



# California Health Benefit Exchange

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## California Health Benefit Exchange Stakeholder Input: Individual Market: Agent Payment Options

The California Health Benefit Exchange solicited written stakeholder comments on the proposed Individual Market: Agent Payment Options which were presented in public at the May 22<sup>nd</sup> Exchange Board meeting. The options are detailed in a briefing document available on the Exchange's [website](#) titled *Board Recommendations Brief – Individual Market: Agent Payment Options*. Feedback was solicited in three specific issue areas as well as other general comments. Three organizations submitted comments using a stakeholder input form provided on the Exchange website and three organizations submitted comments in separate letters. Comments received on the input forms have been compiled in the tables below. Letters will be posted separately on the Exchange stakeholder [webpage](#). Stakeholder comments will be used for consideration of revisions to the Individual Market: Agent Payment Options Report. The California Health Benefit Exchange thanks all stakeholders for their valuable comments that will assist in the planning and implementation of the Individual Market: Agent Payment Options.

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## **Comment Letters Submitted**

Benefitscafe.com

D.A. Jones Insurance Services

Rothman Insurance Services

## **Input Forms Submitted**

Anthem Blue Cross

Blue Shield of California

Consumers Union

**California Health Benefit Exchange: Stakeholder Questions**  
**Individual Market: Agent Payment Options**

**ISSUE 1**

<b>Issue #1: Agent Payment Options</b>	
<b>Organization</b>	<b>Comments</b>
Anthem Blue Cross	<p>Anthem appreciates the opportunity to comment on proposed agent payment options. While we offer some comments below, we would like to ask for additional clarification on the options in order to better understand and further comment on them. Specifically, in Option 1, we would like to seek clarification regarding how “mutually acceptable contracts” would be determined.</p> <p>However, based on the limited information provided, we believe that Option 1 would be the most effective payment option. We believe health plans should continue to be able to design commission structures to adequately compensate agents, and should assume full responsibility for the administrative functions and ongoing costs associated with agents. We agree that this option poses the least financial and administrative burden on the exchange.</p> <p>With regards to Option 2, we are concerned that agents assisting Medi-Cal enrollment are not being compensated, and thus caution a model where agents would be required to promote enrollment in a program without any financial incentives. We believe that unless agents are appropriately compensated, ensuring individuals are referred to Medi-Cal could pose a challenge. Agents should have direct financial incentives to assist with any services they provide to facilitate enrollment. We strongly believe this should not be considered a cost of doing business.</p> <p>Furthermore, we would like to caution the exchange about selecting Option 3, where the exchange would pay agents as navigators. We are concerned that this option carries significant risk to enrollment projections in the exchange, particularly if agents chose not to participate in the exchange at all. Furthermore, this could result in unequal payment rates for the sale of insurance products on and off the exchange.</p>
Blue Shield of California	<p>The proposed recommendation allows plans to pay agents directly based on market terms for Exchange coverage and requires parity for commission rates for both QHP products inside and outside the Exchange and non-QHP products.</p> <ul style="list-style-type: none"> <li>• Parity in commission rates for QHP products is appropriate and necessary to meet the requirement to have the same pricing for such products inside and outside the Exchange.</li> <li>• Extending this requirement to non-QHP products seems premature and unnecessary given that subsidies are only available for individuals purchasing through the Exchange.</li> </ul>

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<b>Issue #1: Agent Payment Options</b>	
<b>Organization</b>	<b>Comments</b>
Consumers Union	<p>Consumers Union recommends careful consideration of Option 2, under which the Exchange would serve as a pass through for agent commissions, rather than adopting Option 1. Option 2 would align the individual market agent payment structure with the recommendation for SHOP payment for agents, under which the Exchange would collect and administer commissions. Making the Exchange the collector of agent commissions for both the SHOP and individual Exchange parallels the alignment proposed for health plan and benefit design options. Option 2 would create a simplified structure by which the Exchange would become the single commission payee for all Exchange business for each participating issuer. In addition to coherence and simplicity, Option 2 would reduce the incentive for agents to recommend one plan over another.</p> <p>Consumers Union understands the rationale for relying on current market compensation arrangements between issuers and agents, including commissions based on a percent of premium, to maintain stability in the marketplace. We note, however, that compensation based on a percentage of premium incentivizes agents to guide consumers to policies with higher premiums. Percentage-based commissions built on top of the ever rising health insurance costs also perpetuate the upward spiral and inhibit the Exchange’s ability to contain costs—a critical need in our health care and insurance system. This warrants monitoring over time to consider whether a reasonable flat fee or cap on commissions, rather than a percent of premium without limit, would be a better compensation model for agents.</p>

**ISSUE 2**

<b>Issue #2: Recommended Approach</b>	
<b>Organization</b>	<b>Comments</b>
Consumers Union	<p>The training and other requirements in the Individual Market Agent proposal and in the proposal for the Assister program are not fully compatible. The Individual Market Agent proposal recommends that the Exchange develop curriculum and training specific to agents. We support the proposal for the Assister Program – requiring agents to be trained, certified and registered under the same requirements as Navigators and all other Direct Benefit Assisters.</p>

ISSUE 3

Issue #3: Agent Payment Issues Needing Additional Development (see Table 2)	
Organization	Comments
Anthem Blue Cross	<p>If the Exchange decides to ensure there is transparency for consumers regarding agent compensation and commissions, Anthem strongly believes that any transparency standards should be applied to all channels equally. Likewise, it is also our assumption that, similar to today and per the ACA, premiums for a particular plan would be the same regardless of the sales channel utilized. We are also concerned that transparency may result in consumer confusion. For instance, in the event that a consumer enrolls without a broker or agent, the consumer may look for a discount or rebate of the commission fee.</p>
Consumers Union	<p>Web-based agents: Consumers Union sees considerable downsides to allowing web-based agents or brokers to solicit business for the Exchange. The Exchange is required to have a streamlined website that will provide information and education about applying, becoming eligible for, and enrolling in Qualified Health Plans. The website will be available at no cost to health plans or consumers. It would be duplicative to allow web-based agent sites to provide information for a fee (albeit from issuers) when their website would be required to provide the exact same information as is available on the Exchange's own free website. It would compete with the Exchange's own website, make it hard to monitor steering, and potentially confuse consumers who are supposed to be able to apply in a streamlined manner.</p> <p>If the California Exchange decides to permit web-based agents to assist consumers, additional protections should be put in place. While federal law establishes requirements for the information agent websites must display, there are few specifications regarding how that information must be displayed. In light of the well-established complexity of health insurance decision making and the influential role of the "choice architecture" used to display health plan information, the Exchange should require agent websites to display the information in a manner that maximizes the ability of consumers to find the plan that best meets their needs and avoids elements or displays that inappropriately promote certain plans (such as those paying a higher commission) over others. For example, agent websites should ensure prominent display of any consumer choice tools that the Exchange website makes available (such as the required premium calculator or the ability to filter by whether a particular physician is in a plan's network).</p> <p>In addition, the Exchange should require that web-based agents ensure that consumers are aware of the default sort order of plan choices and that consumers can easily alter the sort order. The websites should be prohibited from hiding any choices in their initial results. When the consumer hides or filters out choices, there must be a clear indicator that not all choices are currently displayed. In addition, the agent websites should be prohibited from</p>

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**Individual Market: Agent Payment Options**

<b>Issue #3: Agent Payment Issues Needing Additional Development (see Table 2)</b>	
<b>Organization</b>	<b>Comments</b>
	<p>displaying sponsored links to health plans, particularly in a manner that makes such links appear to be part of the plan choices display.</p> <p>Web-based agents should not be permitted to utilize confusing, look-alike data elements such as “customer reviews” or “best seller” designations that are less robust than similar items found on the Exchange website (such as the results from user experience surveys and other data that Exchanges are required by statute to provide). Web-based agents cannot be permitted to hide or make hard-to-find key data such as the plan’s out-of-pocket limit or estimates of consumer out-of-pocket expenses.</p> <p>It is critical that consumers are aware that the Exchange has its own website through which they may enroll in QHPs and receive premium assistance, with or without the assistance of an agent and at no additional cost. The Exchange should develop rules that require web-based agents to make clear to consumers which site they are on and require that sites prominently display some distinguishable feature that clearly indicates to consumers that they are no longer on the Exchange’s website, and that they may return to the Exchange’s website at any time to complete enrollment.</p>

**ISSUE 4**

<b>Issue #4: Other Comments</b>	
<b>Organization</b>	<b>Comments</b>
Anthem Blue Cross	<p>Anthem supports the requirement to ensure any assister, including an agent who is paid by a health plan, inform consumers that other enrollment options exist. However, we are concerned that stringent requirements that ensure agents fully represent and display all QHPs available to a consumer may dampen issuer marketing efforts related to the Exchange, leading to lower-than-expected enrollment in Exchange plans.</p> <p>Anthem does not oppose standards that would require commission parity inside and outside of the exchange; however, we would like to seek additional clarification on how such requirements would work. Anthem would like to understand if this would be done at the QHP level, and how this would work (such as in instances where the health plan is tiering agents and paying differential commissions, running a temporary bonus program, etc).</p>

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<b>Issue #4: Other Comments</b>	
<b>Organization</b>	<b>Comments</b>
	<p>We believe the Exchange should have a critical role providing certification for agents and brokers. We believe health plans should not be doing this function, as some standardization will help ensure all consumers receive adequate support in a consistent manner, regardless of an agent’s compensation. We recommend that certification of agents and brokers be done annually, with at least some portion of the training counting toward continuing education credits.</p> <p>Finally, we strongly urge the Exchange to address the issue of Navigators’ liability in representing health plans. This is the first time that health insurance issuers will have sales coming through a channel (i.e., Navigators) that we do not have oversight of through contracting or hiring and training. Given HHS’ rules do not permit the Exchange to require Navigators to have Errors and Omission coverage, we ask the Exchange to address what would happen in the event that a Navigator misrepresents the benefits of a QHP. Furthermore, agents and Navigators will be on an unlevel playing field as agents will continue to be liable for errors in representation while Navigators will not be.</p>
Blue Shield of California	<p>The brief notes that agent training and certification will need to be updated to reflect new market rules and seeks comment on how this might be best facilitated by the Exchange.</p> <ul style="list-style-type: none"> <li>• We recommend such training be a continuing education (CE) requirement. Currently all agents are required to have a minimum number of Ethics CE credits to keep their license active. A similar requirement could be established for Exchange training. The Exchange could work with CE providers to develop the course curriculum, with on-going administration of training and certification conducted by CE providers.</li> </ul>

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<p>Consumers Union</p>	<p>In Consumers Union’s comments to the federal interim regulations, we recommended a number of important protections to ensure that agents working with Exchanges are treated similarly to Navigators to act in the best interest of consumers. Many of the recommendations we made at the federal level have been incorporated into the RHA proposal for the Assister Program. In addition, we believe the Exchange should implement a number of additional requirements specific to agents:</p> <ul style="list-style-type: none"><li>• Develop strong standards to assure that agents and brokers will not use any information obtained through the application process for purposes unrelated to this purpose, such as business an agent or broker may have with issuers outside the Exchange;</li><li>• Verify that agents and brokers disclose to the Exchange and to consumers all payment arrangements and issuer affiliations with QHP and non-QHP issuers (including any potential conflict of interest); and</li></ul> <p>For example, the Exchange should require that an agent or broker that enrolls individuals in a QHP through the Exchange must disclose all fees and payment arrangements from QHP issuers, non-QHP issuers and the Exchange, which the Exchange must display in a manner that is readily available to consumers, including, at a minimum, on the Exchange website.</p> <p>Under Agent Payment Option 1 or Option 2, Consumers Union also urges the Exchange to carefully consider establishing contractual requirements on Qualified Health Plans in the Exchange to:</p> <ul style="list-style-type: none"><li>• Pay equal commissions for the sale of QHP and non-QHP products, creating parity in commission rates inside and outside the Exchange to avoid adverse selection;</li><li>• Prohibit preferential direct or indirect consideration to agents for products inside; outside the Exchange based on health status, age, products with differing benefits; and</li><li>• Prohibit higher commissions, or other direct or indirect consideration, in the first year of a policy versus renewal years, in order to discourage churning;</li><li>• Prohibit volume bonuses for enrolling a certain number of new lives each year in one or more particular products; and</li><li>• Prohibit “fee waivers” for establishing websites, providing e-mail lists, offering preprinted promotional fliers, etc. for those agents who are deemed "high-producing" agents.</li></ul> <p>While some of the concerns these provisions aim to address may diminish over time, current marketplace circumstances warrant addressing them contractually.</p> <p>For Medi-Cal and Healthy Families Program applicants, Consumers Union supports agents in the individual market who are certified and registered as Assisters being required to provide the same scope of education and assistance</p>
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for Medi-Cal and HFP applicants, without compensation, as any other potential Assister. This is a “cost of doing business.” Because different family members applying through the individual market Exchange may be eligible for different programs (e.g. children may be eligible for HFP while their parent/s may be eligible for Exchange subsidies), it is important that agents be fully versed and able to assist in all program options.

Consumers Union is very concerned about the reasonableness of assuming agents will provide fair and impartial information to individuals simply if that is required by the Exchange. Agents have a direct financial relationship with issuers and a financial interest in the transaction of enrollment. If the issuers pay agent commissions, the Exchange is going to have to develop a rigorous monitoring and tracking system to govern agent behavior and monitor the results of agent assistance, including developing strong performance and transparency criteria that will ensure agents are not steering individuals to certain plans contrary to the consumer’s best interest. Adopting Option 2 (see Question #1) where the Exchange will collect and redistribute commissions, may ameliorate many of these concerns.