



STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
BENEFITS ADMINISTRATION

312 Rosa L. Parks Avenue  
Suite 2600 William R. Snodgrass Tennessee Tower  
Nashville, Tennessee 37243  
Phone (615) 741-4517 or (866) 576-0029  
FAX (615) 253-8556

Mark A. Emkes  
COMMISSIONER

Laurie Lee  
EXECUTIVE DIRECTOR

To: Members of the Agent Broker Technical Advisory Group (TAG)  
From: Brooks Daverman  
Date: March 9, 2011  
Subj: Materials for Meeting on Friday, March 25, 2011

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We look forward to welcoming you to the third meeting of the Agent/Broker Technical Advisory Group (TAG) on Friday, March 25, 2011 from 11:00 am – 1:00 pm (CT). Please note that we will begin at an earlier time to allow out-of-town members extra time to return home, although this may require members to eat an earlier or later lunch than they are used to. We will meet again in the Madison Room on the third floor of the Tennessee Tower, which is located at 312 Rosa L. Parks Avenue, Nashville, TN 37243.

The following text provides background for each topic on our preliminary agenda below. In advance of our meeting, please review this memo as time permits of you. Should you have any questions, please feel free to contact me directly at [brooks.daverman@tn.gov](mailto:brooks.daverman@tn.gov) or by phone at 615-532-3163.

## **Preliminary Agenda**

The following reflects the preliminary agenda for our meeting:

- 1. Review of Discussion at Previous Meeting**
- 2. NAHU Whitepaper**
- 3. Proposals on Key Issues Affecting Agents**
- 4. Discussion of Next Steps**

### **1. Review of Discussion at Previous Meeting**

Included as Attachment A is a summary of our last meeting on January 28, 2011. We would appreciate your suggested revisions and clarifications to ensure that we accurately captured the content of the discussion.

### **2. National Association of Health Underwriters White Paper**

We recently discovered a white paper by the National Association of Health Underwriters that covers many of the issues that we have discussed in our meetings (please see Attachment B). We wanted to bring the paper to your attention although we may not spend much time on it during the meeting.

### 3. Proposals on Key Issues Affecting Agents

For this meeting we have gathered together proposals on the key issues affecting agents and brokers. With one exception, these proposals are ideas that we have heard from members of the TAG during our meetings. We have heard feedback from members that the most recent meetings have started to feel like “going in circles” and that they would like the TAG to start reaching definitive proposals. To that end, we put these draft proposals in writing as a way to move from questions to answers. In the meeting, we would like to discuss each proposal, make changes suggested by members, and then gauge whether the proposal has support from the TAG. In cases where you do not support a proposal, we hope you will be able to propose alternatives. We expect this meeting to be one of our final meetings.

Also, please keep in mind that proposals from this group will be evaluated by Tennessee decision-makers based on whether or not the proposals forward their policy goals. For example, we have discussed potential policy goals in previous meetings. Another way to think about this is to consider what policy problem a specific proposal solves.

#### Maintaining Customer Service in Health Insurance Purchasing

Small Employer: Exchange requires small employers to purchase through an agent.

Individual: Website includes prominent button and phone number allowing people to contact an agent at any time in the process.

#### Agent Compensation

Small Employer: Agents are paid commissions or other forms of compensation by carriers. The exchange does not get involved in the compensation arrangement between agents and carriers, except to require that compensation rates are no less than what the carrier pays for the small employer market outside the exchange (to avoid adverse selection). We support the agent of record approach to encourage customer support by agents throughout the year.

Individual: Same as small employer except for one additional proposal: compensation rates are pegged to each carrier’s silver level of coverage, so that an agent who sells a carrier’s plan is compensated the same amount whether the plan is bronze, silver, gold, or platinum. However, different compensation rates will be set by different carriers.

#### Agent Credentialing

Small Employer and Individual:

- Licensed to sell in Tennessee
- Appointed by a certain number of carriers
- Minimum production requirement
- Access fee
- A continuing education requirement and test developed and delivered by an external third party, including professional associations, non-profits, and for-profits.

## Plan Designs

Small Employer: No plan design requirements for small employer plans.

Individual: Exchange sets parameters for somewhere between three and twelve benefit designs to facilitate easy comparisons.

## Requirements for Carriers Inside and Outside the Exchange (Parallel Markets)

Small Employer: Carriers that offer plans outside the exchange would also be required to offer inside the exchange (with an exception for carriers with a small number of subscribers outside the exchange).<sup>1</sup>

Individual: No requirement for carriers to participate in the individual exchange.

## Other Issues Pending Federal Rules

We have asked for federal guidance on other pertinent issues (see Attachment C for those emails). Since we do not have federal guidance, we have not included proposals on these issues, but we are interested in the thoughts of the TAG members.

Plan pricing: Are premiums required to vary by a ratio of 3:1 for age and 1.5:1 for tobacco use, or could the variation be less?

Multi-state employers: What state exchange will be used by employers with employees in multiple states?

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<sup>1</sup> This requirement is not one that we have discussed in the TAG, but it is included as a way to maintain participation in the small business exchange.

# **Attachment A: What We Heard**

*Draft Summary of the Agent/Broker TAG Meeting on January 28, 2011*

## **Agent/Broker Services**

Several agents and brokers expressed their belief that the move to guaranteed issue, community-rated insurance would change their current work (and time obligations) with clients. The elimination of medical underwriting should simplify the process substantially. They indicated that it would likely lead to some increase in business volume, but they were unclear as to the magnitude of the effect.

## **Call Center**

In a digression during the agent/broker service discussion, Brooks and Brian provided some details about how a Call Center (which is required under PPACA) could function. They indicated that Call Center could plausibly operate as a virtual network of existing agents rather than a new facility (or vendor) with new staff. Several agents/brokers asked about how the call volume might be distributed under such a system; Brian indicated that the caller might apply filters (e.g., geography) and then the exchange could distribute the calls in a preset (or even randomized order) among brokers that were willing to accept the calls. Agents and brokers expressed some reservations, though two TAG members acknowledged that the State was trying to find creative ways to rely on the existing distribution channel of trained producers.

## **Credentialing**

In the discussion about the broker/agent services, the group spent some time talking about the appropriate qualifications and credentialing to serve on the exchange. These may include:

- Licensure (either under current or new “exchange” category);
- Appointment with one or more major insurers
- Training/continuing education
- Test (annual?)
- Tenure as an agent/broker
- Volume (lower threshold)
- An annual fee

The group discussed the pros/cons of each and made no recommendations. However, the dialogue was illustrative of the underlying concern as to how can the exchange ensure that individuals can get accurate information and quality service from brokers listed there. It also revealed an implicit assumption that a “come one, come all” approach may include licensed brokers who are relatively inexperienced and/or unfamiliar with the exchange.

## **Compensation**

The group continued the previous discussion about the structure of agent/broker compensation. A few key details came out of this dialogue:

- Several agents recommended that the State mandate some form of parity in terms of commissions inside and outside the exchange in order to keep producers neutral about using the exchange.
- One broker asked whether brokers could be compensated for helping individuals make plan selections using the free choice vouchers (particularly if that agent had helped the small group initially purchase coverage); Brian indicated that this may be desirable.
- The members of the TAG appear to prefer flat PMPM payments over the course of the year instead of “up-front” payments at the time of enrollment. One broker noted that the flat PMPM approach would help to cover the costs of providing ongoing service to clients. If combined with the Agent of Record (AoR) approach, this compensation system may also reinforce the exchange’s quality of service goals.
- One broker made an insightful comment that payments to agents/brokers have a value proposition related to reductions of uncompensated care. To the extent that agents/brokers help the exchange to maximize enrollment (thereby minimizing the number of uninsured), they will also help to minimize uncompensated care costs to the State’s health care providers (and payers).

**Follow-on point:** We had been debating how we could best make the business case to the federal government to give the states maximum flexibility around agent/broker compensation from (or through) the exchanges. It later occurred to us that we could use the example of the hard-to-reach uninsured and related it to uncompensated care costs. By way of example, we might be able to convince the Feds that exchanges should be allowed to make robust “bonus payments” to agents/brokers that enroll an individual who has been uninsured for the previous 12 months. An intervention along these lines would be targeted (arguably on the hard-to-reach), tied to the outcome of interest, and associated with a reduction in liabilities elsewhere. We would appreciate your feedback on this notion.

- One broker helpfully explained the agent compensation structure in the worker compensation assigned risk pool (which we understood to be a 5% commission). This might serve as a model.

**Follow-on point:** Upon reflection, we are unclear whether the federal government would approve a compensation structure that may induce producers to “sell up.” Thus, we might be able to develop a PMPM compensation scheme that is pegged to the second-lowest-cost silver plan (a benchmark value used for other purposes), regardless of whether the agent/broker enrolls the client in a bronze-, silver-, gold-, or platinum-level plan. We would appreciate your feedback on this notion.

## Attachment B



# National Association of Health Underwriters

*America's Benefits Specialists*

## The Role of Health Insurance Agents, Brokers and Consultants in Any Health Insurance “Exchange”

Licensed health insurance agents, brokers and consultants design benefit plans, explain coordination issues of public and private benefits to individuals/employees, and solve problems that may occur once coverage is in place. They are also at the forefront of helping to design and implement cutting-edge health promotion and wellness programs for employers—a focus that everyone agrees is critical to combating increasing health care costs. We know that the agents and brokers will be needed more than ever to serve as counselors and advocates for the American consumer if an “exchange” is a component of comprehensive federal health reform legislation.

As an association representing more than 100,000 health insurance agents, brokers and benefit specialists from every state in the country, the National Association of Health Underwriters has the following thoughts about the role of our members in any health insurance exchange:

### **Access**

The standardized online format for presenting health insurance coverage options to consumers should include an option to contact a certified, state-licensed agent/broker for assistance. This function could be structured similarly to a Web-based portal for home sales, [www.realtor.com](http://www.realtor.com), which presents property listing information in a standardized format but also connects a potential homebuyer with the state-licensed property listing agent. In addition, it is key that the standardized online information format requirements should not preclude agents and brokers from presenting additional information to their clients when they connect with them on a personal level.

### **Certification**

Agent/brokers who would like to participate in selling and servicing products through the exchange should be required to complete an annual exam-based certification process that addresses both private coverage options and public assistance and subsidy-eligible options to ensure that familiar with all coverage choices available to consumers. Trained advisors would help increase access and overall coverage rates by helping individuals determine what options were available and best suited to their individual needs.

NAHU will work in partnership with other appropriate parties to assume responsibility for developing a certification program – the Certified Health Care Access Advisor - for agents and brokers who market through an exchange, to ensure that they are thoroughly trained on all private and government health insurance options, as well as the principles of ethical behavior. CHCAA training program would include both national and state-specific components, and NAHU would make available to the public a searchable database of insurance professionals who have been certified.

Development of this educational program is already underway and will save millions of administrative and public outreach dollars, allowing the savings to be used in a better direction: toward providing lower-income individuals with the subsidies they need to purchase health care coverage.

### **Additional Marketing Requirements**

Some have proposed requiring additional marketing requirements for agents and brokers selling products in any exchange similar to those utilized for producers who sell Medicare Advantage products. But the Medicare Advantage rules were designed to protect a very different, distinct and vulnerable population, Medicare beneficiaries, who are buying completely different insurance products than what will be offered through any exchange.

If the rules governing Medicare Advantage producers were applied to the exchange marketplace, they would not provide appropriate, adequate or necessary consumer protections. An example of one of the many Medicare Advantage marketing rules that would not translate at all to the exchange marketplace is the ban on simultaneously cross-selling other non-health insurance products. If that rule was applied to the exchange, it would mean that agents and brokers would not be able to discuss group life insurance products, dental insurance, long- and short-term disability and many other elements of a normal employee benefit package with an employer or employee at the same meeting. The agent would have to make an appointment to come back 48 hours later. Not only does this rule have no value in the under-65 health insurance marketplace, it would be extraordinarily problematic to virtually all American employers that might offer coverage through an exchange.

NAHU believes that an exam-based certification process for health insurance agents and brokers selling in the exchange would be much more appropriate than the application of rules designed for an entirely different insurance marketplace under markedly different circumstances. In addition, it should be specified that all individuals and entities selling through any exchange should be subject to existing state-licensure and continuing education requirements and all other applicable state-based regulations.

### **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.

### **Other Means of Enrollment Assistance (Call Centers, Navigators, Enrollment in Public Places)**

Discussions concerning national or state-based exchanges have also suggested that it may be appropriate to utilize other means of assistance to help people purchase coverage, like call centers

or community navigators. Allowing individuals to enroll in coverage at certain public places, like schools and hospitals and public assistance offices has also been considered.

Though government-run call centers have a time and a place in providing basic information and service, they cannot replace the high level of personal service, policy knowledge and accountability that distinguishes the professional agent, broker and consultant. In contrast to the professional agent and broker experience, government-run help centers have a spotty record of service and dependability. Depriving Americans of the services of professionally licensed benefit specialists would not be in the best interests of consumers and patients.

Some have also proposed federal funding assistance for “navigators” to conduct public education activities, distribute information about enrollment and premium credits, and provide enrollment assistance. Health insurers or parties that receive financial support from insurers to assist with enrollment would be ineligible to serve as navigators. Entities eligible to become navigators could include trade, industry and professional organizations, unions and chambers of commerce, small business development centers, and others.

NAHU is unclear on the purpose of health insurance navigators will serve and feels that their functionality is duplicative of some of the role licensed agents and brokers already serve in the marketplace. And many services provided by agents and brokers would never be able to be assumed by a navigator because they lack the expertise to perform those functions, so we question the wisdom of spending precious financial resources on a new system such as the navigators. If navigators should be subject to the same rigorous licensing and continuing education requirements that licensed agents and brokers are required to abide by. In addition, NAHU feels that navigators, if used, should be limited to entities with prior experience in this area such as the SHIPs that provide seniors with assistance relative to the Medicare program.

Finally regarding consumers being able to enroll in public places like schools and hospitals, we feel that consumers should be able to access information about health plans through the exchange’s web-based portal in public locations, but any person assisting in enrollment must be licensed according to the rules of the state. Consumers enrolling in public locations will be the most vulnerable and in need of licensed and professional assistance.

## Attachment C

### *Emails to Federal Insurance Exchange Regulators*

We have emailed staff of the Center for Consumer Information and Insurance Oversight (CCIIO) within the Department of Health and Human Services requesting guidance and information on many issues related to insurance exchange implementation. Below are excerpts from some of our requests for additional information. CCIIO has not answered any of the questions below. In most cases we will need to wait for rules to be issued in the future by CCIIO to answer our questions.

#### Email Dated January 24, 2011

Terence,

In our ongoing dialogue with our agent/broker technical advisory group (TAG) and our actuary/underwriter TAG, we've been asked a few questions regarding premiums:

- (a) Will states have the flexibility to use different age and tobacco bands inside and outside the exchange?
- (b) Will states have the flexibility to set premium rules for premium tiering (e.g., two tiers of single/family vs. four tiers of single/applicant + spouse/applicant + child(ren)/applicant + spouse + child(ren))?
- (c) Must premium tiers be the same inside and outside of the exchange?
- (d) Will states have the flexibility to set age bands by the head-of-household (e.g., determine that the premium tier is based on the oldest member of a married couple vs. based on youngest member of a married couple)?
- (e) To what extent will applicants who self-report tobacco use be required to pay the 50% rate penalty without premium assistance tax credits? For example, will a 60-year-old with a household income of 150% FPL qualify for premium assistance tax credits just for the base premium or for the base premium + tobacco penalty?

Please let us know how we might be able to connect and proceed.

Thanks!  
Brian

#### Email Dated March 3, 2011

Terence,

I've gotten a few more questions that I couldn't answer and wanted to pass them along to you at CCIIO. Any guidance would be appreciated.

Thanks,  
Brian

## **Questions for CClIO on Exchanges, Free Choice Vouchers**

1. Assume that an employer established a plan that provided minimum essential coverage (which it understood to be coverage of 60% of the total allowable costs for essential health benefits). Assume further that the employer adopted a requirement that the member's premium contribution would be capped at 8.0% of the member's gross compensation (presuming that this would be less than or equal to the MAGI for most employee households). Would such an approach exempt the employer from liability for both the employer penalties under PPACA Section 1513 and free choice vouchers under PPACA Section 10108? [Note: If the answer is "yes," then I would expect many self-funded plans to adopt this type of approach to address some of the issues that I included in my email yesterday.]
2. Tennessee borders eight other states, and four of our six major metropolitan areas (Memphis, Chattanooga, Clarksville, and the Tri-Cities) are on the state border. Perhaps for this reason, I am getting the following questions fairly regularly from small employers:
  - (a) If an employer participating in a SHOP exchange has employees in multiple states, must all of the employees use the SHOP exchange in the state in which the employer is domiciled?
  - (b) If an employer has employees who live in multiple states and those employees qualify for free choice vouchers, will the employees be required to redeem their vouchers in the state of the employer's domicile or the state of the employee's domicile?
3. How will employers know or determine an employee's household MAGI for purposes of determining their eligibility for free choice vouchers? Is this going to be an eligibility function that the Exchange will conduct and simply notify employers if one or more of their employees is eligible?
4. Assume that two married persons are eligible for free choice vouchers from their respective (and separate) employers. The employers each (and coincidentally) contribute 90% for individual coverage but only 60% for family coverage. Will these persons have the option to choose individual vouchers from each of their employers? This question arose because at least one employer was unclear about how to interpret the last sentence of PPACA Section 10108(d)(1)(A).
5. Several employers asked the following: can employees who are eligible for free choice vouchers could forego the vouchers and instead enroll in a qualified health plan using a premium assistance tax credit?

-Brian Haile