North Carolina Department of Insurance
Market Reform Technical Advisory Group In-Person Meeting #9
Wednesday, October 17, 2012
FINAL Version – Approved by the TAG via email

Meeting Attendees	Organization
TAG Members and NC DOI Project Team	
Joe Winn (*by phone*)	Aetna Health Inc.
David Hill	Assurant
Patrick Getzen	Blue Cross Blue Shield of North Carolina
Tracy Baker	Coventry Health Care of the Carolinas, Inc.
Peter Chauncey	Coventry Health Care of the Carolinas, Inc.
Ken Lewis	FirstCarolinaCare Ins. Co. Inc.
David Contorno	Independent Insurance Agents of NC
Allison Garcimonde	Manatt
Melinda Dutton	Manatt
Sharon Woda	Manatt
Teresa Gutierrez	NC Assoc. of Health Underwriters
Fred Joyner	NC Assoc. of Insurance and Financial Advisors
Vinny Longobardo (*by phone*)	NC Business Group on Health
Allen Feezor (*by phone*)	NC Department of Health and Human Services
Ben Popkin	NC Department of Insurance
Ernest Nickerson	NC Department of Insurance
Jean Holliday	NC Department of Insurance
Julia Lerche	NC Department of Insurance
Lauren Short	NC Department of Insurance
Rosemary Gillespie	NC Department of Insurance
Ted Hamby	NC Department of Insurance
Michael Keough	NC Health Insurance Risk Pool, Inc./dba Inclusive Health
Adam Linker	NC Justice Center
Pam Silberman	NC Institute of Medicine
Interested Parties	
Andy Landes	H-PACT
Amy Jo Johnson	NC General Assembly
Teresa Knowles	NC Department of Insurance
Susan Ryan (*by phone*)	NC Department of Health and Human Services

Agenda

• Welcome and Introductions
• Project Timeline, Goals/Objectives of Today's Discussion, Statement of Values for TAG
• Items for Discussion in TAG Meeting #9
   o *Agent/Broker Compensation*
   o *Agent/Broker Appointment*
   o *Tobacco Rating Factor*
• Wrap Up and Next Steps

Please refer to the October 17 "TAG In-Person Meeting #9" Slide Deck.

Welcome and Introductions

Ted Hamby of the North Carolina Department of Insurance ("DOI" or "the Department") convened the meeting at 9:30 AM and welcomed meeting attendees. Mr. Hamby asked attendees, including those participating by phone, to introduce themselves to the group. Mr. Hamby then turned the floor over to Sharon Woda of Manatt for a review of the objectives of the day's meeting discussion.

Project Timeline, Goals/Objectives of Today's Discussion, and Statement of Values for TAG

Ms. Woda reviewed the past and future project and regulatory timelines for the TAG's ongoing work (*see slide deck for additional details*) and objectives for the day's meeting which included:

- Continue discussion of 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 tobacco rating requirement and potential affordability implications

Ms. Woda briefly reviewed the TAG Statement of Values, developed by the TAG during its first phase of work, and reminded the group that the statement is meant to guide their deliberations and serve as a lens through which to assess the policy options under consideration. Ms. Woda then asked Melinda Dutton of Manatt to kick-off the discussion of agent/broker compensation issues.

Issues for Discussion in TAG Meeting #9

Please note that the "Consensus Points" listed in this section are in DRAFT form only and will be reviewed by the TAG at its next meeting or through email; any modifications to these draft consensus points by the TAG prior to TAG approval will be detailed in the TAG #9 final meeting notes.

Agent/Broker Compensation

Ms. Dutton provided a brief overview of relevant federal and state law and regulations, concerns related to agent/broker compensation alignment in the Exchange, and the results of TAG deliberations on the subject at the group's last meeting. Ms. Dutton also reviewed the results of a survey of agent/brokers in North Carolina in which respondents were asked to indicate which potential new compensation policies they might support (*see slide deck for additional details*). Ms. Dutton then asked the group to evaluate the following three policy options for standardizing agent/broker compensation in the state:

1. Insurance carriers shall provide the same agent/broker compensation for a specific plan whether it is sold inside or outside the Exchange.
2. Each insurer shall set a standard commission rate across all health insurance products it sells inside and outside of the Exchange.
3. All insurers shall **NOT** be required to utilize the same standard commission rate across all health insurance products sold inside and outside the Exchange.

The TAG started by discussing the first two options under consideration – that each insurance carrier in the state be required to offer a standard commission rate 1) for a specific plan whether sold inside or outside the Exchange and 2) across all of its health insurance products whether sold inside or outside the Exchange.

- Several TAG members representing insurance carriers noted that in the current market carriers sometimes attempt to use agent compensation to drive business toward a particular plan or product for business reasons, such as profitability. For example, carriers may offer bonuses to agents for selling HMO products, as these usually are more profitable for insurers than PPOs.
- In response to a question from the DOI regarding whether carriers ever use compensation to drive business toward innovative or value-based products, some carrier representatives indicated that insurers typically do not due to the uncertainty around how those plans will perform, while others indicated that compensation is a component of the offering of innovative or value-based products.
- Members initially discussed that requiring insurance carriers to offer a standard commission rate for their respective plans and products whether sold inside or outside the Exchange is desirable, as it will mitigate the potential for agents to steer consumers to a particular plan or product based on compensation rather than what is in the consumer's best interest.

The TAG discussed the third option under consideration – whether all insurers in the state should be required to use the same standard commission rate across all health insurance products sold inside and outside the Exchange.

- A number of TAG members stated their support for standardizing agent compensation across carriers based on their belief that agent/broker compensation is currently used in the market as a mechanism to influence agent behavior and drive business toward particular plans or products, irrespective of consumer interests. These members expressed the belief that carriers should be forced to compete on the relative value and quality of products offered rather than on the amount of compensation made available to agents to incentivize enrollment of consumers in a given plan. Supporters of standardizing compensation rates across carriers posited that doing so would result in higher-quality coverage options for consumers.

- TAG members representing the agent/broker community reported that based on the results of the survey conducted to assess agents' views on standardization, the agent/broker community is not opposed to standardization as long as it provides agents with sufficiently reasonable income comparable to current average compensation and does not result in a decrease in overall compensation. These members noted that while there will always be people who "follow the money", the vast majority of agents do what is in the best interest of the company or individual they are serving, without looking at bonuses and compensation. These members also observed that because North Carolina on average pays significantly lower base compensation rates than surrounding states, agents are often compelled to pursue bonuses or other types of production-based compensation to "fill the gap" in compensation; accordingly, any assessment of current average compensation that may be conducted to inform the development of a standardized base commission rate must take into account production-based compensation. Finally, agents would likely be opposed to implementation of a model like that currently used by Inclusive Health in which agents are only paid a one-time fee at initial enrollment.
- A smaller number of TAG members opposed standardization, based on the concern that this would limit carriers' ability to base compensation on business needs and could hinder the ability of some insurers to remain competitive in the market, potentially resulting in fewer coverage choices for consumers. These members noted that the ACA already limits the ability of carriers to modify business practices to suit business needs and posited that standardization would be of particular concern to smaller carriers in the state who today can use compensation as one way to compete with dominant carriers.
- Members also expressed concern over precluding carriers from paying less than the standard rate if business needs compel the carrier to reduce agent compensation (i.e., a carrier that is losing money and wants to reduce agent compensation rates to stay afloat or as part of an "exit strategy" to ease their exit from the market). The TAG agreed that in order to address this concern, any standardized compensation rate imposed across carriers should serve only as a cap or "ceiling" on compensation, such that carriers would be prohibited from paying amounts greater than the standardized rate (to mitigate incentive for agents to enroll customers in plans or products based on higher compensation rather than on the consumer's best interest) but permitted to pay rates lower than the standard rate.
- The group discussed whether production-based compensation should be included if compensation were to be standardized. Members agreed that standardization would be ineffective if limited only to commission-based compensation and carriers permitted to continue offering production-based or non-commission compensation to agents. Accordingly, the group agreed that if standardization is pursued, it should include all forms of agent/broker compensation. TAG members representing the agent/broker community reiterated that agents are not opposed to including bonuses in rate standardization as long as current gross compensation (i.e., commission and bonuses) is taken into consideration when estimating average compensation for the potential development of a standardized rate and standardization of bonuses does not result in an overall decline in compensation.
- The TAG discussed how a standardized rate might be developed. Currently, carriers typically either base agent compensation on a percentage of plan premium or pay agents a per member per month (PMPM) flat fee. Members agreed that tying a standardized base compensation to a

percentage of premium could prove untenable for carriers in the long run due to medical inflation and the potential for rapidly increasing premiums. Tying compensation to a percentage of premium could also result in agents focusing on serving families rather than individuals as the former would generate a larger premium payment than the latter. Accordingly, the majority of members seemed to favor a flat PMPM payment cap that is roughly equivalent to agents' current average gross compensation, indexed to the consumer price index, and evaluated on a periodic basis (e.g., every three to five years) to ensure its adequacy. Some members noted that this model is similar to the one currently used in Medicare Advantage (MA) and suggested researching the impact it has had on the MA program. One member stated that only a small number of carriers in the state are currently issuing PMPM payments and recommended that the group reach out for input to those carriers who are currently basing agent compensation on a percentage of premium.

- The TAG briefly discussed which entity might set or monitor standardized compensation rates. Some members suggested that if a process for rate standardization and monitoring were established, the NC DOI should be tasked with administering the policy.
- In attempt to drive toward consensus, members were asked whether any of the options under consideration could "stand alone" (i.e., whether the group would support Option 1 and/or 2 in the absence of consensus around Option 3). TAG members responded that implementing only Option 1 and/or 2 would be ineffective for realizing the goals of standardization and could result in unintended consequences for carriers. One carrier representative indicated that some insurers would likely want to retain flexibility to modify compensation across their own plans and products if payments were not standardized across carriers in order to counter the ability of other insurers to attract business by offering high compensation rates. Accordingly, several members conditioned their support of Options 1 and 2 (requiring standardization within carriers) on consensus around Option 3 (requiring standardization across carriers).

Consensus Point(s):

- There was strong support among many TAG members for standardization of agent compensation both within and across carriers, applicable to all forms of agent compensation (including production-based compensation and non-commissions compensation). However, these members noted that their support is contingent upon the requirement that any standardized rate must: 1) provide reasonable compensation to agents and brokers; 2) be affordable for carriers; and 3) serve as a cap on agent compensation, such that carriers have the flexibility to offer agents less than the standardized rate if they so choose.
- A smaller number of TAG members did not support standardization of agent compensation, particularly across carriers, due to concerns that limiting flexibility for carriers could hinder the ability of some insurers to remain competitive in the market and result in fewer choices for consumers. These members also expressed concern over taking action prior to knowing how 2014 reforms will impact the market.
- Accordingly, the TAG **did not reach consensus** on the issue of standardization of agent/broker compensation, particularly with regard to Option 3 (i.e., requiring that compensation be standardized across carriers).
    - Though there was strong support for Options 1 – 2 among a majority of TAG members, several members did not support full standardization across carriers (Option 3) or wanted

to consider the issue further with colleagues. Additionally, a number of the TAG members in favor of standardizing compensation agreed that their support for standardization within carriers (Options 1 and 2) was contingent upon requiring that compensation also be standardized across carriers (Option 3).

- While clear consensus was not reached, the group agreed that strong enough support exists for the goals of standardization (pending the contingencies described above regarding the requirement that rates be reasonable for agents and carriers) such that the issue should be further examined.

The group then turned to a discussion of agent/broker appointments, specifically in relation to agent/broker compensation and potential impact on consumers' equal access to the selection of all qualified health plans (QHPs) offered through the Exchange.

Agent/Broker Appointments

Ms. Dutton introduced the discussion by describing the results of prior TAG deliberations on the subject and responses from the survey of agents and brokers in the state regarding potential policy options for agent/broker appointments (*see slide deck for additional details*). Ms. Dutton noted that during the group's last discussion of the issue, the TAG had agreed that disclosure might be a mechanism to ensuring that consumers have equal access to all qualified health plans (QHP) available through the Exchange (as opposed to ensuring consumer access to the full range of QHPs by requiring that insurers appoint any agent interested in selling a carrier's QHP).

- TAG member representatives of the broker/agent community reported that survey responses indicate that agents are not opposed to disclosing which health insurers they are or are not appointed with if they sell products through the Exchange. However, agents/brokers were opposed to being required to make the same disclosure if they are not selling any products through the Exchange. Agent/broker representatives noted that disclosure of appointments is not currently required in the marketplace for other types of insurance.
- Other TAG members observed that through health reform, the health care sector is moving toward greater disclosure across all industry segments (e.g., greater disclosure from carriers about costs and rates, greater disclosure from providers on performance and payment) and from the perspective of protecting consumer interests, more disclosure is always preferable to less. Some members countered that implementing and monitoring disclosure requirements could prove burdensome to agent/brokers and state regulators and questioned whether the value brought by increased transparency merits the potential for increased administrative burden.
- The group discussed how big an impact disclosure might have on an agent's business. Members noted that while disclosure was unlikely to have a considerable impact when a client is already meeting with an agent about purchasing coverage, it may make a difference in attracting new customers if agents use their being appointed to sell all products available in the Exchange as a marketing tool.
- The TAG continued to discuss the operational challenges of implementing disclosure requirements and monitoring compliance, and discussed some potential unintended consequences of disclosure. For example, one member raised the issue of current state statute that prohibits agents from discussing plan benefits with consumers about any plans that they are

not appointed to sell. This member noted that requiring disclosure might drive agents to violate the statute because they may reference QHP information available via the Exchange web portal to display plans they are not appointed to sell in the Exchange. One reason for this would be to demonstrate to the consumer the ways in which plans the agent is appointed to sell are similar to products offered in the Exchange.

Consensus Points:

- TAG members **reached consensus** that agents/brokers selling products through the Exchange should be required to disclose to consumers which health insurers they are appointed with and which they are not appointed with in the individual and small group markets.
- A majority of TAG members expressed support for requiring that agents/brokers be required to disclose to consumers which health insurers they are and are not appointed with, regardless of whether they are selling through the Exchange or not in the individual and small group market, but the group did not reach consensus on the issue.

Ms. Dutton then turned the floor over to Ms. Woda to lead the discussion on the tobacco rating factor.

Tobacco Rating Factor

Ms. Woda introduced the discussion by reviewing relevant federal laws and regulations, as well as potential options and related action steps for rating by tobacco use (*see slide deck for additional details*). The ACA permits premiums to vary by tobacco use, but rates may not vary by more than a ratio of 1.5 to 1. The group was asked to consider whether carriers in the state should be granted the flexibility to implement a tobacco rating of up to 1.5, or whether the state should set a maximum factor at something lower than 1.5. The group was also asked to consider what the factor should be if consensus was reached that it should be set lower than 1.5 in the individual market.

Should carriers be required to limit the tobacco rating factor to something lower than 1.5?

- The TAG discussed the relative advantages and disadvantages of rating by tobacco use. Several members of the group noted that tobacco rating provides a potentially powerful opportunity to send an anti-smoking public health message and to drive current smokers toward healthier behaviors, as well as ensuring that costs associated with tobacco use are borne only by tobacco users. However, members also recognized that allowing for a rating factor as high as 1.5 (which equals a 50% increase in premiums for tobacco users) may dissuade people from self-disclosing tobacco use and, counter to the goals of the ACA, result in tobacco users opting out of purchasing coverage.
- Some carrier representatives noted that individual policies currently underwrite based on smoking/non-smoking status, and that the addition of smoking typically results in premiums that are 20 to 30% higher for smokers than non-smokers. Accordingly, members seemed to be in agreement that a 50% increase in premiums through use of a 1.5 rating factor was excessive.

- Several members noted that the group's discussion would benefit from the participation of representatives of the state's public health anti-smoking community to offer a public policy perspective on the use of insurance premiums to incentivize smokers to adopt healthier behaviors and whether other mechanisms might instead be effectively leveraged to this end. For example, one member expressed opposition to increasing the cost of insurance as a mechanism to reduce tobacco use and suggested that other, less potentially problematic policy levers be used instead. Another member suggested an increased tobacco tax as an example one such policy lever.
- Members agreed that if the state decides to allow carriers to use a tobacco rating factor of up to 1.5, it should also consider requiring that those carriers be made to offer the full range of smoking cessation benefits and wellness programs to assist smokers in quitting. One member also noted that if carriers are permitted to rate by tobacco use, insurers should be required to waive such rating factors if an individual is participating in a tobacco cessation program (as is currently required under HIPAA).
- The group discussed the potential futility of imposing tobacco rating factors on smokers as the potential for increased premiums would likely result in most people withholding information on their tobacco use from providers and payers. This could also prove prohibitively burdensome for carriers if they were required to actively monitor consumers' tobacco use in order to impose related rating factors.
- The group extensively discussed the importance of considering insurance affordability when evaluating the desirability of rating by tobacco use. Members expressed strong concern over the possibility that a tobacco rating factor could result in premiums that are unaffordable to low-income individuals in the state (who disproportionately use tobacco relative to other state populations), such that many will consequently choose not to purchase insurance. Accordingly, many expressed support for developing a sliding scale for tobacco rating factors that is tied to income. Others suggested that the state might also consider conducting an analysis to identify the most ideal rating factor or range of rating factors for low-income populations (i.e., a rating factor that would be significant enough to encourage tobacco users to adopt healthier behaviors, but not so high that it would dissuade low-income individuals from purchasing coverage). Members also suggested considering a one-time nominal flat fee charge for smokers when purchasing coverage (which should also be set using an income-based sliding scale).
- One member noted that if the NC DOI takes action to set the maximum tobacco rating factor to something lower than the 1.5:1 ratio permitted under the ACA, it should provide qualitative and quantitative justification for the rating factor it ends up choosing.

Consensus Points:

- The TAG agreed that the tobacco rating factor should be limited to less than 1.5, but did not reach consensus regarding what the appropriate rating factor would be.
  - Some members wanted to seize a public health opportunity to drive tobacco users toward healthier behaviors, but were concerned that increasing costs for tobacco users may dissuade people from self-disclosing tobacco use or, counter to the goals of the ACA, result in low income tobacco users opting out of purchasing coverage.

        - Other members felt that a rating factor should not be used for tobacco use and questioned whether other policy levers, such as a direct tobacco tax, might be more appropriate and effective to target tobacco use in the state.
    - The TAG agreed that additional information would inform its assessment of the tobacco rating factor issue, including input from anti-smoking public health experts in the state, forthcoming federal guidance, and additional research into the impact of requiring a premium rate increase for tobacco use (particularly on low-income populations).
    - The TAG agreed that any further consideration of the issue should take into account concerns related to implementation challenges (e.g., how will carriers be able to identify and monitor those members who uses tobacco?), affordability (e.g., how to ensure that any cost increases are set high enough to drive changes in behavior but not so high that insurance becomes unaffordable for tobacco users), and equity (e.g., how to reconcile the potential subsidization of tobacco users coverage costs by non-users if a tobacco rating factor is not imposed; how to justify rating for tobacco use but not for other potentially risky/unhealthy behavior).

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

<u>Wrap Up and Next Steps</u>

Ms. Woda reviewed next steps as follows:
- TAG review of meeting minutes. The group was also asked to review the TAG Meeting # 9 minutes once made available in advance of the next meeting. Ms. Woda reiterated that the minutes reflect points of consensus and considerations discussed during the meeting which will be used for developing related issue briefs, and that accordingly it is important that members carefully review the meeting notes.
- Attend next in person meeting (date and time of meeting is TBD).

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

The meeting was adjourned at 12:25 pm.