9:40</b>	Project Timeline, Goals/Objectives of Today’s Discussion, and Statement of Values for TAG
<b>9:40 – 9:45</b>	Review of Notes for TAG #7
<b>9:45 – 10:15</b>	Background for Discussion of Agent/Broker Compensation
<b>10:15 – 10:45</b>	Questions for Discussion in TAG Meeting #8 <ul style="list-style-type: none"><li>• To what extent, if any, should agent/broker commissions be standardized when the Exchange comes on line?</li></ul>
<b>10:45 – 11:15</b>	Questions for Discussion in TAG Meeting #8, continued <ul style="list-style-type: none"><li>• 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?</li></ul>
<b>11:15 – 11:30</b>	<i>Break</i>
<b>11:30 – 12:00</b>	Questions for Discussion in TAG Meeting #8, continued <ul style="list-style-type: none"><li>• What other options should be considered with respect to agent/broker compensation?</li></ul>
<b>12:00 – 12:20</b>	Questions for Discussion in TAG Meeting #8, continued <ul style="list-style-type: none"><li>• Should North Carolina prevent the option for web-based brokers to participate in the Exchange?</li></ul>
<b>12:20 – 12:30</b>	Wrap Up and Next Steps

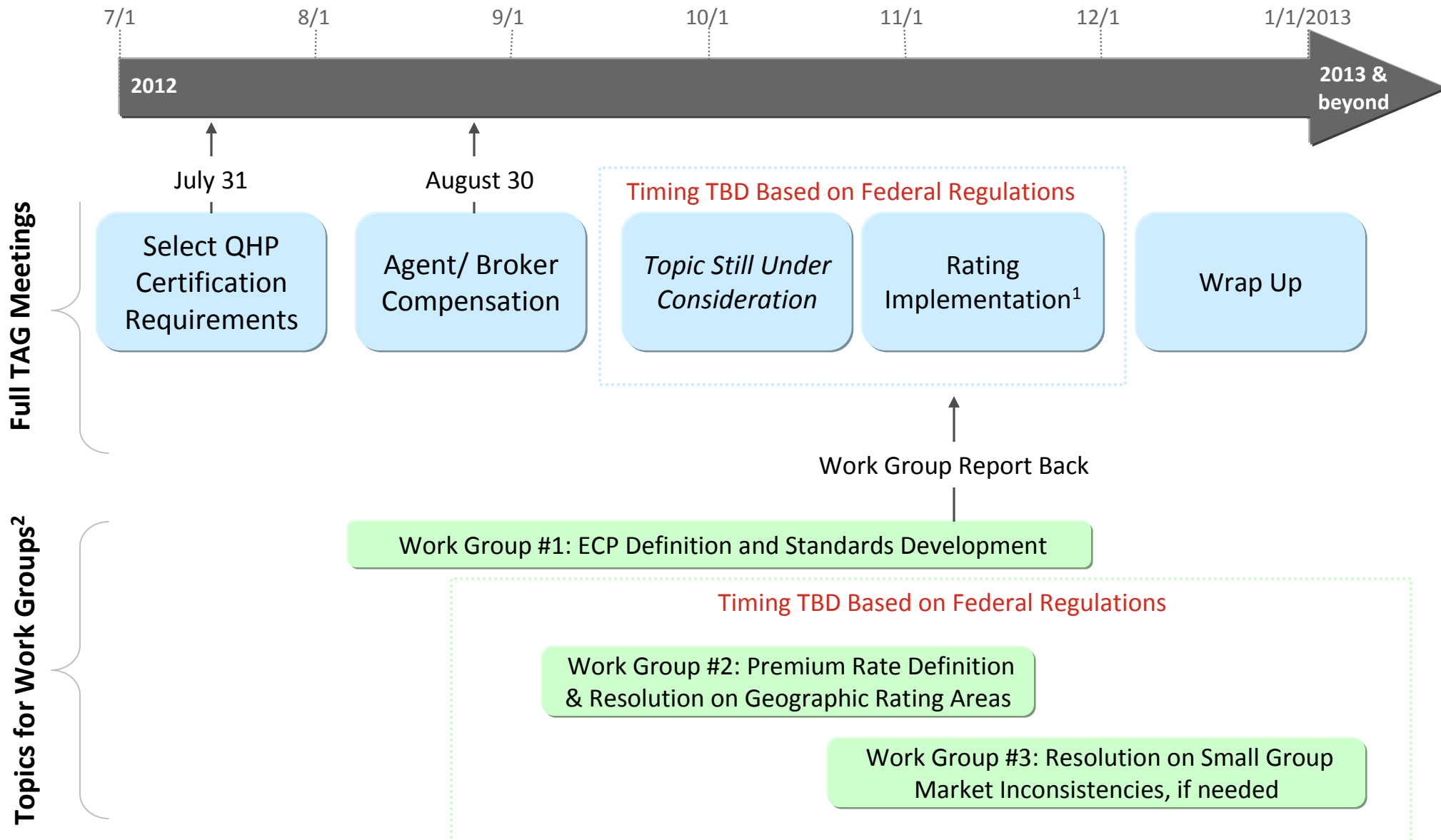
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# Current Project and Regulatory Timeline



# Tentative TAG Meeting and Work Groups Planning



<sup>1</sup>Webinar will lively precede Work Group #2 meeting and Rating Implementation TAG meeting once regulations are released

<sup>2</sup>Work Groups will be held as needed to address technical issues and to arrive at options to set before the TAG.

# Project Goal and Meeting Objectives

***Project Purpose: Develop policy options and considerations and identify areas of consensus to inform the NC DOI actions and recommendations for Exchange-related market reform policies.***

*(pursuant to North Carolina Session Law 2011-391)*

“It is the intent of the General Assembly to establish and operate a State-based health benefits Exchange that meets the requirements of the [ACA]...The DOI and DHHS may collaborate and plan in furtherance of the requirements of the ACA...The Commissioner of Insurance may also study insurance-related provisions of the ACA and any other matters it deems necessary to successful compliance with the provisions of the ACA and related regulations. The Commissioner shall submit a report to the...General Assembly containing recommendations resulting from the study.”

-- Session Law 2011-391

## **Objectives for Today's Meeting**

- 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 Exchange Marketplace

**The TAG will seek to evaluate the market reform policy options under consideration by assessing the extent to which they:**

- Expand coverage;
- Improve affordability of coverage;
- Provide high-value coverage options in the HBE;
- Empower consumers to make informed choices;
- Support predictability for market stakeholders, competition among plans and long-term sustainability of the HBE;
- Support innovations in benefit design, payment, and care delivery that can control costs and improve the quality of care; and
- Facilitate improved health outcomes for North Carolinians.

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# Relevant Federal Laws and Regulations

## **Premium Rates**<sup>1</sup> (which are re-iterated in federal regulations (45 CFR §156.255))

- Premiums may only vary by: Age (3:1 maximum); Tobacco (1.5:1 maximum); Geographic rating area and family composition (e.g. individual, family, spouse + 1, etc) (PHS Act 2701.)
- The premium rate for qualified health plans must be the same, regardless of if it is sold through the exchange or offered directly from an insurer or through an agent (PPACA 1301(a)(1)(C)(iii))

## **Navigators**

- Navigators can be agents or brokers (PPACA 1311).
- Exchange must ensure that Navigators meet certain conflict of interest rules, including that Navigators can not receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any individuals or employees in a QHP or non-QHP (§155.210(d))

## **Sales on the Exchange**

- States may permit agents and brokers to enroll individuals, employers or employees in any QHP in the individual or small group market as soon as the QHP is offered through an Exchange in the State. Subject to certain terms, agents and brokers are able to enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange and assist individuals in applying for advance payments of the premium tax credit and cost share reductions for QHPs (§155.220(a))

<sup>1</sup> Preamble of 156.255: Comments requested that HHS more clearly define what “same plans” would need to be offered at the same premium rate based on concerns that issuers would offer two plans with very minor differences and then charge a different premium for what is essentially the same plan, which could result in adverse selection against the Exchange.

*HHS Response:* Generally, this provision means that health plans that are **substantially the same** as a QHP should charge the same premium and encourage States to use this standard when evaluating compliance with this provision.

# Relevant State Laws and Regulations

## **Definitions** (§58-33-10)

- ***"Agent" means a person licensed to solicit applications for, or to negotiate a policy of, insurance.***
- ***"Broker" means a person who, being a licensed agent, procures insurance for a party other than himself through a duly authorized agent of an insurer that is licensed to do business in this State but for which the broker is not authorized to act as agent.***
- ***"Insurance producer" or "producer" means a person required to be licensed under this Article to sell, solicit, or negotiate insurance. "Insurance producer" or "producer" includes an agent, broker, and limited representative.***

## **Commissions** (§58-33-20)

- ***Only agents who are duly licensed with appropriate company appointments, licensed brokers and licensed limited lines producers, or licensed limited representatives may accept, directly or indirectly, any commission, fee, or other valuable consideration for the sale, solicitation, or negotiation of insurance.***

Note: Full excerpts from state laws and regulations are in the appendix for reference

## Agent Appointments (§ 58-33-40)

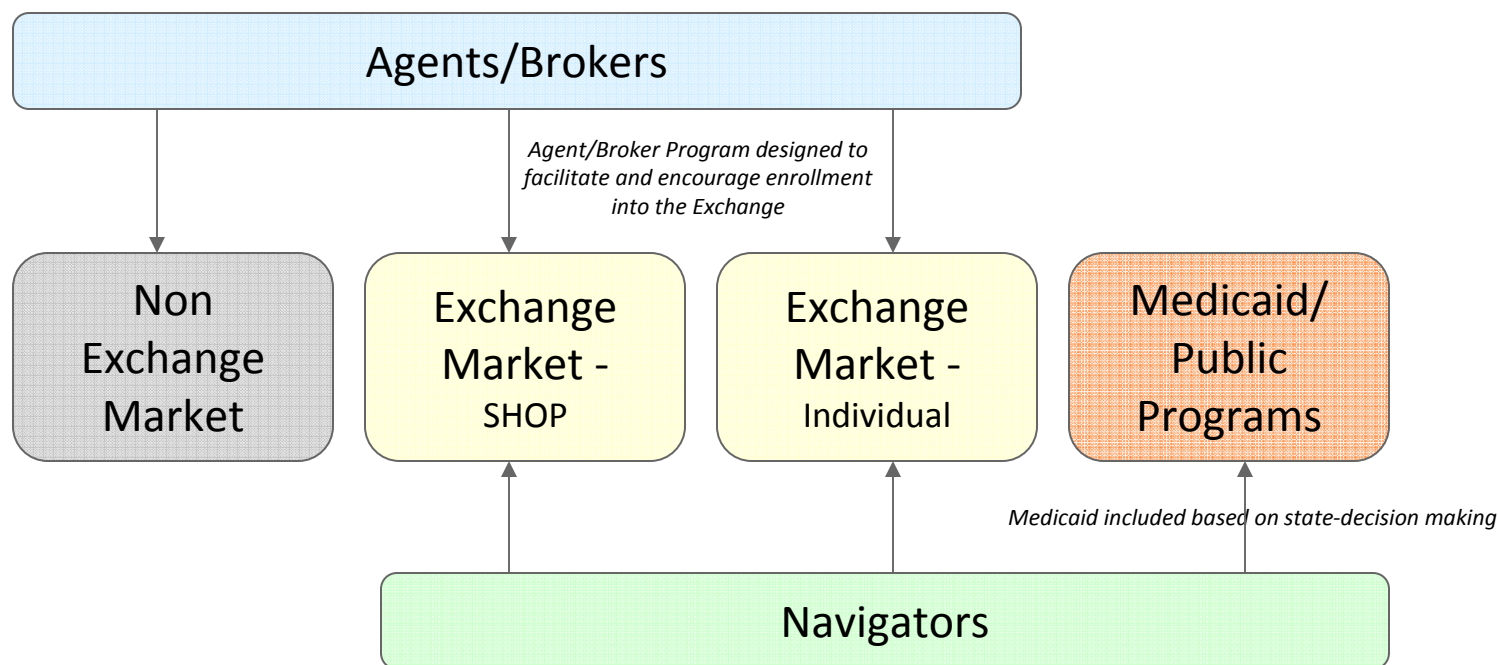
- *Individuals who hold a valid insurance agent's license **shall not, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed.***
- *Any insurer may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. The insurer shall file a notice of appointment within 15 days after the date the first insurance application is submitted. The individual shall be authorized to act as an agent for the appointing insurer for the kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State. There shall be one appointment for each kind of insurance for which the appointed agent is licensed in this State, unless specifically limited.*
- *Insurer shall pay an appointment fee specified for each appointed agent and the annual renewal appointment fee.*

## Licensing of Broker (11 NCAC 06A .0404)

- *A broker's license gives the holder authority to broker only those kinds of insurance for which he holds an agent's license. Brokering shall be done through a licensed and appointed agent of the company with which the business is being placed. A broker's license does not confer binding authority; it only **gives authority to share in commissions with a writing agent.***

Note: Full excerpts from state laws and regulations are in the appendix for reference

# Agents Critical Part of Equation



- Agents/brokers exist in the market place today and serve the private market place
- Navigators are designed under the ACA to be “neutral” parties to target uninsured and under-served individuals and small business for enrollment in to the HBE
- Likely that many agents/brokers will not opt to become Navigators in light of conflict of interest rules
- Under Federal Regulation, States have flexibility in designing their own agent/broker programs to leverage agent/brokers expertise and experience in selling plans into the Exchange

# Establishing Agent/Broker Programs in the Exchange

*While there are many options for consideration, our focus today is on the compensation of the Agents/Brokers who participate in the Agent/Broker Program.*

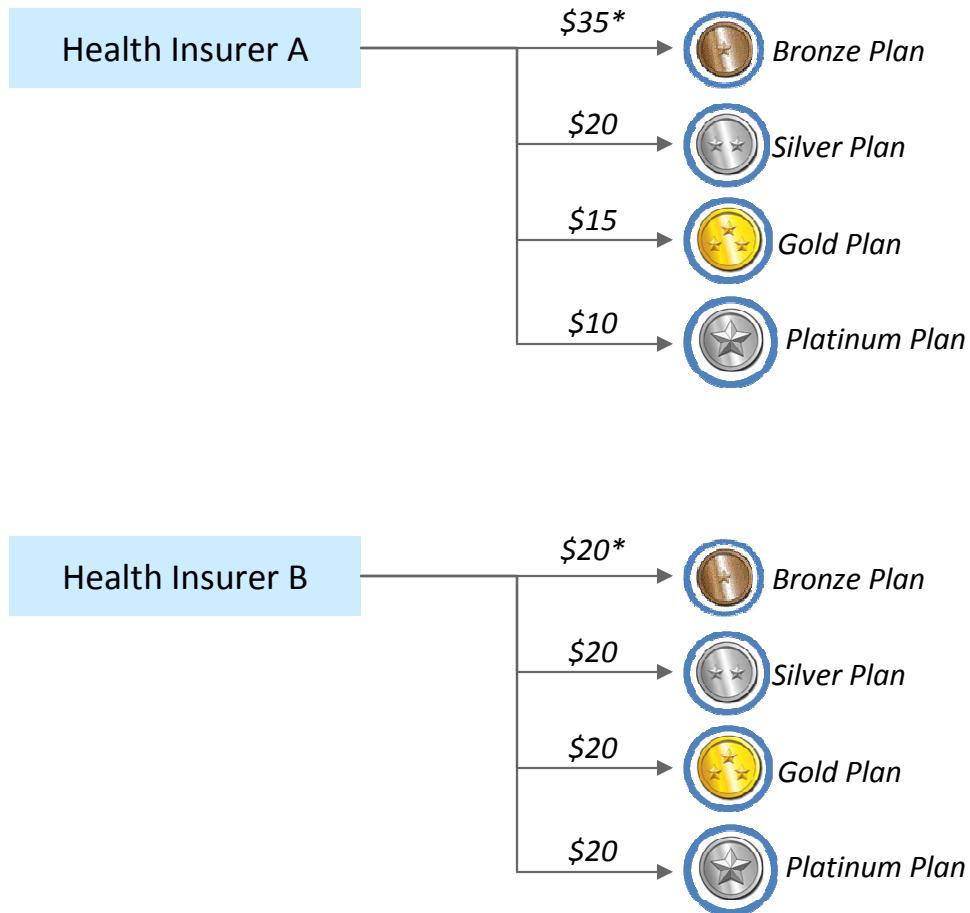
- Determine Training Program and Mechanism
  - Federal regulations require that agents/brokers “receive training in the range of QHP options and insurance affordability programs”
  - States determine training curriculum and if training will be done in accordance with licensure or separately offered
- Determine Method for “Registering” to sell into the Exchange
  - Federal regulations require that agents/brokers register with the Exchange in advance of assisting qualified individuals enrolling in QHPs through the Exchange
  - States determine if separate authorization program needed, could include separate licensure, separate training, and other requirements
- Determine method for ensuring compliance with privacy and security standards
  - Federal regulations require agents/brokers to comply with Exchange’s standards
- Determine how agents/brokers’ information transmits seamlessly/accurately to the Exchange
  - Several federal regulations on ensuring application completeness and eligibility verification and maintenance of records
- ➔ • **Determine compensation of Agents/Brokers in the Program**
- Determine oversight/enforcement of program
  - Including other ACA consumer requirements

Regulations pulled from Section §155.220(d); Located in Appendix



# Insurer Steering via Agent/Broker Compensation

*Insurers could set up compensation structures that attempt to steer to get better risk.*



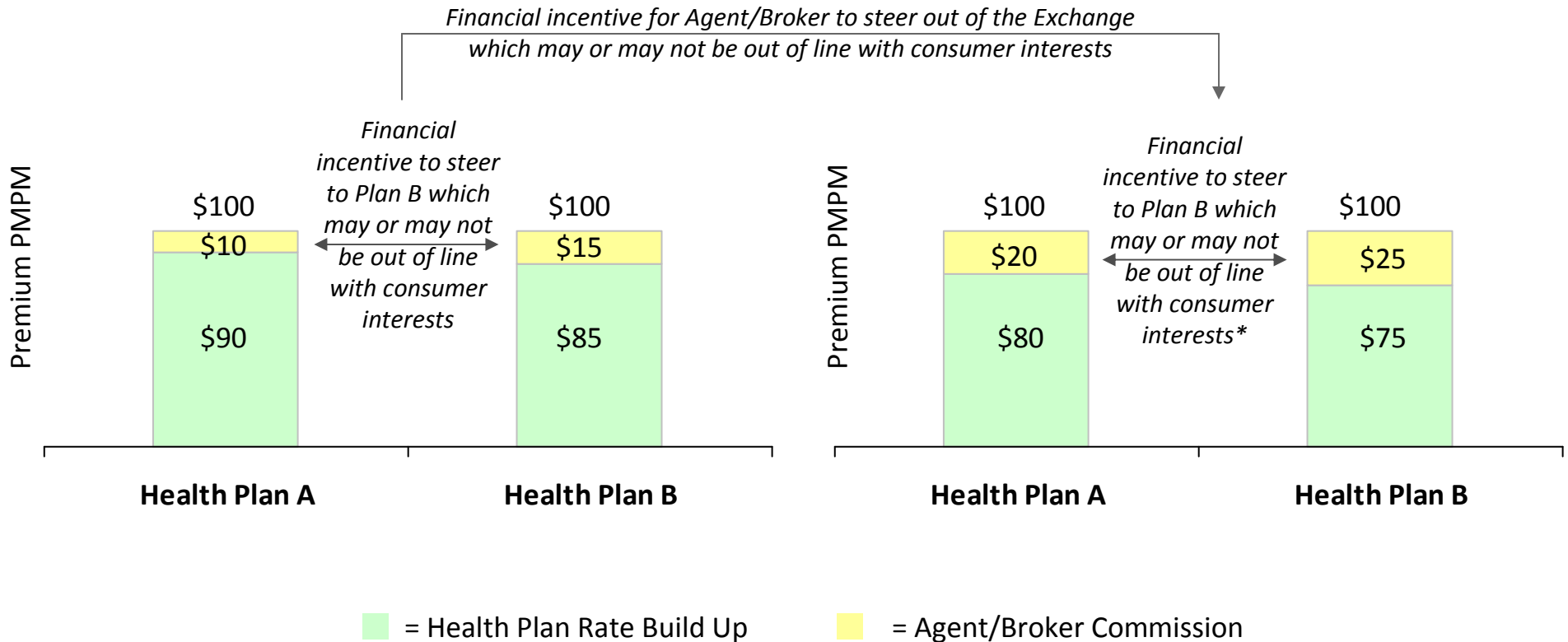
\* Compensation from insurer to agent/broker

# Agent/Broker Compensation Alignment Concerns

*Agent/broker interests may be out of line with consumer interests if steering to a particular plan results in higher compensation.*

Illustrative Example: Same Premium Rate in the Exchange

Illustrative Example: Same Premium Rate out of the Exchange



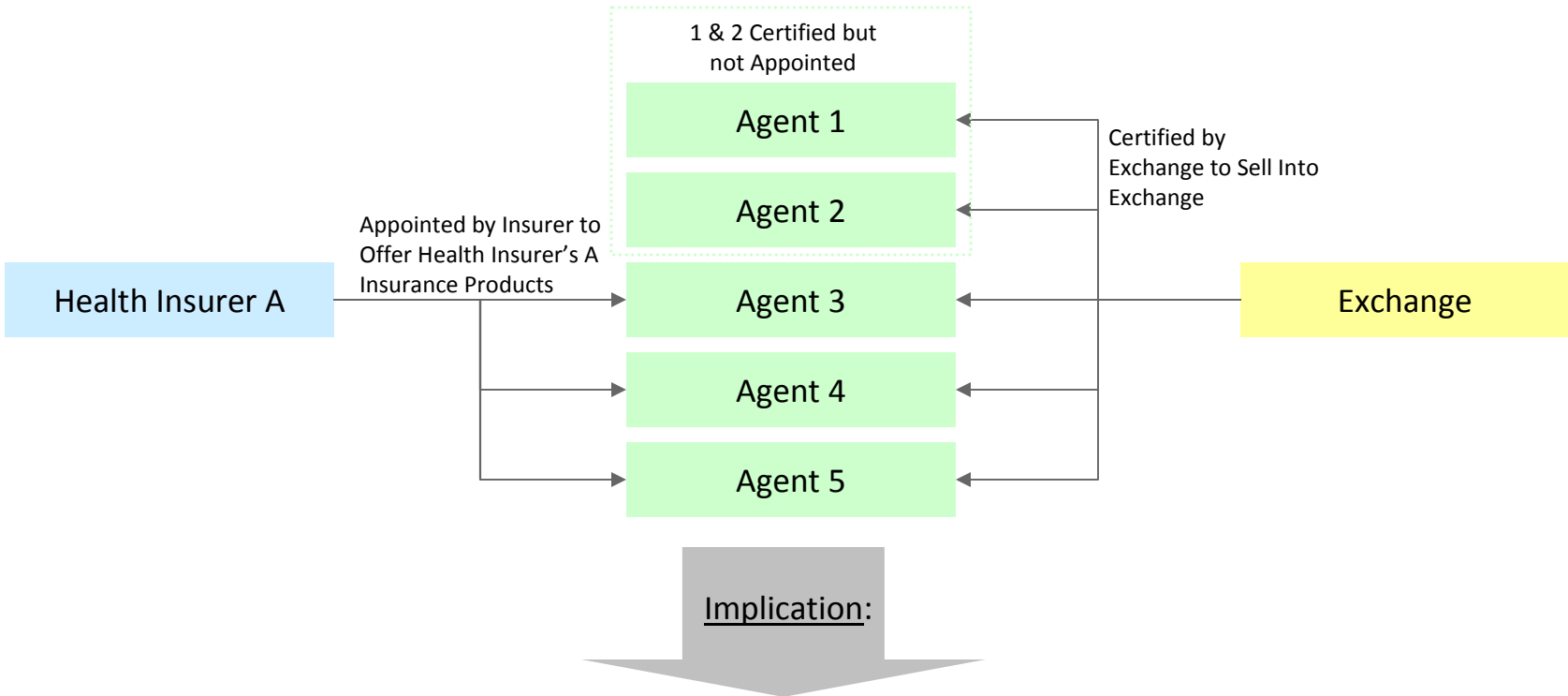
\*Dynamic exists today in the marketplace.

Note: Scenario assumes that plans have benefit differences and that a consumer has needs which would be best met by a particular plan.



# Appointments in Relation to Agent/Broker Compensation

*Another concern is the ability of Exchange-certified agents/brokers to represent and receive compensation for all products sold on the Exchange*



- Agent 1 and 2 may steer consumer to a health plan where they are appointed or, if they offer health insurer A's products, they may not be able to be compensated
- Dynamic also exists in SHOP, where under an employee choice model an agent may not be able to be compensated

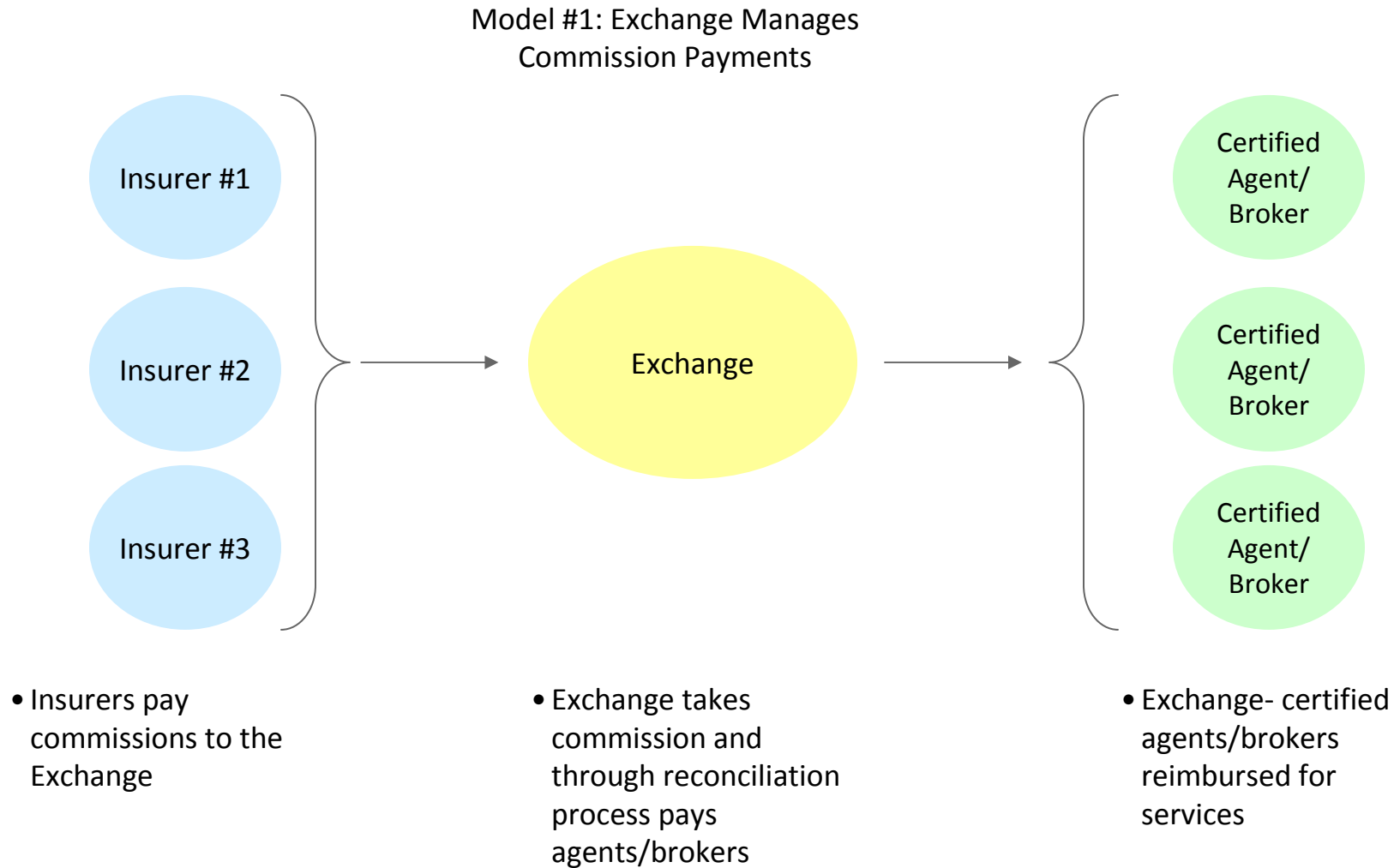
*The NCIOM Work Group acknowledged concerns with agent/broker compensation and the TAG discussion builds off of that work to solicit recommendations for addressing these concerns.*

1. To what extent, if any, should agent/broker commissions be standardized when the Exchange comes on line?
2. 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?
3. What other options should be considered with respect to agent/broker compensation?
4. Should North Carolina prevent the option for web-based brokers to participate in the Exchange?

NCIOM recommendations are noted in the appendix.

# Two Emerging Models Agent/Broker Programs on Exchanges

Answers to questions will inform how broker/agent program is structured. In Model #1, the Exchange takes in compensation for distribution to certified agents/brokers.

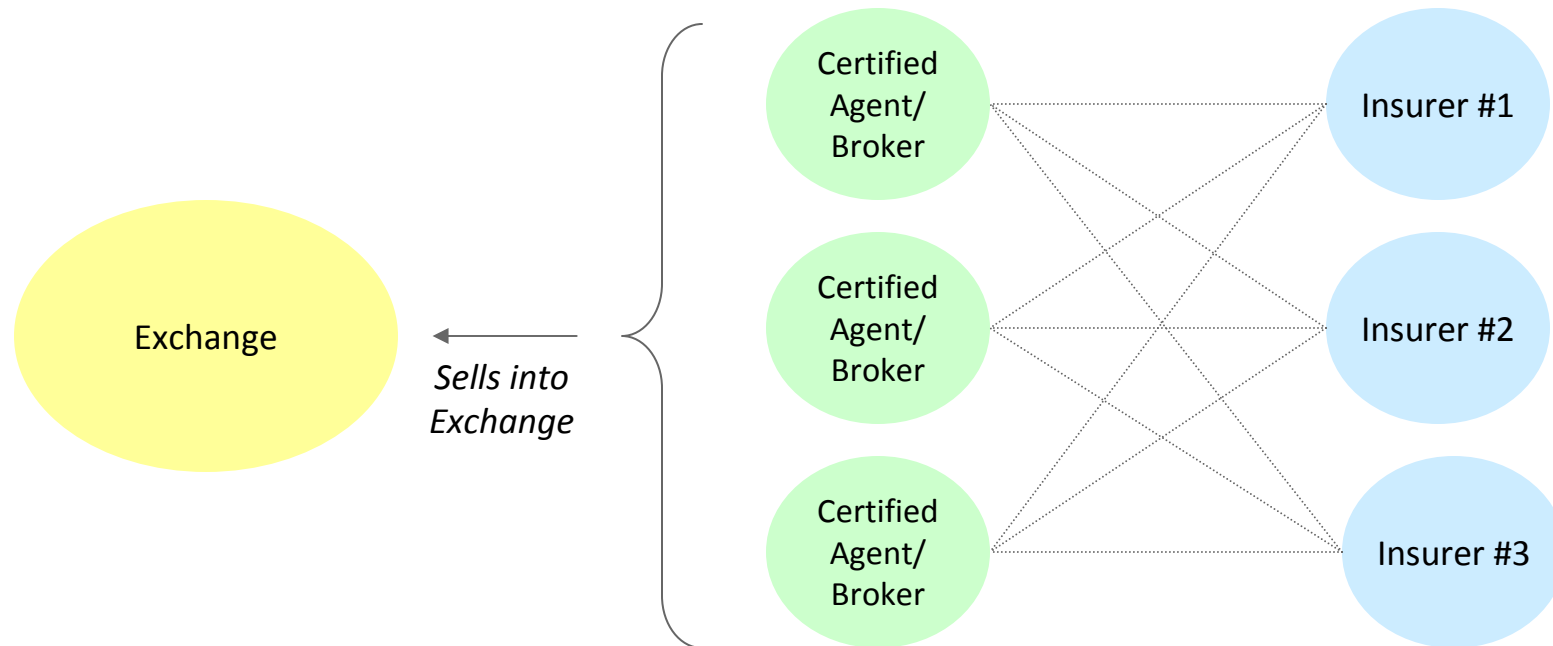


Particular model may only be possible in a state-based Exchange

# Two Emerging Models Agent/Broker Programs on Exchanges

*In Model #2, Exchange is not involved in commission distribution, although the Exchange or State is not precluded from standardizing or regulating certain aspects of compensation in this model.*

Model #2: Exchange Does Not Manage Commission Payments



- Exchange does not distribute commission

- Agents/brokers reimbursed by insurer in accordance with terms/ conditions

- Insurers pay commissions to agents/brokers

Particular model is likely to be used in a federally facilitated exchange or partnership exchange, and could also be deployed in states operating a state-based Exchange

# Agent/Broker Compensation Models in Other States

	Maryland	Oregon
<b>Standardize Compensation in the Exchange (across all products/insurers)</b>	<ul style="list-style-type: none"> <li>Not currently considering</li> </ul>	<ul style="list-style-type: none"> <li>Not currently considering</li> </ul>
<b>Standardize Compensation in the Exchange by Insurer</b>	<ul style="list-style-type: none"> <li>Not currently considering</li> </ul>	<ul style="list-style-type: none"> <li>Requires commission to be standardized by insurer by line of business (but not across all products)</li> </ul>
<b>Standardize Compensation In and Out of the Exchange For QHP Products</b>	<ul style="list-style-type: none"> <li>Not currently considering</li> </ul>	<ul style="list-style-type: none"> <li>Commissions required to be same for QHPs both in and out of the Exchange</li> </ul>
<b>Compensation from Carriers/ Appointment</b>	<ul style="list-style-type: none"> <li>Considering requiring authorized producers who sell plans in the Exchange to have appointments with all carriers in the Exchange. Producers would be required to provide evidence to the Exchange that this requirement is met (<i>draft regulations</i>)</li> </ul>	<ul style="list-style-type: none"> <li>Developed Agent Management Program, where the Exchange became a “business entity” eligible to affiliate with multiple producers under Oregon Insurance regulation.</li> <li>All Certified Agents will be able to offer all QHPs on the Exchange, without requiring appointments</li> </ul>
<b>Structure of Commissions vis a vis the Exchange</b>	<ul style="list-style-type: none"> <li>Model 2: Exchange will not receive and/or pass through any commissions; producers compensated directly by Carriers per MD HBE 2012 statute</li> </ul>	<ul style="list-style-type: none"> <li>Model 1: Exchange will collect commissions from QHP insurers and pass through exact commission to each Agent.</li> </ul>

Source: Phone Calls, Direct Communication with States; Note: All states are considering these programs now and models may change

# Agent/Broker Compensation Models in Other States

	California	Nevada
<b>Standardize Compensation in the Exchange (across all products/insurers)</b>	<ul style="list-style-type: none"> <li>Not currently considering in the Individual market</li> <li>Under consideration in the SHOP Program</li> </ul>	<ul style="list-style-type: none"> <li>Not currently considering</li> </ul>
<b>Standardize Compensation in the Exchange by Insurer</b>	<ul style="list-style-type: none"> <li>Not currently considering in the Individual market</li> <li>SHOP will “likely match carrier commissions although they are considering the option to set their own commission rate.”<sup>1</sup></li> </ul>	<ul style="list-style-type: none"> <li>Not currently considering</li> </ul>
<b>Standardize Compensation In and Out of the Exchange For QHP Products</b>	<ul style="list-style-type: none"> <li>Individual Market and SHOP: Recommends commission parity in and outside the Exchange</li> </ul>	<ul style="list-style-type: none"> <li>Not currently considering</li> </ul>
<b>Compensation from Carriers/ Appointment</b>	<ul style="list-style-type: none"> <li>Not currently considering in the Individual market</li> <li>SHOP recommendations notes that “Exchange would need to work with carriers to assure that agents are certified to meet each carrier’s requirements or establish a mechanism to amend such agreements to allow agents to “accept assignment” from the Exchange.”<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>Producers will be compensated by carriers they are appointed with on the Exchange.</li> </ul>
<b>Structure of Commissions vis a vis the Exchange</b>	<ul style="list-style-type: none"> <li>Model 1 for SHOP, Exchange will receive and pay commissions to SHOP producers</li> <li>Model 2 for Individual Exchange, Agents compensated directly by Insurer</li> </ul>	<ul style="list-style-type: none"> <li>Model 2: Exchange will not receive and/or pass through any commissions</li> </ul>

Source: Phone Calls, Direct Communication with State; All states are considering these programs now and models may change

<sup>1</sup> <http://www.californiahealthbenefitadvisers.com/exchange/agents.htm>, [http://www.healthexchange.ca.gov/BoardMeetings/Documents/July\\_19\\_2012/VIII-C\\_CHBE-AgentPaymentOptions\\_7-19-12.pdf](http://www.healthexchange.ca.gov/BoardMeetings/Documents/July_19_2012/VIII-C_CHBE-AgentPaymentOptions_7-19-12.pdf)

<sup>2</sup> [http://www.healthexchange.ca.gov/BoardMeetings/Documents/July\\_19\\_2012/VIII-A\\_CHBE-SHOPEXchangeBoardRecommendationsBriefs\\_7-19-12.pdf](http://www.healthexchange.ca.gov/BoardMeetings/Documents/July_19_2012/VIII-A_CHBE-SHOPEXchangeBoardRecommendationsBriefs_7-19-12.pdf)

## Excerpts of National Dialogue

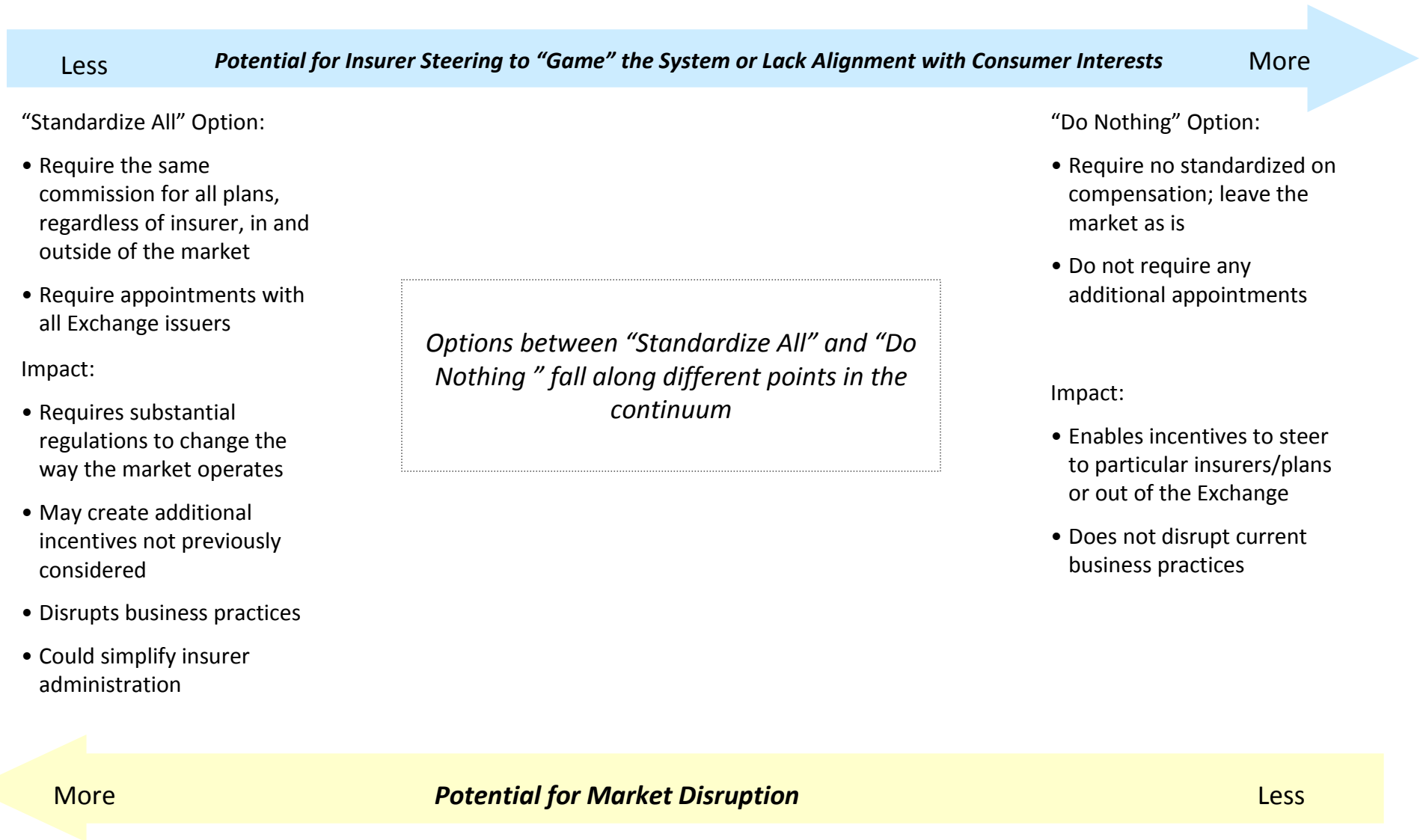
- National Association of Healthcare Underwriters: NAHU believes private health insurance commission payments, including commission amounts and how and when they should be paid, is something that should be determined by the private health insurance carriers as a function of normal health plan operations.<sup>1</sup>
- National Association of Insurance Commissioners: “States will need to consider how agents and brokers serving Exchange consumers will be compensated, and how the pricing of QHPs will remain the same both inside and outside the Exchange.”<sup>2</sup>
- American Academy of Actuaries: Under the section on rating variations the proposed regulation states “[w]e interpret this provision to mean that an issuer must charge a premium that uses underlying rating assumptions that account for all expected enrollees of a QHP, including individuals that enroll in the QHP outside of an exchange, and for all methods of enrollment, including through an Exchange, an agent or broker, or the issuer itself.” This implies to us that QHPs and the standards by which states will be regulating QHPs will apply to both in- and off-exchange product offerings. Clearer guidance on whether the same rules will apply in- and off-exchange should be provided.<sup>3</sup>

<sup>1</sup> [http://www.nahu.org/legislative/Agent\\_Value/agents%20and%20brokers%20in%20an%20exchange.doc](http://www.nahu.org/legislative/Agent_Value/agents%20and%20brokers%20in%20an%20exchange.doc)

<sup>2</sup> [http://www.naic.org/documents/committees\\_pending\\_final\\_120627\\_marketing\\_consumer\\_information\\_white\\_paper.pdf](http://www.naic.org/documents/committees_pending_final_120627_marketing_consumer_information_white_paper.pdf)

<sup>3</sup> [http://www.actuary.org/files/publications/Academy\\_comments\\_on\\_NPRM\\_on\\_exchanges\\_100611\\_final\\_0.pdf](http://www.actuary.org/files/publications/Academy_comments_on_NPRM_on_exchanges_100611_final_0.pdf)

# Standardizing Compensation Not Straightforward





# Pros/Cons to Standardizing Agent/Broker Compensation

*Standardization of agent/broker compensation will mitigate insurers' ability to steer and concerns over consumers receiving advice based on compensation, but will also disrupt the existing marketplace and may create additional adverse incentives.*

## Pros from standardizing agent/broker compensation

- Helps prevent insurers from steering sales to particular plans
- Helps prevent brokers/agents steering consumers to a product or insurer based on compensation

## Cons from standardizing agent/broker compensation

- Reflects a shift from the way the market currently operates
- Unknown what additional (adverse) incentives may be created by new regulation

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# Initial Options for How to Standardize Compensation

## ***Across the Board***

- All insurers pay the same standard PMPM commission for all plans, including group and individual plans
- *Rationale: Mitigates risk of agent/brokers steering to any particular insurer or plan*

## ***Across Insurer Plans***

- Each insurer can set its own commission, but it must be the same for all plans offered by that Insurer on the Exchange
- *Rationale: Mitigates risk of insurer setting attractive compensation rates for certain plans (e.g. bronze) only*

## ***Parity Between the Exchange and Non-Exchange***

- Whatever rules/commissions apply inside the Exchange also apply outside
- *Rationale: Mitigates risk of gaming based on marketplace*

## ***Do Nothing***

- Do nothing and allow non-standard commission structures
- *Rationale: Mirrors the current market place.*

## ***Other?***

- ?

# Options and Action Steps

Question: 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?

Options	Action Steps
<b>Across the Board</b>	<ul style="list-style-type: none"> <li>• Determine what specific amount should be set and how program could be enacted/implemented</li> </ul>
<b>Across Insurer Plans</b>	<ul style="list-style-type: none"> <li>• Determine how program could be enacted/implemented and issue guidance to insurers on establishment of a standard commission rate across all plans</li> </ul>
<b>Parity Between the Exchange and Non-Exchange Markets</b>	<ul style="list-style-type: none"> <li>• Determine how program could be enacted/implemented and issue guidance to insurers on establishment of a standard commission rate across both markets</li> </ul>
<b>Do Nothing</b>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
<b>Other</b>	<ul style="list-style-type: none"> <li>• ????</li> </ul>

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<b>12:20 – 12:30</b>	Wrap Up and Next Steps

# Initial Options for How to Potentially Enable\* Equal Access

## Require Agents to Obtain Appointments

- Could place responsibility on agents to obtain appointments with all QHP insurers as a requirement to conduct business in the Exchange

## Require Insurers to Appoint all Agents for QHPs

- Could require insurers offering QHP products in the Exchange to appoint all agents authorized to sell business in the Exchange

## Require Agents to Obtain a Broker's License

- Could require agents who want to sell on the Exchange to obtain a broker's license
- As a licensed broker, agents can share in commissions without appointment

## Establish the Exchange to Serve as an Clearinghouse

- The Exchange could serve as a centralized clearinghouse through which- as either an agent or a broker- any certified brokers/agents can conduct business and receive compensation from the Exchange, without being appointed individually by each QHP insurer (e.g. – Oregon model)

## Other?

- ?

\* Note legal parameters around certain options not yet defined/decided

# Options and Action Steps

Question: 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?

Options	Action Steps
<p><b>Require Agents/Brokers to Obtain Appointments</b></p>	<ul style="list-style-type: none"> <li>• Issue requirement as part of broader certification requirement for agent/broker participation in the Exchange</li> </ul>
<p><b>Require Insurers to Appoint all Agents/Brokers for QHPs</b></p>	<ul style="list-style-type: none"> <li>• Could be a part of the certification requirement in a state-based Exchange</li> <li>• Make needed statutory changes</li> </ul>
<p><b>Require Agents to Obtain a Broker's License</b></p>	<ul style="list-style-type: none"> <li>• Currently exists as an option under state law; place as a requirement in the agent/broker certification program once developed</li> </ul>
<p><b>Establish the Exchange to Serve as a Clearinghouse</b></p>	<ul style="list-style-type: none"> <li>• Explore how option can be enabled as part of broader effort to establish the Exchange</li> </ul>
<p><b>Other?</b></p>	<ul style="list-style-type: none"> <li>• ?</li> </ul>

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# Initial Options for Additional Regulations

## ***Incentives for Selection Populations***

- Could provide incentives to enroll specific target populations
- *Examples: Groups Under 10, Groups without Insurance, Individuals Not Previously Insured)*

## ***Restrictions on Production-Based Compensation***

- Could further standardize compensation in the market, if such standardization is already contemplated for commissions in and out of the Exchange
- *Examples: Non-commission compensation (e.g. bonuses, trips, etc)*

## ***Consumer Disclosure for Differential Commissions***

- Could provide consumers and businesses with additional information that might serve to protect them in the decision-making/plan selection process
- *Example: Disclosure Statement*

## ***Other?***

- ?

# Options and Action Steps

Question: What other options should be considered with respect to agent/broker compensation?

Options	Action Steps
<b>Incentives for Select Population</b>	<ul style="list-style-type: none"> <li>• Determine details of which populations are targeted and amount of “incentive”</li> </ul>
<b>Restrictions on Production-Based Compensation</b>	<ul style="list-style-type: none"> <li>• Determine enforcement mechanism</li> </ul>
<b>Consumer Disclosure</b>	<ul style="list-style-type: none"> <li>• Develop parameters around disclosure</li> </ul>
<b>Do Nothing</b>	<ul style="list-style-type: none"> <li>• N/A</li> </ul>
<b>Other?</b>	<ul style="list-style-type: none"> <li>• ?</li> </ul>

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# Web-Based Broker- Example

**eHealthInsurance**  
Over 3 Million Customers Insured

Sign In | Help | 24/7 Support | Licensed Agents 1-800-977-8880

Search [Su] My Cart (0)

Individual & Family | Small Business | Short Term | Medicare | Dental | Vision | Travel | More

Home > Individual Health Insurance > Plans Found

**Kiplinger's BEST** Named Kiplinger's BEST health insurance website '08, '09, '11

We found **61** plans starting as low as **\$87.25** a month  
Results based on 1 applicant located in DURHAM County, effective 09/15/2012 (Edit)

**Shop For UnitedHealthOne Plans**  
Health Insurance plans from: **\$87.25**

Best Sellers(10) | All Plans | Plans with Your Doctor | Help Me Choose

Showing 61 Plans | Show Best Sellers | Sort by: **Best Seller** | Bookmark | Print

Company	Plan Name	Rating	MONTHLY COST
<b>CoventryOne</b> AM Best Rating: B++	CoventryOne Plan QHDHP 19A	Rating: 3.5	<b>\$93.02</b>
<b>CoventryOne</b> AM Best Rating: B++	CoventryOne Plan 31A	Rating: 3.5	<b>\$118.80</b>
<b>UnitedHealthOne</b> AM Best Rating: A	Copay Select 70 - 10000	Rating: 4.3	<b>\$126.15</b>
<b>aetna</b> AM Best Rating: A	Managed Choice Open Access 5000	Rating: 3.8	<del>\$144.00</del> <b>\$163.00</b>
<b>aetna</b> AM Best Rating: A	Managed Choice Open Access 7500 with Unlimited P...	Rating: 4.1	<del>\$144.00</del> <b>\$138.00</b>

Plan Type: POS  
Deductible: \$5,000  
Coinsurance: 0%  
Office Visit: No Charge after deductible

Plan Type: POS  
Deductible: \$5,000  
Coinsurance: 30%  
Office Visit: \$40

Plan Type: Network  
Deductible: \$10,000  
Coinsurance: 30%  
Office Visit: \$35

Plan Type: PPO  
Deductible: \$5,000  
Coinsurance: 30%  
Office Visit: \$40 copay deductible waived

Plan Type: PPO  
Deductible: \$7,500  
Coinsurance: 30%  
Office Visit: \$35 copay, deductible waived

Plan Details | Find Doctor | Coverage Calculator

Need Help?  
**CLICK TO TALK** We'll call you now  
**CLICK TO CHAT** Chat with us online 24/7

Or call anytime (800) 977-8880  
Mon - Fri, 9AM - 6PM PST  
Sat - Sun, 7AM - 4PM PST

Only on eHealth - You can search Plans by Doctor across insurance companies.

Common Questions  
What's the best health insurance plan for me?

- Web-based brokers allow consumers to put in specific parameters (e.g. premiums, deductibles, etc) and present a number of options from different insurers that may meet the criteria
- Example used here: Single, young female in Durham looking to purchase insurance

## **Federal Guidance:**

- “When an Internet Web site of the agent or broker is used to complete the QHP selection, at a minimum the Internet Web site must: meet all standards for disclosure and display of QHP information... Not provide financial incentives...; display all QHP data provided by the Exchange; Maintain audit trails and records in an electronic format for a minimum of ten years; and provide consumers with the ability to withdraw from the process and use the Exchange Web site ... at any time.” (§155.220(c)(3))
- “To the extent permitted by a State, HHS intends to work with Web-based brokers that meet all applicable requirements to help consumers select health plans online. Additionally, consistent with the Exchange final rule, HHS intends to use an application programming interface (API) to allow individuals to enroll in QHPs through an FFE with the assistance of Web brokers.” (*CCIIO Guidance on Federally-facilitated Exchanges*)

## **North Carolina Statute:**

- Regulated Under Existing Statute; No State Statute Specifically Addresses Web-Based Brokers



## Other States' Approaches to Web-Based Brokers

- California is considering compensating web-based agents in the same manner as other agents – by the plans with which individuals enroll and subject to their negotiated rate.<sup>1</sup>

## Excerpts of National Dialogue

- **NAIC:** “States may need to determine if Web-based brokers require different regulations from traditional agents and brokers and, if so, what those differences would be, including conflict of interest standards. Since Web-based brokers may use a website other than the Exchange portal, states should strive to ensure that all websites selling QHPs are built in a way that will not confuse consumers, perhaps including a disclaimer that the Web-based broker website is not the official Exchange website. States should ensure that subsidy availability and regulations are clearly available on these websites.”<sup>2</sup>
- **Community Catalyst:** “While web-based brokers may play an important role in ‘spreading the word,’ about insurance, they also may create confusion for consumers and potential challenges to Exchange sustainability and consumer protections... We are concerned that web-based brokers may promote some health products over others ... We applaud CCIIO’s decision in the final regulation to prohibit brokers from receiving compensation from enrollment in non-QHP plans while serving as a Navigator.”<sup>3</sup>
- **Families USA:** “Families USA recommends that ... a web-based broker’s site must link an individual to the official ... application for coverage on the Exchange website for completion and submission. This will ensure a seamless process for consumers and is critical to ensuring that web-based brokers do not gain unnecessary access to individuals’ personal income or other information. It is important to ensure that both the required role of the Exchange is preserved and that consumers are not subjected to confusing plan selection and enrollment processes due to the involvement of a web-based broker.”<sup>4</sup>

<sup>1</sup>[http://www.healthexchange.ca.gov/BoardMeetings/Documents/July\\_19\\_2012/VIII-A\\_CHBE-SHOPExchangeBoardRecommendationsBriefs\\_7-19-12.pdf](http://www.healthexchange.ca.gov/BoardMeetings/Documents/July_19_2012/VIII-A_CHBE-SHOPExchangeBoardRecommendationsBriefs_7-19-12.pdf)

<sup>2</sup>[http://www.naic.org/documents/committees\\_pending\\_final\\_120627\\_marketing\\_consumer\\_information\\_white\\_paper.pdf](http://www.naic.org/documents/committees_pending_final_120627_marketing_consumer_information_white_paper.pdf)

<sup>3</sup> [http://www.communitycatalyst.org/doc\\_store/publications/CC\\_Comments\\_interim\\_final\\_Exchange\\_regs.pdf](http://www.communitycatalyst.org/doc_store/publications/CC_Comments_interim_final_Exchange_regs.pdf)

<sup>4</sup> <http://familiesusa2.org/assets/pdfs/health-reform/comments-on-regs/Families%20USA%20Exchange%20Establishment%20Comments%20May%202012.pdf>

# Options and Action Steps

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

Options	Action Steps
<b>Yes</b>	<ul style="list-style-type: none"><li>• North Carolina should research and consider the mechanisms by which web based brokers would be prevented from participating in the Exchange</li></ul>
<b>No</b>	<ul style="list-style-type: none"><li>• Do Nothing</li></ul>
<b>Other?</b>	<ul style="list-style-type: none"><li>• ?</li></ul>



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- **Review meeting minutes once released**
  - Minutes reflect points of consensus and considerations discussed during today's meeting, which will be used to develop issue briefs
- **Attend next in person meeting (TBD)**
  - Timing is dependent on the release of information from the federal government, particularly market rules and additional guidance on the federal exchange and partnership exchange

*Questions?*

## National Association of Insurance Commissioners (NAIC)

### Comments on QHP Pricing

The ACA includes several provisions that will affect health plan rating and rate review. Though some of these provisions have already been implemented (and are not explicitly covered below), those with a significant impact on rating will be implemented for plan years beginning on or after January 1, 2014. Rates reflecting these changes will need to be developed and filed by issuers and reviewed by regulators, as applicable, in advance of January 1, 2014, and in the case of QHPs offered through the Exchange, rates will need to be approved, if applicable, prior to open enrollment expected to begin October 1, 2013. Note also that rates for non-grandfathered plans outside the Exchange will also be affected by the ACA market reforms, and that health insurance offered in the outside market may be issuing renewal notices as early as July 1, 2013, for plans effective after January 1, 2014. Therefore, rates will need to be approved months in advance of the October 1, 2013, date for Exchange enrollment.

Rating Inside and Outside the Exchange. Issuers offering QHPs in the Exchange must offer the “same premium rate” for plans offered inside and outside the Exchange and whether they’re sold directly or through an agent. It is unclear what steps regulators will need to take to validate that this requirement is being met. States may want to consider establishing a process that requires issuers to submit plan filings in the same manner both inside and outside the exchange.

[http://www.naic.org/documents/committees\\_pending\\_final\\_120627\\_rate\\_review\\_white\\_paper.pdf](http://www.naic.org/documents/committees_pending_final_120627_rate_review_white_paper.pdf)

## National Association of Insurance Commissioners (NAIC)

### Comments on Agent/Broker Compensation

*Agents and Brokers as Navigators.* Agents and brokers may be Navigators if they are not compensated directly or indirectly from health insurance issuers for their work. States may wish to evaluate how this will affect their unique insurance environment and agent requirements.

*Agents Selling on the Exchange.* States should evaluate what training should be required of agents and brokers who wish to sell QHPs through the Exchange, including training on public affordability programs, subsidy eligibility, and use of the Web portal. Additionally, states will need to consider how agents and brokers serving Exchange consumers will be compensated, and how the pricing of QHPs will remain the same both inside and outside the Exchange, whether or not an agent or broker was involved. Both the individual Exchange and the SHOP Exchange should be taken into consideration when making these decisions.

*Conflict of Interest Standards.* States should consider what conflict of interest standards will apply to agents and brokers. States could gather information on the enrollment patterns of consumers who utilize an agent or broker versus those who do not to ensure that consumers are not being steered toward plans that offer agents and brokers the highest commission rate. States might also consider what recourse consumers would have if they are adversely affected by an agent or broker who violates this conflict of interest standard. HHS will provide a conflict of interest standard template for Navigators, and states may be able to adapt this language to suit agents and brokers as well.

*Commission Structure for Agents and Brokers.* States will need to consider how commission structures may change for agents and brokers who sell QHPs on the Exchange. Maryland and Utah have determined that traditional commission structures may remain in place, and Utah is planning to require agents and brokers to disclose their commissions to consumers.

[http://www.naic.org/documents/committees\\_pending\\_final\\_120627\\_marketing\\_consumer\\_information\\_white\\_paper.pdf](http://www.naic.org/documents/committees_pending_final_120627_marketing_consumer_information_white_paper.pdf)

## American Academy of Actuaries

### Comments on QHP Pricing

We also encourage CMS to adopt stronger guidance regarding qualified health plans (QHPs) for both the in- and off-exchange markets. Under the section on rating variations, for example, the proposed regulation states “[w]e interpret this provision to mean that an issuer must charge a premium that uses underlying rating assumptions that account for all expected enrollees of a QHP, including individuals that enroll in the QHP outside of an exchange, and for all methods of enrollment, including through an Exchange, an agent or broker, or the issuer itself.” This implies to us that QHPs and the standards by which states will be regulating QHPs will apply to both in- and off-exchange product offerings. Clearer guidance on whether the same rules will apply in- and off-exchange should be provided.

*Rating Variation (156.255).* While the proposed regulations require a QHP to charge the same premiums for the same benefit plan offered on- or off-exchange (individual or SHOP), there is the potential for a QHP to introduce minor differences between in- and off-exchange benefit plans, creating the opportunity to price the plans differently. The regulations may be strengthened by requiring any price differences to be commensurate with a minimum threshold difference in the actuarial values between in- and off-exchange benefit plans. The actuarial value comparison would be between individual plans (in- and off- exchange) and small-group plans (in- and off-SHOP)—not between individual and small-group plans.

[http://www.actuary.org/files/publications/Academy\\_comments\\_on\\_NPRM\\_on\\_exchanges\\_100611\\_final\\_0.pdf](http://www.actuary.org/files/publications/Academy_comments_on_NPRM_on_exchanges_100611_final_0.pdf)

### Comments on Agent/Broker Compensation

Exchange operations will require timely and accurate communication of information between individuals and small groups, health insurance issuers, and state and federal agencies (i.e., departments of Health and Human Services, Labor, and the Treasury). Exchange operations for which specific procedures and infrastructure will need to be established include... Agent and navigator permissions to charge consumers directly for their services (i.e., just not as part of a premium).

[http://www.actuary.org/files/publications/Academy\\_comments\\_on\\_NPRM\\_on\\_exchanges\\_100611\\_final\\_0.pdf](http://www.actuary.org/files/publications/Academy_comments_on_NPRM_on_exchanges_100611_final_0.pdf)

## National Association of Healthcare Underwriters

### Comments on QHP Pricing

Another structural issue Congress will need to address is how exchanges will mesh with existing and varying state coverage rules and consumer protections. Plan rating rules and other requirements should mirror state laws outside the exchanges, otherwise adverse selection will be rampant. National experience with purchasing pools of all kinds shows that pools that operate at the state-level that also fairly compete with plans outside the pool are the least disruptive to the market.

Under no circumstances should rating laws be different inside the exchange or outside the exchange, as any difference between the marketplaces will cause selection against the exchange. National purchasing pool experience shows that when the playing field is unlevel adverse selection occurs and plans drop out of the pool. So far, risk adjusters have been inadequate to combat this problem.

[http://www.nahu.org/legislative/connector/exchange\\_talking\\_points.pdf](http://www.nahu.org/legislative/connector/exchange_talking_points.pdf)

### Comments on Agent/Broker Compensation

Commissions. There has been some call for agents and brokers marketing products in the exchange to be subject to a regulated commission schedule, as is done with commissions paid for the sale of private Medicare Advantage and Medicare Prescription Drug Plans. The reason why the federal government opted to regulate how commissions were paid in the Medicare Advantage/PDP market was that this program is federally funded, which is not the case for private health insurance premiums. Another issue with Medicare Advantage/PDP commissions was that they were not initially level from year to year, but group health insurance commissions are already level almost universally. Individual market commissions are sometimes slightly higher in the first year to account for the increased costs of initiating a policy, but without the marked difference previously seen in the Medicare Advantage market. NAHU believes private health insurance commission payments, including commission amounts and how and when they should be paid, is something that should be determined by the private health insurance carriers as a function of normal health plan operations.

[http://www.nahu.org/legislative/Agent\\_Value/agents%20and%20brokers%20in%20an%20exchange.doc](http://www.nahu.org/legislative/Agent_Value/agents%20and%20brokers%20in%20an%20exchange.doc)

## National Conference for State Legislatures

### Comments on Agent/Broker Compensation

*Agent/Broker Compensation* – Restrictions on navigator compensation not coming directly or indirectly from a carrier is at odds with the traditional independent producer compensation model. Exchanges may be able to resolve that conflict by using agents and brokers to assist exchange consumers outside of the navigator program. Issues to consider:

- Does producer compensation come from the exchange or the carriers?
- Consistency of compensation between markets to maintain a level playing field and avoid adverse selection
- PPACA requirement that premiums not vary based on whether or not an agent is used for the purchase
- Are exchange consumers charged a producer fee outside of the premium?

[http://www.ncsl.org/documents/health/4-Waltman-ncsl\\_TF.pdf](http://www.ncsl.org/documents/health/4-Waltman-ncsl_TF.pdf)



## National Women's Law Center

### Comments on Web-Based Brokers

Under the final rules, if a state permits a Web-based broker to enroll people in QHPs through the Exchange, the Exchange nevertheless remains at the center of the eligibility determination and enrollment process in accordance with the statute. The agent or broker enrolling a woman in a QHP would have to ensure she completes the eligibility verification and enrollment application through the Exchange Web site, and the Exchange would transmit the enrollment information to the QHP issuer (not to the agent or broker) to allow the issuer to process enrollment. If a state opts to use this option, it is crucial to ensure that the process is as seamless as possible, that women are appropriately connected to the eligibility determination process, and that the Web-based broker does not request women's personal information unnecessarily or use any personal information that is provided for unrelated purposes. Through future guidance or rulemaking, HHS should clarify that Web-based brokers that enroll people in QHPs through the Exchange must send all applicants to the Exchange for an eligibility determination. It is imperative that Web-based brokers should not be able to send people selectively for this determination based on income or other information that the broker might request while on the broker's websites.

Strong privacy protections should be in place to prohibit Web-based brokers that serve in this capacity from obtaining this information for themselves or their records. Consumers should only have to provide it directly to the Exchange as part of the eligibility determination and enrollment process. HHS should also ensure that, in states where Web-based brokers are permitted to enroll people in QHPs, women are linked seamlessly to the Exchange for eligibility determinations and enrollment and are given prominent notification (consistent with 155.220(c)(3)(vi)) that they may withdraw from the Web-based broker process and utilize the Exchange Web site at any time.

[http://www.ncsl.org/documents/health/4-Waltman-ncsl\\_TF.pdf](http://www.ncsl.org/documents/health/4-Waltman-ncsl_TF.pdf)



# Relevant State Laws and Regulations

## **Definitions** (§ 58-33-10)

- "Agent" means a person licensed to solicit applications for, or to negotiate a policy of, insurance. A person not duly licensed who solicits or negotiates a policy of insurance on behalf of an insurer is an agent within the intent of this Article, and thereby becomes liable for all the duties, requirements, liabilities and penalties to which an agent of such company is subject, and such company by compensating such person through any of its officers, agents or employees for soliciting policies of insurance shall thereby accept and acknowledge such person as its agent in such transaction.
- "Broker" means a person who, being a licensed agent, procures insurance for a party other than himself through a duly authorized agent of an insurer that is licensed to do business in this State but for which the broker is not authorized to act as agent. A person not duly licensed who procures insurance for a party other than himself is a broker within the intent of this Article, and thereby becomes liable for all the duties, requirements, liabilities and penalties to which such licensed brokers are subject.
- "Insurance producer" or "producer" means a person required to be licensed under this Article to sell, solicit, or negotiate insurance. "Insurance producer" or "producer" includes an agent, broker, and limited representative.

## **Representation** (§58-33-20)

- (a) Every agent or limited representative who solicits or negotiates an application for insurance of any kind, in any controversy between the insured or his beneficiary and the insurer, is regarded as representing the insurer and not the insured or his beneficiary. This provision does not affect the apparent authority of an agent.
- (b) Every broker who solicits an application for insurance of any kind, in any controversy between the insured or his beneficiary and the insurer issuing any policy upon such application, is regarded as representing the insured or his beneficiary and not the insurer; except any insurer that directly or through its agents delivers in this State to any insurance broker a policy of insurance pursuant to the application or request of such broker, acting for an insured other than himself, is deemed to have authorized such broker to receive on its behalf payment of any premium that is due on such policy of insurance at the time of its issuance or delivery. (1987, c. 629, s. 1.)

# Relevant State Laws and Regulations

## Commissions. (§ 58-33-82)

- (a) An insurance company or insurance producer shall not pay a commission, service fee, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this Article and is not so licensed.
- (b) A person shall not accept a commission, service fee, brokerage, or other valuable consideration for selling, soliciting, or negotiating insurance in this State if that person is required to be licensed under this Article and is not so licensed.
- (c) Renewal or other deferred commissions may be paid to a person for selling, soliciting, or negotiating insurance in this State if the person was required to be licensed under this Article at the time of the sale, solicitation, or negotiation and was so licensed at that time.
- (d) Except as provided in subsection (e) of this section, only agents who are duly licensed with appropriate company appointments, licensed brokers, licensed limited lines producers, or licensed limited representatives may accept, directly or indirectly, any commission, fee, or other valuable consideration for the sale, solicitation, or negotiation of insurance.
- (e) Commissions, fees, or other valuable consideration for the sale, solicitation, or negotiation of insurance may be assigned or directed to be paid in the following circumstances:
  - (1) To a business entity by a person who is an owner, shareholder, member, partner, director, employee, or agent of that business entity.
  - (2) To a producer in connection with renewals of insurance business originally sold by or through the licensed person or for other deferred commissions.
  - (3) In connection with the indirect receipt of commissions in circumstances in which a license is not required under G.S. 58-33-26(n). (2001-203, s. 23; 2004-199, s. 20(e).)

# Relevant State Laws and Regulations

## Appointments. (§ 58-33-40 & 11 NCAC 06A .0412)

- (a) Except as provided in subsection (b) of this section, no individual who holds a valid insurance agent's license issued by the Commissioner shall, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed.
- (b) Any insurer authorized to transact business in this State may appoint as its agent any individual who holds a valid agent's license issued by the Commissioner. To appoint an individual as its agent, the appointing insurer shall file, in a format approved by the Commissioner, a notice of appointment within 15 days after the date the first insurance application is submitted. The individual shall be authorized to act as an agent for the appointing insurer for the kinds of insurance for which the insurer is authorized in this State and for which the appointed agent is licensed in this State, unless specifically limited. For purposes of determining the number of appointments for an agent, there shall be one appointment for each kind of insurance for which the appointed agent is licensed in this State, unless specifically limited.
- (c) Repealed by Session Laws 2009-566, s. 9, effective August 28, 2009.
- (d) Every insurer shall remit in a manner prescribed by the Commissioner the appointment fee specified in G.S. 58-33-125 for each appointed agent.
- (e) An appointment shall continue in effect as long as the appointed agent is properly licensed and the appointing insurer is authorized to transact business in this State, unless the appointment is cancelled.
- (f) Prior to April 1 of each year, every insurer shall remit in a manner prescribed by the Commissioner the renewal appointment fee specified in G.S. 58-33-125.
- (g) Any agent license in effect on February 1, 1988, shall be deemed to be an appointment for the unexpired term of that license.
- (h) Repealed by Session Laws 2009-566, s. 9, effective August 28, 2009. (1987, c. 629, s. 1; 2001-203, s. 14; 2009-383, s. 3; 2009-566, ss. 7-9.)

## Responsibility of Company

Before appointing an agent, an insurance company shall determine that (1) The agent holds the proper license for each kind of authority for which the agent will be appointed; and (2) The agent has not committed any act that is a ground for probation, suspension, nonrenewal, or revocation set forth in G.S. 58-33-46.



# Relevant State Laws and Regulations

## Licensing of Broker. (11 NCAC 06A .0404)

- (a) An applicant shall be a licensed agent in North Carolina for each kind of insurance to be brokered.*
- (b) A broker's license gives the holder authority to broker only those kinds of insurance for which he holds an agent's license. Brokering shall be done through a licensed and appointed agent of the company with which the business is being placed. A broker's license does not confer binding authority; it only gives authority to share in commissions with a writing agent.*
- (c) Each applicant shall file with his application a surety bond or cash, certificates of deposit, or securities as provided by statute. Any cash, certificate of deposit, or securities deposited in lieu of the surety bond shall be held in accordance with 11 NCAC 11B .0100.*

## Rebates and charges in excess of premium prohibited; exceptions. (§ 58-33-85)

- (a) No insurer, agent, broker or limited representative shall knowingly charge, demand or receive a premium for any policy of insurance except in accordance with the applicable filing approved by the Commissioner. No insurer, agent, broker or limited representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in a policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy of insurance. No insured named in a policy of insurance, nor any employee of such insured, shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement. Nothing herein contained shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, brokers and limited representatives, nor as prohibiting any participating insurer from distributing to its policyholders dividends, savings or the unused or unabsorbed portion of premiums and premium deposits. As used in this section the word "insurance" includes suretyship and the word "policy" includes bond.*
- (b) No insurer, agent, broker, or limited representative shall knowingly charge to or demand or receive from an applicant for insurance any money or other consideration in return for the processing of applications or other forms or for the rendering of services associated with a contract of insurance, which money or other consideration is in addition to the premium for such contract, unless the applicant consents in writing before any services are rendered. This subsection does not apply to the charging or collection of any fees otherwise provided for by law. (1987, c. 629, s. 1; c. 864, ss. 49, 89; 1989, c. 485, s. 52; 1991, c. 720, s. 4; 2001-203, s. 25.)*

# NCIOM Recommendation on Agent/Broker Compensation

## Recommendation 2.8: Requirements for Agents and Brokers Selling Coverage in the HBE (Sections B and C)

The North Carolina Department of Insurance, in conjunction with the HBE, should examine different ways to prevent conflicts of interest, reduce the incentive to steer individuals or businesses outside the HBE, encourage agents and brokers to work with the smallest employers (with 10 or fewer employees), and encourage agents and brokers to reach out to small businesses that had not recently provided employer sponsored insurance coverage. As part of this analysis, NCDOI and NCHBE should consider the impact of any changes in agent and broker compensation on overall agent/broker compensation, insurers' medical loss ratio, and on premium prices in the nongroup and small group market. As part of this analysis, NCDOI and the HBE should consider whether to:

- i. Pay agents and brokers a standard commission per enrollee regardless of the insurer.
- ii. Require insurers to pay agents and brokers the same standard commission, whether placing business inside or outside the HBE.
- iii. Pay agents and brokers a standard commission for each individual whether enrolling in a nongroup plan or group plan.
- iv. Require insurers to appoint all licensed agents and brokers in good standing who have been certified to offer insurance inside the HBE as part of the insurers' panel.
- v. Pay agents and brokers a higher per person commission or other compensation to encourage agents and brokers to enroll very small groups (eg, groups of under 10 employees).
- vi. Pay higher commissions or other compensation to encourage agents and brokers to enroll small businesses that had not offered health insurance in the last six months.

If the NCDOI, in conjunction with the NCDOI, does not change agent and navigator compensation structure to prevent conflicts of interest or reduce the incentive to steer individuals or businesses to different insurers or plans inside or outside the HBE, then agents or brokers who place business in the HBE must disclose to their individual and small business clients if they receive differential commissions from different insurers.

# Federal Regulations- § 155.220

## § 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

- (a) *General rule.* A State may permit agents and brokers to— (1) Enroll individuals, employers or employees in any QHP in the individual or small group market as soon as the QHP is offered through an Exchange in the State; (2) Subject to paragraphs (c), (d), and (e) of this section, enroll qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange; and (3) Subject to paragraphs (d) and (e) of this section, assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.
- (b) *Web site disclosure.* The Exchange may elect to provide information regarding licensed agents and brokers on its Web site for the convenience of consumers seeking insurance through that Exchange.
- (c) *Enrollment through the Exchange.* A qualified individual may be enrolled in a QHP through the Exchange with the assistance of an agent or broker if— (1) The agent or broker ensures the applicant's completion of an eligibility verification and enrollment application through the Exchange Web site as described in § 155.405; (2) The Exchange transmits enrollment information to the QHP issuer as provided in § 155.400(a) to allow the issuer to effectuate enrollment of qualified individuals in the QHP. (3) When an Internet Web site of the agent or broker is used to complete the QHP selection, at a minimum the Internet Web site must: (i) Meet all standards for disclosure and display of QHP information contained in § 155.205(b)(1) and (c); (ii) Provide consumers the ability to view all QHPs offered through the Exchange; (iii) Not provide financial incentives, such as rebates or giveaways; (iv) Display all QHP data provided by the Exchange; (v) Maintain audit trails and records in an electronic format for a minimum of ten years; and (vi) Provide consumers with the ability to withdraw from the process and use the Exchange Web site described in § 155.205(b) instead at any time.
- (d) *Agreement.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with the terms of an agreement between the agent or broker and the Exchange under which the agent or broker at least: (1) Registers with the Exchange in advance of assisting qualified individuals enrolling in QHPs through the Exchange; (2) Receives training in the range of QHP options and insurance affordability programs; and (3) Complies with the Exchange's privacy and security standards adopted consistent with § 155.260.
- (e) *Compliance with State law.* An agent or broker that enrolls qualified individuals in a QHP in a manner that constitutes enrollment through the Exchange or assists individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs must comply with applicable State law related to agents and brokers, including applicable State law related to confidentiality and conflicts of interest.