Individual Market: Agent Payment Options

May 21, 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 is exploring alternatives to ensure that agents can also play an important role for enrolling consumers in qualified health plans, and potentially in the full range of new subsidized coverage options.

This Board Recommendation Brief addresses the potential role of agents in the individual market; the role of agents in the Small Business Health Options Program (SHOP) will be 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.

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. To utilize the valuable skills of agents for purposes of enrollment, the Exchange should consider a policy for appropriate compensation.

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 a percentage of the premiums paid by the enrollee or policyholder.

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 at least the standard set of defined 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 are 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. (Note: the Exchange is developing recommendations for potential standardization of cost-sharing arrangements for Exchange products).

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

- **Responsibility to Purchase Insurance:** As part of assuring health insurance is affordable for all – which requires having the entire population participate in getting coverage -- starting in 2014, all Californians have the obligation to participate in the health insurance marketplace. Millions will be supported with subsidies, but this community responsibility will touch both large employers (101+ employees) and individuals. Starting in 2014, the fine for not having insurance will be either $95 or 1 percent of a person's income — whichever is greater. Then in 2015, the fine will be either $325 or 2 percent of income. In 2016, the fine will be $695 or 2.5 percent of income. After 2016, the fine will be based on the cost-of-living adjustment every year.

Issue

Taken together, the factors described above mean that for agents, the only certainty is that there will be substantial changes in their environment in the coming years. From the perspective of the Exchange, the "certainty" reflected in this Board Recommendation Brief is that agents need to be part of assuring millions of Californians get the coverage and care they need. 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.

Options

This Brief considers three options for potential agent payment (see Table 1. Summary of Options for Agent Payment). Given the important role agents now play in the individual market, the options that did not involve some form of payment for agents were considered unviable. The three options related to potential agent payment are as follows:

- Option 1. Plans Pay Agents (commission based on market terms)
- Option 2. Exchange Pays Agents (commission structure that parallels market)
- Option 3. Exchange Pays Agents as Navigators

Recommended Approach

The preliminary recommendation is for the Exchange to establish policies that would allow for health plans in the Exchange to pay agents directly (Option 1). 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 as follows: (Also see Table 2. Individual Market – Agent Payment Issues Needing Additional Development.)

- **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).

- **Define Agent Role with Non-Exchange Eligibility and Enrollment**: 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 is considering two options regarding agents' roles for individuals who are determined likely to be eligible for Medi-Cal or Healthy Families:

    - Option 1. Refer Medi-Cal or Healthy Families Candidates: Under this option, agents would refer individuals to other resources for further counsel and assistance (e.g., to Service Center, local Navigator or county welfare office).

    - Option 2. Assist Medi-Cal or Healthy Families Candidates: Under this option, the agent would provide the same full scope of counsel and advice as would a Navigator, but would not be compensated for this function. This arrangement would be part of the agent's "cost of doing business," and reflects what many agents do now – without compensation - to help individuals enroll in the Healthy Families Program.

- **Defining Scope of Agent Training/Certification:** Given that agents already meet California Department of Insurance licensure standards, which will need to be updated to reflect new market rules – such as Essential Health Benefits, guaranteed issue and actuarial value – the Exchange would need to develop curriculum and training that are specific to agents. This option does not excuse agents from obtaining Exchange certification and specific training on eligibility for subsidies and Exchange coverage before being permitted to enroll consumers in Qualified Health Plans. Mechanisms would need to be established to verify Exchange certification and licensure, ensuring continuing education, and implementing any other agent guidelines set forth by the Exchange. Whether this would be done by the Exchange or health plans needs to be investigated.

- **Assuring Consumers' Access to Unbiased Information:** Under this option, agents would have an obligation to present all health plan and product choices to potential enrollees in a fair and balanced way – irrespective of their compensation arrangements with plans. The Exchange would need to establish and monitor processes that would ensure that agents are both educated about plans from which they do not receive commissions and place consumers in the full range of plans. The Exchange would establish performance and transparency criteria with plans to guarantee fair and accurate representation of Exchange plan information and rate quotes, and assure that agents are fairly offering and communicating all options to consumers.

The Exchange welcomes comment 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 2). 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. (See Table 1. for more discussion.)

In option 3, agents would be paid on the same basis as Navigators. However, it is noted that Navigators will serve a different role than agents in the Exchange. 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 deemed as unviable.

Table 1. Summary Individual Market: Agent Payment Options

Option 1. Plans Pay Agents (Market Commission)	Option 2. Exchange Pays Agents (Set Commission)	Option 3. 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.

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Option 1. Plans Pay Agents (Market Commission)	Option 2. Exchange Pays Agents (Set Commission)	Option 3. Exchange Pays Agents as Navigators
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

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Option 1. Plans Pay Agents (Market Commission)	Option 2. Exchange Pays Agents (Set Commission)	Option 3. 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 (this is particularly a concern for plans that do not pay commissions).	**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 ▪ 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**
Vesting (grandfathering historical contract arrangements and rate schedules which are higher than present market conditions)	Vesting arrangements would need to be reviewed to assure the agents' incentives were not so strong that they would not provide to potential enrollees the range of all plans and products in the Exchange.
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.
Role of Health Plans' Captive Agents (Direct sales programs operated by health plans independent of GAs, external agents and the Exchange).	Independent of the agent compensation policies, the Exchange will be developing options for "Health Plan/Exchange Marketing and Sales Coordination Policies." How "captive agents" are handled needs to addressed in this context.
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.
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.
Role of General Agencies (GA)	With the option of health plans' paying agents, health plans arrangements with General Agents, including contract rates would be matters between the plans and GAs. However, if plans retain existing contracts with agents and General Agencies, it may be challenging for the Exchange to drive common practice standards across all plans. The Exchange may need to investigate the extent to which amendments are needed to existing contracts to incorporate any new Exchange-related guidelines.

Table 2. Individual Market – Agent Payment Issues Needing Additional Development	
Issue	**Consideration**
Impact and Coordination with SHOP Operations	The Exchange will need to consider how and in what ways it 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.
Web-Based Agents	The Exchange is in the process of developing the relationship it may have with web based entities.

References

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