

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

*In-Person TAG Meeting #9*

October 17, 2012



MERCER

OLIVER WYMAN

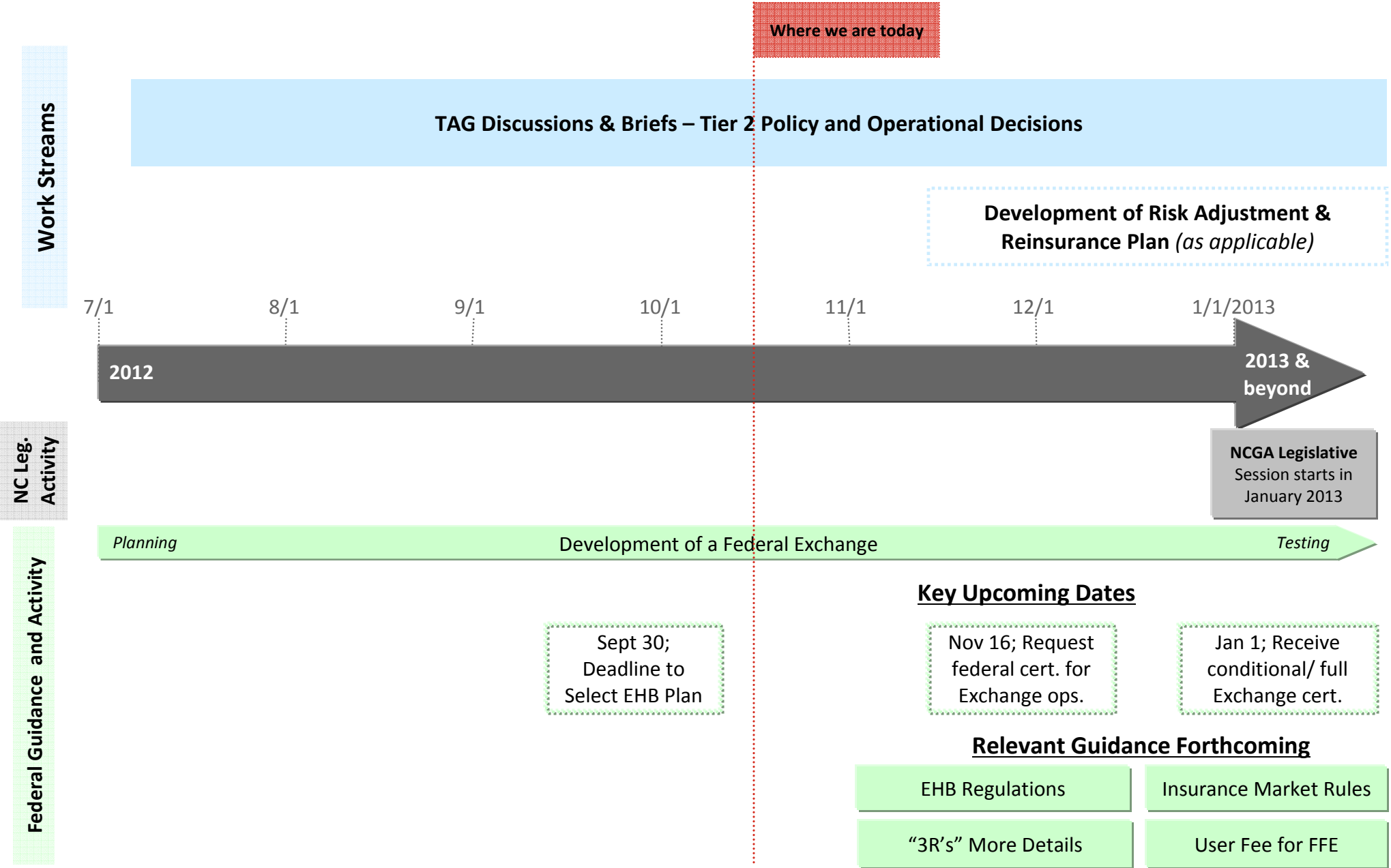
# Agenda

<b>9:30 – 9:35</b>	<b>Welcome and Introductions</b>
<b>9:35 – 9:45</b>	Project Timeline, Goals/Objectives of Today’s Discussion, and Statement of Values for TAG
<b>9:45 – 10:45</b>	Items for Discussion in TAG Meeting #9 <ul style="list-style-type: none"><li>• Agent/Broker compensation</li></ul>
<b>10:45 – 11:15</b>	Items for Discussion in TAG Meeting #9, continued <ul style="list-style-type: none"><li>• Agent/Broker Appointment</li></ul>
<b>11:15 – 11:30</b>	<i>Break</i>
<b>11:30 – 12:20</b>	Items for Discussion in TAG Meeting #9, continued <ul style="list-style-type: none"><li>• Should carriers be required to limit the tobacco rating factor to something lower than 1.5?</li></ul>
<b>12:20 – 12:30</b>	Wrap Up and Next Steps

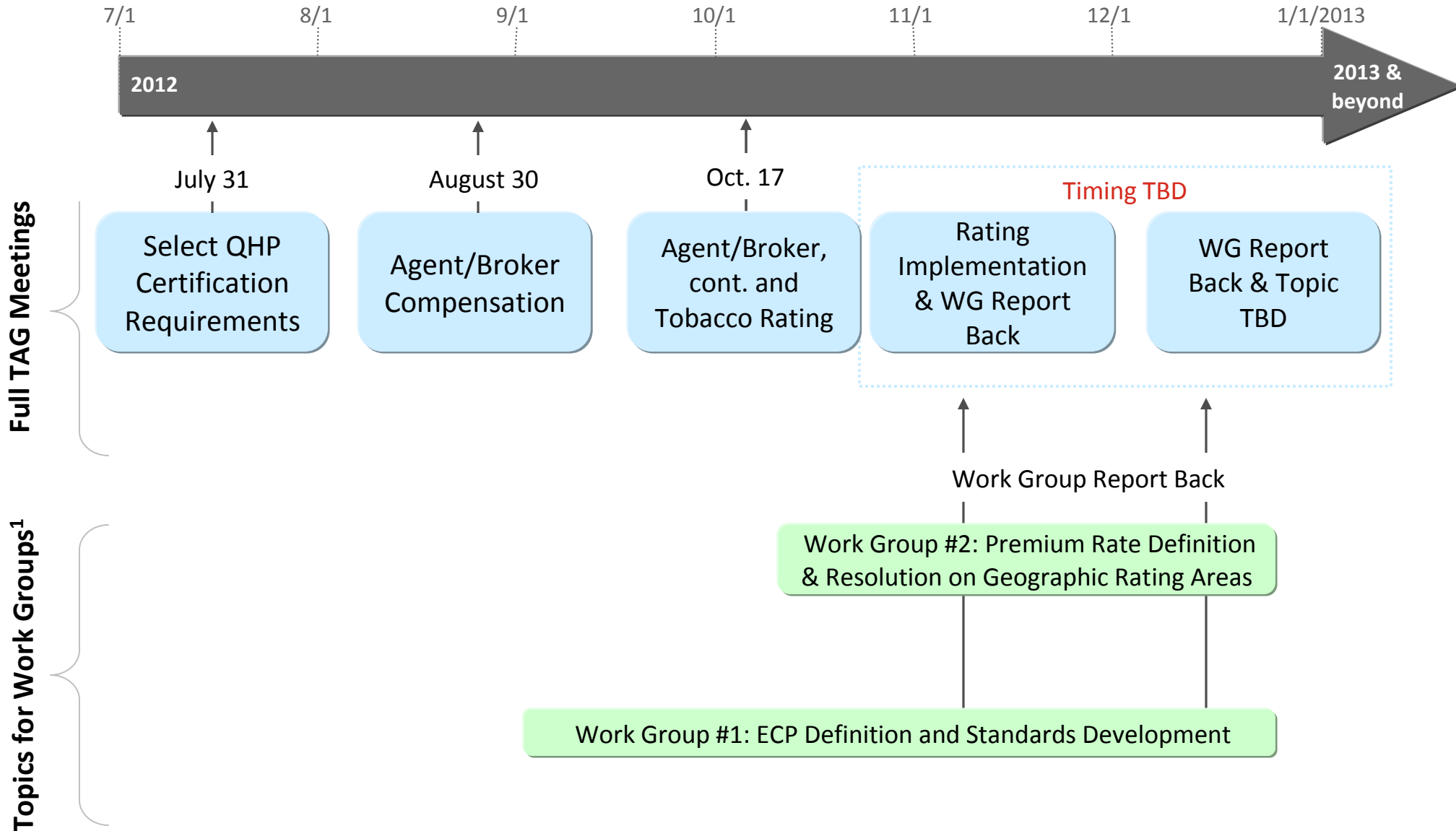
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# Current Project and Regulatory Timeline



# Tentative TAG Meeting and Work Groups Planning for 2012



<sup>1</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

- Continue Discussion of Agent/Broker Compensation and Appointment Issues and Potential Impacts on the Marketplace
- Address Specific Measures that North Carolina Could Consider to Manage Agent/Broker Issues Both In and Out of The Exchange
- Discuss the Tobacco Rating Requirement and Potential Affordability Implications

**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 State/Federal Laws and Regulations

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

- 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)*)

## **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)*)

## **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.***

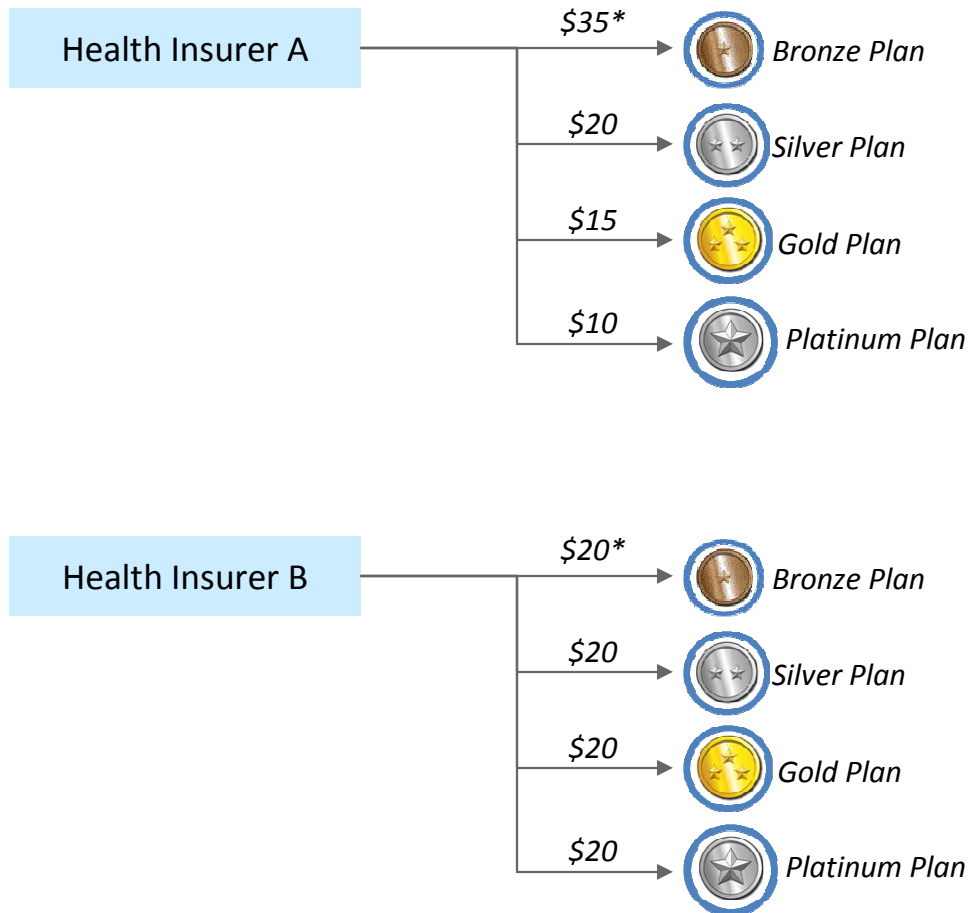
## **Commissions** *(§58-33-20)*

- ***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.***

Details of state and federal law/regulations can be found in the appendix

# Issue Overview: Insurer Steering via Agent/Broker Compensation

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



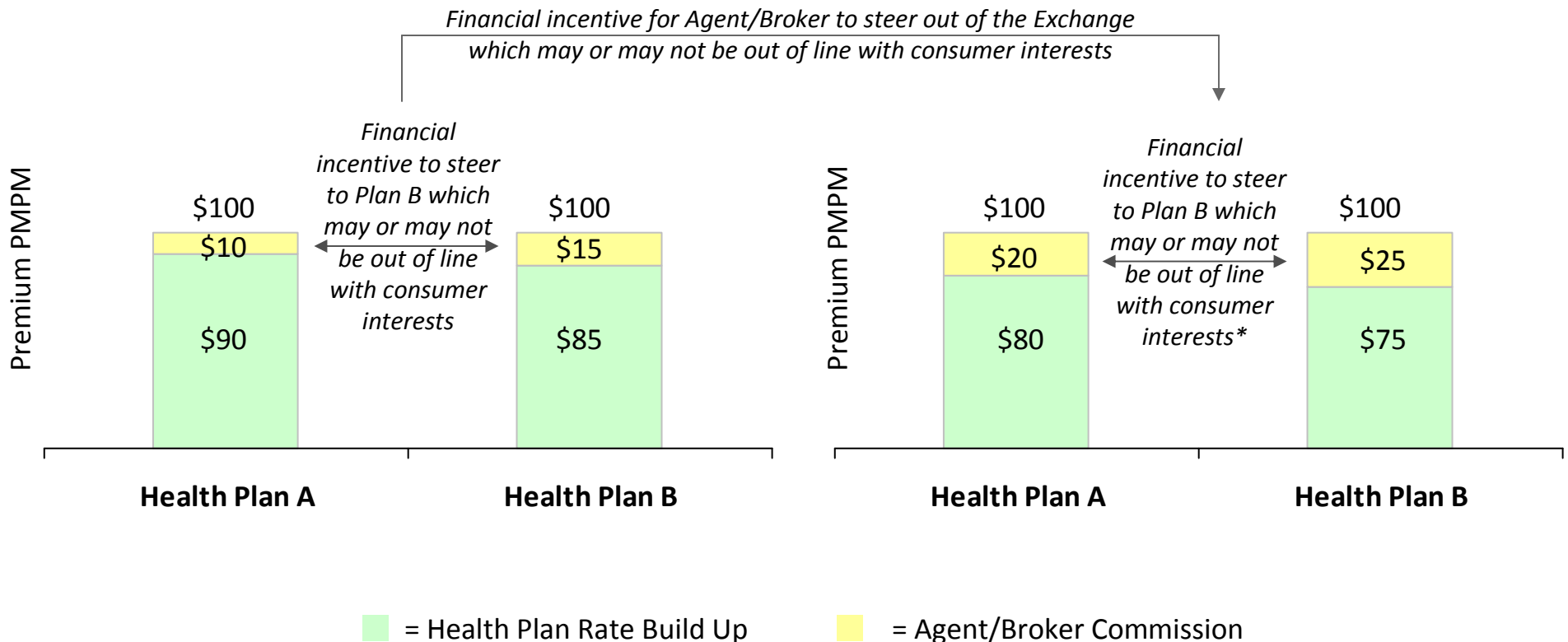
\* Compensation from insurer to agent/broker

# Issue Overview: 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, although dynamic exists in the market today.*

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.

*In the prior TAG meeting, consensus was reached to further discuss standardization of agent/broker compensation.*

1. To what extent, if any, should agent/broker commissions be standardized when the Exchange comes on line?

TAG Response: 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 to determine which solutions are most feasible.

2. What other options should be considered with respect to agent/broker compensation?

TAG Response: 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.

# North Carolina Agent/Broker Organization Survey Responses\*

	Question	Group 1	Groups 2 and 3
1	Insurance Carriers shall provide the same agent/broker compensation for a specific plan whether it is sold inside or outside the Exchange	Yes	Yes – 85% of members agree
2	Each Insurer shall set a standard commission rate across all health insurance products it sells inside and outside the Exchange. (Commission rates would be set separately for the individual, small group and large group markets.)	Yes	Yes – 78% of members agree <i>Members expressed concerns about commission rates dropping or switching to inclusive health payment rates.</i>
	If yes, would you support standardizing commissions at a certain dollar amount, % of premium, or either?	% of Premium	Dollar Amount – 22% % of Premium – 55% Either – 23%
3	All insurers shall utilize the same standard commission rate (set by some third party) across all health insurance products sold inside and outside the Exchange. (Commission rates would be set separately for the individual, small group and large group markets.)	No	No <i>Members do not like the idea of an outside third party setting commissions, especially the government.</i>
	If yes, would you support standardizing commissions at a certain dollar amount, % of premium, or either?		For those members that responded yes, % of premium was the most popular response (about 55%)

\*Respondents were asked to assume that average agent/broker compensation is maintained, and indicate which of the following policies their organization would support to guarantee that North Carolina consumers receive unbiased advice from and are best served by the agent/broker community.

# Survey Responses (contd.)

	Question	Group 1	Groups 2 and 3
4	If commission is standardized, how should the standardized commission rate be set?	NCDOI should be the entity to establish the standardized compensation levels with strong input and coordination with a representative committee/group of participating carriers and agent community.	<p>Answers varied widely among members.</p> <ul style="list-style-type: none"> <li>▪ Should be left to the carrier</li> <li>▪ DOI to establish guidelines</li> <li>▪ Third party (e.g., HHS)</li> <li>▪ Support for free market</li> </ul>
5	All insurers shall eliminate production-based sales compensation.	Yes	No – 71% of respondents disagree
6	All insurers shall restrict production-based sales compensation. Please describe acceptable restrictions.	Not answered	No – 75% of respondents disagree
7	All insurers shall eliminate non-commission compensation.	No	No – 73% of respondents disagree
8	All insurers shall restrict non-commission compensation. Please describe acceptable restrictions.	Not answered	Most disagree with any restrictions but, if necessary, they are willing to give up trips.
9	Agents/brokers shall be required to disclose differential commissions and compensation to consumers	No	50/50 split among members

# TAG Discussion: Options for Standardizing Agent/Broker Compensation

Options	TAG Discussion		
	Yes for 2014?	Consider for 2016?	No?
1. <i>Insurance Carriers shall provide the same agent/broker compensation for a specific plan whether it is sold inside or outside the Exchange.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. <i>Each Insurer shall set a standard commission rate across all health insurance products it sells inside and outside the Exchange. (Commission rates would be set separately for the individual, small group and large group markets.)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. <i>All insurers shall <b>NOT</b> be required to utilize the same standard commission rate across all health insurance products sold inside and outside the Exchange.</i>	<input type="checkbox"/>		<input type="checkbox"/>

# TAG Discussion: Options for Standardizing Agent/Broker Compensation

	<u>TAG Discussion</u>		
	Yes for 2014?	Consider for 2016?	No?
1. <i>All insurers shall continue to be allowed to pay agents/brokers production-based sales compensation.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. <i>All insurers shall continue to be allowed to pay agents/brokers non-commission compensation.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. <i>Agents/brokers shall be required to disclose differential commissions and compensation to consumers in the individual market</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. <i>Agents/brokers shall be required to disclose differential commissions and compensation to consumers in the small group market</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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# Relevant State/Federal Laws and Regulations

*ACA and Federal Regulations do not address Appointments*

## **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)

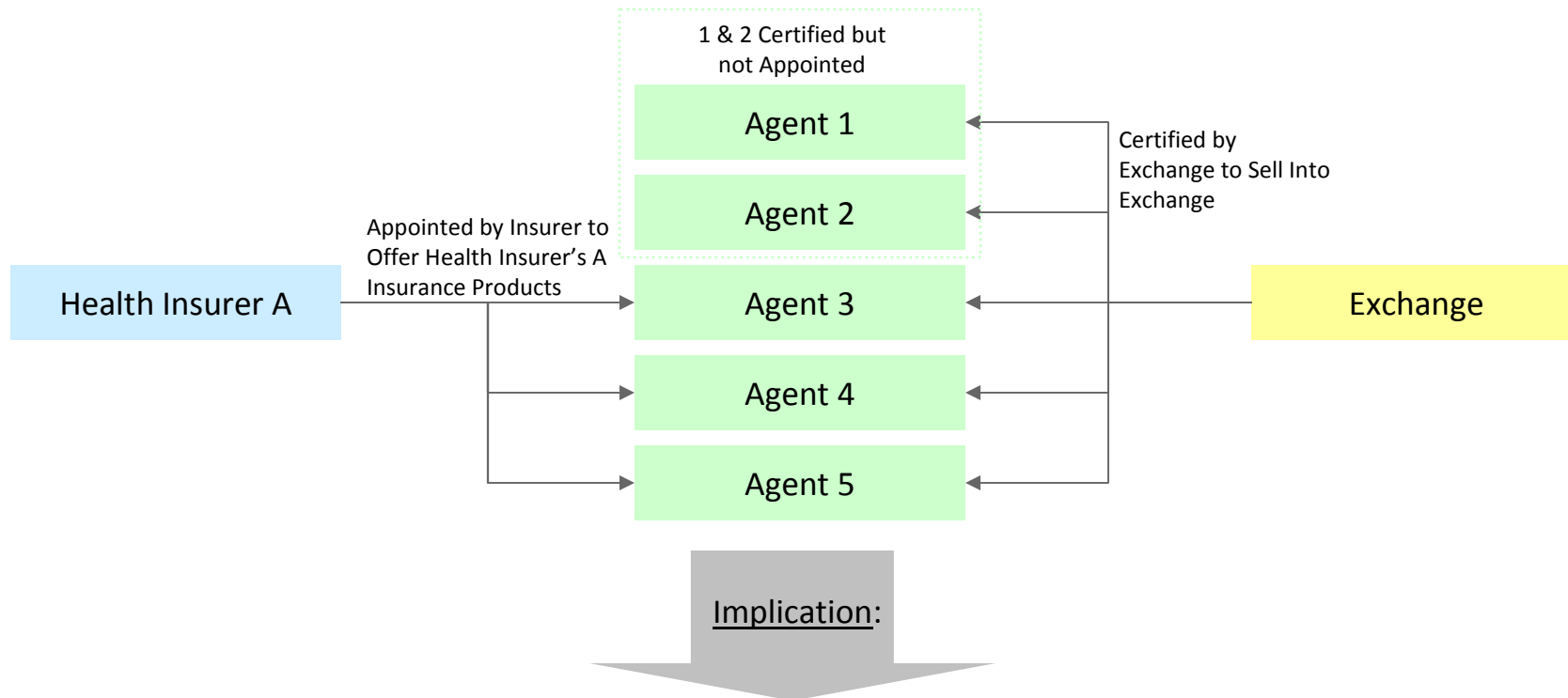
- *A broker's license gives the holder authority to broker only those kinds of insurance for which he holds an agent's license. Brokering shall be done through a licensed and appointed agent of the company with which the business is being placed. A broker's license does not confer binding authority;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

Details of state and federal law/regulations can be found in the appendix

# Overview: Appointments in Relation to Agent/Broker Compensation

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*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 TAG reached agreement that consumers' need to have a better ability to understand and evaluate choices.*

1. 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?

## TAG Response:

- 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.

# North Carolina Agent/Broker Organization Survey Responses\*

	Question	Group 1	Groups 2 and 3
10	Agents/brokers selling products <u>through the Exchange</u> shall be required to disclose to consumers which health insurers they are appointed with and which health insurers they are not appointed with.	No	Yes – Most members are OK with disclosure
11	Agents/brokers shall be required to disclose to consumers which health insurers they are appointed with and which health insurers they are not appointed with, <u>whether they are selling through the Exchange or not.</u>	No	No – 60% of members disagree

\*Respondents were asked to assume that average agent/broker compensation is maintained, and indicate which of the following policies their organization would support to guarantee that North Carolina consumers receive unbiased advice from and are best served by the agent/broker community.

# Options for Disclosure of Appointments

	TAG Discussion		
	Yes for 2014?	Consider for 2016?	No?
1. Agents/brokers selling products <u>through the Exchange</u> shall be required to disclose to consumers which health insurers they are appointed with and which health insurers they are not appointed with <u>in the individual market</u> .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Agents/brokers selling products <u>through the Exchange</u> shall be required to disclose to consumers which health insurers they are appointed with and which health insurers they are not appointed with <u>in the small group market</u> .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Agents/brokers shall be required to disclose to consumers which health insurers they are appointed with and which health insurers they are not appointed with, <u>whether they are selling through the Exchange or not in the individual market</u> .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Agents/brokers shall be required to disclose to consumers which health insurers they are appointed with and which health insurers they are not appointed with, <u>whether they are selling through the Exchange or not in the small market</u> .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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# Relevant Federal Laws and Regulations – Insurance Rating Rules

- Premiums offered by non-grandfathered plans in the individual and small group markets shall vary with respect to the particular plan or coverage involved only by:
  - (i) whether such plan or coverage covers an individual or family;
  - (ii) rating area, as established in accordance with paragraph (2);
  - (iii) age, except that such rate shall not vary by more than 3 to 1 for adults (consistent with section 2707(c))<sup>1</sup>; and
  - (iv) tobacco use, except that such rate shall not vary by more than 1.5 to 1. – (ACA Section 2701(a)(1)(A))
- The federal premium tax credit is based only on premiums before any additional charge for tobacco use. That is, the federal tax credit is not increased for people facing higher premiums due to a tobacco-rating factor. – *Internal Revenue Code 36B(b)(3)(C), as added by ACA 1401*
- The ACA expressly recognizes that a premium of more than 8% of income is not "affordable" and relieves individuals who would have to pay more than this amount for coverage from the individual "mandate" to obtain coverage. – *ACA Section 1501 and 10106*
- The initial premium for a taxpayer whose household income is within an income tier specified in the table to the right shall increase, on a sliding scale, from the initial premium percentage to the final premium percentage specified for the relevant income tier. – *Section 36B of the Internal Revenue Code of 1986, as added by Section 1401 of the ACA*

“In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.0%	2.0%
133% up to 150%	3.0%	4.0%
150% up to 200%	4.0%	6.3%
200% up to 250%	6.3%	8.05%
250% up to 300%	8.05%	9.5%
300% up to 400%	9.5%	9.5%”;

<sup>1</sup>2702(c) refers to child only plans: “If a health insurance issuer offers health insurance coverage in any level of coverage specified under section 1302(d) of the PPACA, the issuer shall also offer such coverage in that level as a plan in which the only enrollees are individuals who, as of the beginning of a plan year, have not attained the age of 21.” Thus, children are not part of the 3:1 limitation.

## Tobacco Use in North Carolina

- 20.9% of the adult population in North Carolina (over 1,458,000 individuals aged 18+ years) are current cigarette smokers. Across all states, the prevalence of cigarette smoking ranges from 9.3% to 26.5%. North Carolina ranks 38<sup>th</sup> among the states.
- 10.8% of youth aged 12-17 years smoke in North Carolina. This compares to 6.5%-15.9% in other states. North Carolina ranks 25<sup>th</sup> nationally.
- The smoking-attributable mortality rate among 35+ year adults in North Carolina is 298.4/100,000. Compared to other states, North Carolina ranks 38<sup>th</sup> in this measure.
- 29.9% of current adult smokers in North Carolina do not have a high school degree, compared to 28.3% with a high school degree and 15.1% with more than a high school degree.
- According to the NC Behavioral Risk Factor Surveillance System, in 2010 low income individuals are more likely to smoke (see table at right)

Household Income	Are you a current Smoker?	
	Yes	No
<b>Less than \$15,000</b>	35.6%	64.4%
<b>\$15,000 - \$24,999</b>	25.7%	74.3%
<b>\$25,000 - \$34,999</b>	22.5%	77.5%
<b>\$35,000 - \$49,999</b>	19.3%	80.7%
<b>\$50,000 - \$74,999</b>	14.3%	85.7%
<b>\$75,000+</b>	11.5%	88.5%

Source: CDC Statistics: [http://www.cdc.gov/tobacco/data\\_statistics/state\\_data/state\\_highlights/2010/pdfs/states/north\\_carolina.pdf](http://www.cdc.gov/tobacco/data_statistics/state_data/state_highlights/2010/pdfs/states/north_carolina.pdf);

IHPS Paper: [http://www.ihps.org/pubs/Tobacco\\_Rating\\_Issue\\_Brief\\_21June2012.pdf](http://www.ihps.org/pubs/Tobacco_Rating_Issue_Brief_21June2012.pdf); and Urban Institute: <http://www.urban.org/publications/406892.html>.

# Tobacco Use Issue in Practice

## Practical Implication of Affordability

- The application of a 50% premium factor means lower income tobacco users could face health insurance premiums that are prohibitively expensive relative to their incomes.
- Research has shown that participation in subsidized programs by low income uninsured falls below 2% of eligibles when premiums exceed 10% of income, indicating that very few lower income tobacco users would participate in coverage with a 50% maximum surcharge, undermining the ACA's goal to reduce the number of uninsured.
- The difference in premiums for a 30 year-old smoker versus non-smoker with an annual income of \$25,000 is illustrated in the table below

	Non-Tobacco User	Tobacco User
<b>Annual Income</b>	\$25,000	\$25,000
<b>Age-Adjusted Monthly Health Insurance Premium</b>	\$300	\$300
<b>Maximum % of Income Eligible to Pay for Premiums (after age adjustment)</b>	6.91%	6.91%
<b>Individual's Monthly Health Insurance Premium Responsibility</b>	\$144	\$144
<b>Tobacco Use Surcharge</b>	\$0	\$150
<b>Total Monthly Health Insurance Premium</b>	\$144	\$294
<b>Total Premiums as a % of Income</b>	\$6.91%	\$14.11%

Source: IHPS Paper: [http://www.ihps.org/pubs/Tobacco\\_Rating\\_Issue\\_Brief\\_21June2012.pdf](http://www.ihps.org/pubs/Tobacco_Rating_Issue_Brief_21June2012.pdf); and Urban Institute: <http://www.urban.org/publications/406892.html>.  
Kaiser Family Foundation: <http://healthreform.kff.org/subsidycalculator.aspx?source=QL>

# Considerations – Tobacco Rating

*Rating by tobacco use sends a public health message and could ensure that costs associated with tobacco are borne only by users, however the complexities associated with defining “use,” identifying users and charging predominantly lower-income individuals up to 50% more than non-users makes may make it attractive for states to limit the rating factor.*

## Pros of having a tobacco rating factor

- Incorporates public health focus in rating, which could encourage people to quit smoking or not take up smoking
- Tobacco users bear the additional costs that comes with use, rather than spread across all people with coverage (including non-users)

## Cons of having a tobacco rating factor

- Uncertain how to define “tobacco use” or determine if someone is a user
- Subsidies for low-income will not be adjusted for tobacco use, meaning that out-of-pocket premium costs would likely be unaffordable to this population
- 50% increase in premiums for tobacco users might exceed the expected costs associated with tobacco use and could dissuade people from self-disclosing tobacco use or signing up for insurance

## Other States' Approaches to Tobacco Use

- During its July meeting the California Exchange considered options with respect to tobacco use rating factors and recommended that the Exchange conduct further research on the pros and cons of requiring a limited (e.g., 5%) rate-up for tobacco use that would be waived if the enrollee participates in a smoking cessation program.<sup>1</sup>
- VA notes that it is difficult to verify if an individual is a tobacco user or not.<sup>2</sup>
- New Jersey law prohibits carriers in the State from taking tobacco use into account in varying premiums: "If New Jersey wishes to permit plans to vary rates based on tobacco use, it must add this factor to the exclusive list of factors set forth in its statutes and regulations. It also would need to adopt a cap on rate variation based on tobacco use that does not exceed, but may be less than, 150 percent."<sup>3</sup>

## Excerpts of National Dialogue

- **Health Access California:** Health Access opposes tobacco surcharges, calling them "illness penalties, not wellness incentives." According to Health Access, AARP, Consumers Union, and the California Pan-Ethnic Health Network also hold this view.<sup>4</sup>

<sup>1</sup>[http://www.healthexchange.ca.gov/BoardMeetings/Documents/July\\_19\\_2012/CHBE-QHP\\_Discussion\\_Draft\\_7162012.pdf](http://www.healthexchange.ca.gov/BoardMeetings/Documents/July_19_2012/CHBE-QHP_Discussion_Draft_7162012.pdf)

<sup>2</sup>[http://www.naic.org/documents/committees\\_b\\_hcra\\_wg\\_120503\\_VHRI\\_HBE\\_PWC\\_7-15-11.pdf](http://www.naic.org/documents/committees_b_hcra_wg_120503_VHRI_HBE_PWC_7-15-11.pdf)

<sup>3</sup><http://www.cshp.rutgers.edu/Downloads/9490.pdf>

<sup>4</sup><http://www.familiesusa.org/conference/health-action-2012/conference-materials/Wright.ppt>

# Options and Action Steps

**Question:** Should insurers be required to limit the tobacco rating factor to something lower than 1.5 in the individual market?

Options	Action Steps
<b>No</b>	<ul style="list-style-type: none"><li>• Do nothing; allow insurers the flexibility to implement the tobacco rating up to a 1.5 to 1 ratio</li></ul>
<b>Yes</b>	<ul style="list-style-type: none"><li>• Determine whether to set a maximum factor to something lower than 1.5 (<i>see next slide</i>)</li></ul>
<b>Other?</b>	<ul style="list-style-type: none"><li>• ???</li></ul>

# Options and Action Steps

**Question:** If insurers are required to limit the tobacco rating factor to something lower than 1.5 in the individual market, what should the factor be?

Options	Considerations
<b>Eliminate tobacco factor</b>	<ul style="list-style-type: none"> <li>• If permitted under regulation, eliminate the ability to rate for tobacco use (e.g. 1:1)</li> </ul>
<b>Apply a lower tobacco rating factor to the total premium</b>	<ul style="list-style-type: none"> <li>• For example, 20% versus 50%</li> <li>• Determine a process for deciding what the factor will be to apply uniformly to all insurers</li> </ul>
<b>Apply a lower rating factor to the premium after subsidy</b>	<ul style="list-style-type: none"> <li>• Apply a factor (e.g. 20%) to the premium after the subsidy has been determined, so that the lower income individual does not face as much cost</li> <li>• Exact process would need to be determined, if permitted under regulation</li> </ul>
<b>Cap the dollar amount of the tobacco rating factor</b>	<ul style="list-style-type: none"> <li>• Apply the factor but limit costs the tobacco user to the lesser of 50% of the premium or a set dollar cap (e.g. \$1200 per year)– if permitted under regulation</li> </ul>
<b>Other?</b>	<ul style="list-style-type: none"> <li>• ???</li> </ul>

Options adapted from the IHPS Paper: [http://www.ihps.org/pubs/Tobacco\\_Rating\\_Issue\\_Brief\\_21June2012.pdf](http://www.ihps.org/pubs/Tobacco_Rating_Issue_Brief_21June2012.pdf)

# Agenda

9:30 – 9:35	Welcome and Introductions
9:35 – 9:45	Project Timeline, Goals/Objectives of Today’s Discussion, and Statement of Values for TAG
9:45 – 10:45	Items for Discussion in TAG Meeting #9 <ul style="list-style-type: none"><li>• Agent/Broker compensation</li></ul>
10:45 – 11:15	Items for Discussion in TAG Meeting #9, continued <ul style="list-style-type: none"><li>• Agent/Broker Appointment</li></ul>
11:15 – 11:30	<i>Break</i>
11:30 – 12:20	<b>Items for Discussion in TAG Meeting #9, continued</b> <ul style="list-style-type: none"><li>• <b>Should carriers be required to limit the tobacco rating factor to something lower than 1.5?</b></li></ul>
12:20 – 12:30	<b>Wrap Up and Next Steps</b>



- **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 progress of the work groups, which in turn may depend on the release of additional guidance from the federal government

*Questions?*

# Survey Responses- Appendix

12. Please provide other suggestions for policies related to agents and brokers that should be considered by the TAG and NCDOL.	
Group 1	The marketplace is the best place to determine what is the best product for the consumer. But it also needs to be a level playing field that allows no one company to have an unfair competitive advantage through agent compensation or other means. The exchange should have no benefit over the open market due to cost or access.
Groups 2 & 3	<p>“The brokers have taken it on the chin to help the insurers be in compliance. It is getting more difficult to be profitable, especially since we are performing more of the duties that used to happen with the insurers and for less compensation. Between hiring staff to handle these duties and taking the cuts we have already endured, we need to be honored as professionals that we are and be compensated for the outstanding job we do for our clients” (Group 2 and 3)</p> <p>“We are being asked to do more and more for much less compensation each year. The agent is the first line of defense for business and individuals. Compliance has become a HUGE issue for the clients and the agents and it is falling to the agents and brokers to try to keep things straight for the clients. I am truly concerned that compensation for the agents and brokers is going to further erode and drive many into early retirement or out of the business. At the least it will drive many small agencies to consolidate to try to save through economies of scale. There is a lot of concern from the agent community that this will turn our consultative business in to a transactional business and if that happens the consumer and small business are going to be the biggest loser.” (Group 3 only)</p>

## 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)

## Health Access California

### Comments on Tobacco Use

Health Access California opposes tobacco surcharges, calling them “illness penalties, not wellness incentives.” According to Health Access, AARP, Consumers Union, and the California Pan-Ethnic Health Network also hold this view.

Health Access states:

- There is no scientific evidence that tobacco surcharge on health insurance premiums reduces tobacco use
- Illness penalties are backdoor underwriting based on health status
- Illness penalties are sometimes a backdoor way to shift costs
- Illness penalties are inherently regressive unless scaled to income
- Illness penalties penalize those at higher risk of chronic conditions (seniors and communities of color)

<http://www.familiesusa.org/conference/health-action-2012/conference-materials/Wright.ppt>



# 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.

# 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.

# 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.