Individual Market: Agent Payment Options

August 16, 2012

Summary

The California Health Benefit Exchange has taken an "all hands on deck" approach for addressing the challenges of enrolling millions of Californians in new affordable coverage options. To complement the proposed Navigators and Assisters program for helping individuals obtain coverage, the Exchange explored agent compensation alternatives to ensure that licensed agents can also play an important role for enrolling consumers in qualified health plans, and in the full range of new subsidized coverage options.

This Board Recommendation Brief addresses the role of agents in the individual market; the role of agents in the Small Business Health Options Program (SHOP) is addressed in separate brief.

Background

Health insurance agents have historically played a pivotal role in helping employers and consumers choose and enroll in health insurance products. Agents help consumers understand the complexities of health insurance, and guide them through the myriad of options to find an appropriate plan that best suits their needs. Agents can be a valuable resource to consumers and can play a key role in the success of the Exchange. Individuals who access the enrollment process for the Exchange may be eligible for subsidized or unsubsidized Individual insurance coverage, or may be eligible for Medi-Cal or Healthy Families, depending on their income level and family circumstances. It is also likely that some families seeking coverage through the Exchange will have some members who are eligible for one type of coverage (for example Medi-Cal) while other members of the same family are eligible for another type of coverage. Consequently, the enrollment process should consider this full range of potential enrollment, and should be as seamless as possible for the enrollee.

Federal regulations do not require state Exchanges to create a system that allows agents to enroll people in the Exchange. Rather, states have the *option* of allowing agents to provide enrollment assistance. They also have the option of allowing agents to help consumers apply for advance payment of premium tax credits and cost-sharing reductions.

Additionally, California's investment in The California Healthcare Eligibility, Enrollment and Retention System (CalHEERS) project will eventually simplify enrollment processes by providing a "one-stop shop" to determine eligibility for non-subsidized coverage for individuals in the Exchange and subsidized coverage for individuals eligible for various state programs. CalHEERS is jointly sponsored between the California Health Benefit Exchange, the Department of Health

Care Services, and the Managed Risk Medical Insurance Board, with the assistance of the Office of Systems Integration.

Under current practice, agents generally fall into two categories: those who are self-employed or work for an independent agency, and those who are "captive agents," who are employed by a carrier and may receive a salary. All agents are typically paid sales commissions that are higher in the first year of a new sale, but continue to accrue each year the individual remains enrolled. This commission is typically a percentage of the premiums paid by the enrollee or policyholder. There may also be incentive programs or volume triggers that change the commission rate or pay a bonus above a specified number of new sales or total premium value of an agent's book of business with a given carrier. This has implications for the Exchange in its objective to establish policies that assure unbiased representation of Qualified Health Plan products to individuals. There are commonly also commission incentives for combined sales of supplemental dental and life products for individuals.

While agents have and will continue to play a pivotal role in helping many individual Californians find and enroll in health insurance coverage, their function will evolve with the many changes that will occur effective 2014 with the implementation of the Affordable Care Act. Examples of those changes include:

- **Guaranteed Issue**: Under the Affordable Care Act, health insurance companies will be required to offer coverage to everyone regardless of health status and with no screening based on pre-existing conditions. Currently, one of the important roles played by agents is to help consumers navigate the complex issues related to qualifying for coverage and potential coverage exclusions.

- **Standardization of Essential Health Benefits**: All health plans, both inside and outside of the Exchange, will be required to offer products with at least the standard set of Essential Health Benefits. For consumers, there will be a far clearer set of comparable standards of covered benefits across health plans and products.

- **Implementation of Medical Loss Ratio Standards for Health Plans:** Effective January 1, 2011, health plans in the individual market were required to spend at least 80% of the premium collected on health care services. Non-health care services include health plan administration, marketing (including payments to agents), overhead and profit. To the extent plans spend less than the target amount on health care, the plan must pay that amount to individual enrollees as a rebate.

- **New Cost Sharing and Standards for Actuarial Value:** All health insurance products, both inside and outside of the Exchange, will need to offer benefits based on "actuarial value" standards related to cost sharing arrangements. This will also make comparison of plan designs simpler for the consumer. The Exchange is considering whether to establish a set of standardized benefit designs that all Qualified Health Plans must offer, and the range of variation in plan designs that will be permitted in the Exchange.

- **Opportunities for Premium and Cost-Sharing Subsidies**: Millions of Californians will have subsidies available for them to help make health coverage more affordable. In addition to expanded coverage through Medi-Cal and Healthy Families, federal subsidies will also consist of tiered financial payments based on income level to support the purchase of private plan options through the Exchange.

- **Responsibility to Purchase Insurance:** The Affordable Care Act mandates that nearly all individuals have insurance coverage or pay a penalty. Consequently, large numbers of individuals are expected to be newly covered in 2014.

These changes are expected to encourage a large number of individuals to seek insurance coverage for the first time, and others who are currently insured to assess whether there are new options available to them for broader coverage provisions or lower premium. Taken together, these changes will result in many people seeking the assistance of Agents to assess their options.

Issues and Recommendations

Agents have historically played an important role in assisting individuals in enrolling in Individual health insurance and are expected to continue do so once the Exchange becomes fully operational in 2014. The Exchange recognizes that agents can and should play an important role in promoting Exchange products in the individual market. This "Individual Market: Agent Payment Options" brief presents three options for payment to agents who facilitate enrollment of individuals in a plan offered through the Exchange, and potentially for other programs (see Table 1. Summary of Options for Agent Payment). Although there is an additional option of not compensating Agents for assisting Individuals to enroll in the Exchange, that option was dismissed. The three options related to potential agent payment are as follows:

- Option A. Plans Pay Agents (commission based on market terms)
- Option B. Exchange Pays Agents (commission structure that parallels market)
- Option C. Exchange Pays Agents as Navigators

Staff recommends that the Exchange establish policies that would allow for health plans in the Exchange to pay agents directly **(Option A)**. The rationale for this recommendation is outlined below, along with issues that require further investigation.

In a system in which health plans pay agents directly, plans would continue their own commission arrangements as the basis for payment to agents for enrolling individuals in Exchange products. Plans will also handle all administrative functions and ongoing costs associated with managing agents, and resolve any payment or compliance disputes. This option relieves the Exchange of the financial and organizational burden of developing the administrative resources to handle agent payments, and maintains the relationship between the health plans and agents with regard to their payment arrangements.

The Exchange would, however, need to establish clear policies in a number of areas, and has determined the recommended approach for several items. Others require additional consideration and are described in Table 2. Individual Market – Agent Payment Issues Needing Additional Development.

- **Define Agent Role with Non-Exchange Eligibility and Enrollment, including Medi-Cal and Healthy Families**: As discussed in the companion document on Navigators and Assisters, treating agents as "Direct Benefit Assisters," means certifying agents that have completed training with the Exchange. Eligibility for a potential subsidy in the Exchange can only be determined by a process that also first determines if an individual is eligible for Medi-Cal or Healthy Families. Because of this, agents would need to understand the full range of eligibility rules to assist individuals. Beyond assisting anyone on the basics of eligibility, the Exchange would require that Agents assist Medi-Cal and Healthy Families eligible individuals in completing their enrollment in those programs. They would provide the same full scope of counsel and advice as would a Navigator, but would not receive compensation for this service. The arrangement would be considered a cost of doing business with the Exchange, and would be consistent with current practice, whereby Agents often assist individuals in enrolling in Healthy Families with no direct compensation. This process will be facilitated through the CalHEERS project that will combine enrollment processes.
- **Require Commission Parity Inside and Outside the Exchange**: This option allows plans to base compensation for the sale of Exchange products on market commission rates. But to ensure there are not incentives for agents to sell outside of the Exchange, it is suggested that there be a contractual requirement on plans in the Exchange to pay equal commissions for the sale of non-Exchange products. Creating parity in commission rates between sales of Exchange and non-Exchange plans both reduces incentive for agents to steer consumers toward or away from the Exchange. (Note: it is clear that parity should exist for commissions related to Qualified Health Plans, but whether the parity should relate to non-QHP products offered by plans outside of the Exchange requires additional investigation).
- **Payment of Web-Based Agents**: Staff recommends that web-based insurance agents be compensated in the same manner as other agents. One example of a web-based agent is e-Health Insurance. Staff believes that all available enrollment options should be available to Exchange enrollees, and that one type of provider should not be advantaged or disadvantaged compared to any others.
- **Payment of General Agents**: Staff recommends that additional payments not be made to General Agents for Individual enrollees. Although there is a separate recommendation that General Agents receive payment for assisting with Small

Employer enrollment in the SHOP Exchange (this issue is discussed in a separate Board Recommendation Brief) the services required for Individuals are different from those needed by Small Employers, and staff do not believe such additional compensation is appropriate for the Individual Exchange.

- **Assuring Consumers' Access to Unbiased Information and Vesting of Agent Commissions:** It is critical that the Exchange's Agent policy be structured to ensure that all individuals have the full range of information presented to them in an unbiased way. Consequently, the policies must include an obligation that Agents present all health plan and product choices to potential enrollees in a fair and balanced way, regardless of the level of compensation an Agent receives from different health plan issuers. Agent compensation for incentive programs and some vested arrangements may be out of line with this requirement, and the Exchange will need to monitor compensation arrangements to ensure there is no bias introduced in how different health plan options are presented to enrollees.
- **Defining Scope of Agent Training/Certification:** All Agents must meet California Department of Insurance licensure standards that include training requirements. Those standards will need to be updated to reflect new market rules that will apply to Exchange and non-Exchange plans – such as Essential Health Benefits, guaranteed issue and actuarial value. The Exchange will also would need to develop curriculum and training that are specific to licensed agents that reflect the full range of training the Exchange considers important, including specific training on eligibility for subsidies and Exchange coverage. Mechanisms will need to be established to verify Exchange certification and licensure, ensure continuing education, and implement any other agent guidelines set forth by the Exchange. Whether this would be done by the Exchange or health plans needs to be investigated.

The Exchange received stakeholder feedback on these issues as well as those detailed in Table 2.

Considerations for Options Not Recommended

This Brief also considered the option of the Exchange paying agents directly (Option B). This was ultimately rejected due to the administrative burden it would place on the Exchange and the potential for creating instability in the marketplace. If the Exchange set agent compensation at a lower or higher rate than market commission rates, the result would be an unbalanced playing field between products offered inside and outside of the Exchange. For example, if the Exchange were to pay agents less than prevailing commission rates, agents may prioritize sales of non-Exchange plans for which they receive higher compensation, thereby jeopardizing sales of Exchange products.

In Option C, agents would be paid on the same basis as Navigators. Because Navigators will serve a different role than agents in the Exchange, linking the payment of Agents to that of

Navigators is deemed inappropriate. In the preamble to the final rule, HHS distinguishes the Navigator role from the role of agents. HHS states:

> "The responsibilities of a Navigator differ from the activities of an agent or broker. For example, the duties of a Navigator described under §155.210(e) of the final rule include providing information regarding various health programs, beyond private health insurance plans, and providing information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange. Moreover, any individual or entity serving as a Navigator may not be compensated for enrolling individuals in QHPs or health plans outside of the Exchange. As such, an agent or broker serving as a Navigator would not be permitted to receive compensation from a health insurance issuer for enrolling individuals in particular health plans."

Therefore, agents would in effect have to forego their commercial health business to serve as Navigators in the Exchange – an option that was determined to be unworkable.

Table 1. Summary Individual Market: Agent Payment Options		
Option A. Plans Pay Agents (Market Commission)	**Option B. Exchange Pays Agents (Set Commission)**	**Option C. Exchange Pays Agents as Navigators**
SUMMARY The Exchange allows plans and agents to determine mutually acceptable contracts and commission, plans pay agents directly. Agents would need to be "certified" with the Exchange as Direct Benefit Assisters and meet terms (see Navigators and Assisters Recommendations, May 18, 2012).	**SUMMARY** The Exchange pays agents directly and sets the compensation rate for agents who enroll consumers in Qualified Health Plans, and potentially for assisting consumers in eligibility and enrollment processes for other programs.	**SUMMARY** The Exchange contracts directly with agents who enroll individuals in Exchange coverage and pays them the same as it pays Navigators.
PURPOSE Plans use health plan commission structures to compensate agents, and assume full responsibility for administrative functions and ongoing costs associated with agents. The Exchange minimizes its direct relationship with agents and delegates all payment negotiations to the plans. Agents would be required to obtain certification and training on Exchange products as "Direct Benefit Assisters."	**PURPOSE** The Exchange maintains a robust and engaging role in the oversight of agents by designing its own agent payment system. The Exchange enters into direct contracts with agents, and assumes responsibility for their training, appointment, certification, and assuring they are licensed.	**PURPOSE** The Exchange compensates agents at the same rate as Navigators and prohibits agents from accepting payment from the plan and the Exchange for the same sale. Under this scenario, agents who contract with the Exchange are prohibited from retaining direct contracts with plans.
PROS ▪ Minimizes financial and administrative burden to the Exchange ▪ Potential cost savings from utilizing existing infrastructure and administration ▪ Agents continue to receive market rate commissions ▪ Plans can adjust compensation to market changes ▪ The Exchange avoids being viewed as the driver of any future payment changes ▪ Exchange could still require new guidelines to control quality of sales by agents to enrollees	**PROS** ▪ Direct engagement with and oversight of agents ▪ Flexibility in payment design could result in cost savings ▪ Exchange could develop guidelines for agent participation ▪ Possible elimination of vesting arrangements may result in new enrollment in the Exchange. ▪ Top sellers of Exchange coverage could be rewarded as incentive to promote Exchange products	**PROS** ▪ Would promote equal offering of all Exchange products. Agents would be required to work with all Qualified Health Plans, which would remove any incentive to steer consumers towards a particular issuer. ▪ May lower premiums for consumers, as agents in the Exchange would not receive sales commission

Table 1. Summary Individual Market: Agent Payment Options		
Option A. Plans Pay Agents (Market Commission)	**Option B. Exchange Pays Agents (Set Commission)**	**Option C. Exchange Pays Agents as Navigators**
CONS ▪ Exchange oversight would be limited ▪ Agents would continue to equally offer products inside and outside of the Exchange (as opposed to focusing on Exchange products) ▪ High risk of agents steering consumers to plans with which they have any or better commission arrangements ▪ Vested Agent compensation arrangements for some plans may result in disproportionately high payments and encourage steerage ▪ May disadvantage Exchange Qualified Health Plans that do not have established Agent commission arrangements	**CONS** ▪ The Exchange functions as another distribution channel and would jeopardize sales if it were to seek to reduce or adjust agent payments to improve affordability ▪ The Exchange would have to establish a process to execute agent agreements, verify their licensure and file appointment notices with CA Department of Insurance. ▪ Administrative and financial burden placed solely on the Exchange ▪ May negatively impact agent's existing relationships with plans ▪ If the Exchange lags in implementing payment incentive programs or does not establish these programs, agents may prioritize new sales outside of the Exchange	**CONS** ▪ May adversely result in agents not participating in the Exchange at all, thereby lowering Exchange enrollment ▪ Could result in adverse selection, as Agents selectively encourage preferred risk enrollees to plans from which they receive higher compensation ▪ Would potentially result in unequal payment rates for the sale of health insurance products inside and outside of the Exchange

Table 2. Individual Market – Agent Payment Issues Needing Additional Development	
Issue	**Consideration**
Navigators and Agent Payment Coordination	The Exchange must make certain that agents are not dually paid by plans as agents and by the Exchange as Navigators. Therefore, plans must work with the Exchange to develop a continually updated list of Exchange-eligible agents to prevent accidental dual compensation.
Plan Contracts with Agents	The Exchange having payments made directly by health plans allows current contracts between health plans and agents and General Agencies to remain intact. There may need to be amendments of those contracts to include guidelines for the sale of Exchange products.
Variation in Payment Amounts and Methods: ▪ **Graded payment schedules** ▪ **Adjusted payments based on agent volume** ▪ **Recognitions of high-performing agents** ▪ **Special promotions**	The proposal of having payment parity for Exchange and non-Exchange sales is complex given the variety of ways the agents are compensated and incented by health plans. The Exchange needs to investigate the range of payment methods and work with health plans and agents to structure a balanced program and to ensure those existing policies don't interfere with the requirement that all Exchange plans be presented to potential enrollees in an unbiased way.
Establish Agent Participation Rules	The Exchange may need to encourage plans to standardize their agent participation rules insofar as agents are working with Exchange QHPs.
Transparency of Agent Payment	The Exchange needs to consider the extent to which it makes agent commissions transparent to consumers.
Impact and Coordination with SHOP Operations	The Exchange will need to consider how and in what ways the small employer health options (SHOP) operational issues require coordination (e.g., tracking of payments to agents from different sources; would individual members keep the same ID if they transition from employer-based coverage to being COBRA-eligible; the role of agents in enrolling family members of SHOP employees in the individual Exchange).
Supplemental Product Sales	The Exchange will need to develop policies regarding potential agent involvement in the sale of dental and/or vision plans if they are offered as independent/supplemental products in the Exchange.

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