



Legislative Update
Special Health Producer's Edition
November 2011

Health Insurance Rate Proposition Filed

Consumer Watchdog, a non-profit organization, recently announced its filing of the Insurance Rate Public Justification and Accountability Act. This Act would expand some of the concepts contained in the previously voter approved Proposition 103. Originally passed in 1988, Proposition 103 required property and casualty insurance rates to be approved by the Insurance Commissioner prior to taking effect. It also required the position of Insurance Commissioner be elected, rather than appointed by the Governor.

Among other things, the new Insurance Rate Public Justification and Accountability Act will require health insurance companies and health maintenance organizations to file requests for rate increases under penalty of perjury with the Insurance Commissioner prior to putting new rates into effect. It also gives the Insurance Commissioner the authority to order refunds to consumers if a rate is determined to be too high prior to being reviewed.

This Act is another in a series of attempts to hold down the cost of Health Insurance at the expense of the carriers, rather than by reforming a health care delivery system working hard to understand and implement the Affordable Care Act. The results of this new Act will be higher costs, less agent and broker support, and a system being pushed ever closer to Single Payor.

The measure's proponents expect the measure to be cleared by the Attorney General's Office sometime in January and plan to collect the required almost 500,000 by May of next year.

For more information, please see [http://ag.ca.gov/cms_attachments/initiatives/pdfs/i1015_11-0072_\(insurance_affordability_v2\).pdf](http://ag.ca.gov/cms_attachments/initiatives/pdfs/i1015_11-0072_(insurance_affordability_v2).pdf)

NAIFA-California will be working closely with the other agent trade associations and health insurance representatives to determine the best course of action to help defeat the ballot measure. Please stay tuned and get prepared to play an integral role helping to stop a measure that would be so harmful to a marketplace that is already in an evolutionary time.

PPACA and CA Health Benefit Exchange Implementation Underway

The implementation of Affordable Care Act and the building of the California Health Benefit Exchange are well underway in California. NAIFA-California, along with the other insurance agent trade associations, is working diligently to ensure that the role of the agent is protected in the evolving health insurance marketplace. As part of this effort, the agent trade associations continually monitor the Exchange board's activity and recently submitted joint comments expressing concerns about compensation, licensure and the role of the agent working with the Exchange. Below is a copy of the letter that was submitted.



September 27, 2011

TO: Members, California Health Benefit Exchange Board

FROM: Julianne Broyles
California Association of Health Underwriters
Shari McHugh
National Association of Insurance and Financial Advisors-California
John Norwood
Insurance Broker and Agents of the West

SUBJECT: Licensed Health Insurance Agents' Role & Compensation for Exchange Enrollments

The California Association of Health Underwriters (CAHU), the National Association of Insurance and Financial Advisors-California (NAIFA-California) and Insurance Broker and Agents of the West (IBA West) would like to submit the following discussion points regarding means of compensating agents and brokers who provide consumers with health care coverage through the California Health Benefit Exchanges.

The California Association of Health Underwriters (CAHU) is the state's largest association of health insurance agents, brokers and other health insurance industry professionals. Our members help millions of individual Californians and businesses evaluate, select, purchase and use their health care coverage plans, resulting in greater health and financial security. CAHU agents and brokers also act as advocates for policyholders and their families when coverage disputes arise. CAHU agents and brokers perform many functions for small employers with respect to managing their employee benefits program - at no additional cost to the small employer.

The National Association of Insurance and Financial Advisors – California (NAIFA-CA) is an association representing over 5,000 insurance professionals from all sectors of the industry, including life, health, property, casualty and financial services.

IBA West is the leading producer association in the West for insurance brokers and agents. IBA West represents more than 600 firms in California and Washington and more than 14,000

Under the law today, one path to enrollment in Exchange health care coverage products is through **Certified Navigators**.

“§155.210 Navigator program standards.

(a) General Requirements. The Exchange must establish a Navigator program consistent with this section through which it awards grants to eligible public or private entities described in paragraph (b) of this section.”

(b) Entities eligible to be a Navigator.

(1) To receive a Navigator grant, an entity must –

(i) Be capable of carrying out at least those duties described in paragraph (d) of this section;

(ii) Demonstrate to the Exchange that the entity has existing relationships, or could readily establish relationships, with employers and employees, consumers (including uninsured and underinsured consumers), or self-employed individuals likely to be eligible for enrollment in a Qualified health Plan”

The law instructs the Exchange board to establish criteria individuals need to meet before acting as a Navigator for the Exchange. The law also establishes minimum standards for Navigator Certification (e.g., basic knowledge Navigators must have regarding the Exchange, Federal Premium Subsidy, and Medicaid qualification).

Navigators are required to demonstrate this knowledge through a test to be developed by the Exchange Board. Nonetheless, the bill vests substantial power in and grants significant flexibility to the Board in establishing and maintaining the certification requirement.

The second path to health care coverage through the Exchange established by the legislation is through **Licensed Insurance Agents**.

“§155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

(a) General rule. A State may choose to permit agents and brokers to –

(1) Enroll qualified individuals, qualified employers or qualified employees in any QHPs in the individual or small group market as soon as the QHP is offered through an Exchange in the State; and

(2) Assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions for QHPs.” P. 193-194

Licensed insurance agents

Since all health plans to be offered by the two California Exchanges will be plans that require approval and regulation by either the California Department of Insurance (DOI) or the California Department of Managed Care (DMHC), it is appropriate to conclude that all California licensed agents and brokers (who today must meet intensive education and testing requirements imposed by current law) will be permitted to enroll Californians in the Qualified Health Plans available in the two CA Exchanges without becoming certified as Navigators.

Insurance agents are the professionals who should provide individuals and employers with the explanations and education necessary to make informed decisions and to help these individuals to purchase or move to a plan that will meet the new requirements. Agents are able to explain what the changes are, how the individuals will be affected, what their options are and how to get subsidies if they are eligible. Agents will help individuals and employers to choose the health insurance product that fits their budget and personal needs while taking into account who their physician is, what hospital they want, what medications they use and any other special health insurance needs they have.

Since the 1800s, California has required insurance agents to be licensed and the law have required insurance products be marketed and sold by licensed agents. The Insurance Commissioner is charged with ensuring that agents follow all the consumer protection laws and regulations. State law also requires agents to be knowledgeable and ethical, to take continuing education courses and to meet minimum licensure standards both initially and on an ongoing basis.

As background, the Insurance Commissioner regulates the specific curriculum for a Health and Accident insurance license as well as the institutions that provide the actual courses. The current requirement is 20 hours of pre-licensing course work and an additional 12 hours of ethics and code knowledge. In addition, the applicant must complete an exam administered by the Commissioner and pass a background check. This insures that all applicants actually have the requisite knowledge to place an individual or employer in a health insurance product and comply with the consumer protection requirements.

Licensure also allows for a place and a process for consumer complaints should an individual feel they have been given the wrong information or a statute or regulation has been broken. It allows the Commissioner to ensure that anyone not meeting the requirements be disciplined or have their license revoked.

Our organizations also plan to work with the Department of Insurance to ensure that agents who perform such enrollments in Exchange products include in their continuing education courses a module covering the details of the public health programs because some applicants for Exchange health plans may have public health options available to them such as Healthy Families, MediCal, etc. This requirement is needed to make the "No Wrong Door" concept required by PPACA for applicants for Exchange health plans successful.

These "two-path" approach benefits consumers by assuring only qualified individuals will help them choose and enroll for coverage through the Exchange, regardless of whether they buy directly from Exchange Navigators or work through an independent health insurance agent.

Our organizations believe this is especially important for small businesses who may work with independent brokers on a variety of coverages (business, general liability, life, disability, dental, vision, etc.) and want to keep these advisors engaged on issues relating to medical benefits and tax advantages/disadvantages of plan options.

This approach also **benefits the Exchange** because it increases the number of prospects being exposed to the Exchange offerings with no added expense. Medical insurance is often (and increasingly) being purchased as part of a broader package of benefits and services offered by independent agents. By partnering with agents/brokers, the Exchange will gain access to employer working with those brokers who offer these comprehensive benefit packages.

Agent Compensation Proposal

PPACA requires the premiums for all Qualified Health plans in the Exchanges to be the same when purchased outside the Exchange. However, the Exchange will need to collect an administrative fee for every policy sold through the Exchanges, to cover their operating costs.

If the insurers and health care service plans selling the same Exchange plans in the outside private market place have to charge the exact same premium as the Exchange charges - including their administrative fee, then these outside sales will unfairly benefit from collecting the same Exchange administrative fee for themselves - when they are not incurring the Exchange's operating expenses.

As a result, our organizations propose that the premiums for the Qualified Health Plans sold in and outside of the Exchanges include an embedded ten percent (10%) agent compensation fee. The Exchange will add their additional administrative fee to their billings for all those people enrolled in Exchange health plans, which probably should be shown as an additional charge on each policy-billing invoice.

Our organizations propose the following compensation process:

When an agent enrolls a person (or employer group) in an Exchange Qualified Health Plan, the Exchange will pay an agent compensation fees (based on the premium that excludes the Exchange Administrative Fee) -

- Individual Policies: 10% First Year ; 5% All Renewals (including all change of plan or carrier selection)
- Small Group Policies: 7% - First Year and All Renewals

When a Navigator enrolls a person (or employer group) in an Exchange Qualified Health Plan, the Exchange will use the compensation fee to fund the grants to be paid to the community organizations and other entities that have provided Navigators, likely based on the number of enrollees each Navigator produces.

When an agent enrolls a person (or employer group) in any of the same Qualified Health Plans but outside of the Exchange in the private marketplace, the insurer or health care service plan will pay the agent the same agent compensation fee directly, as they do now.

CAHU, NAIFA-California and IBA West are happy to answer questions or supply additional information on this proposal. Julianne Broyles (CAHU) may be reached at (916) 441-5050, Shari McHugh (NAIFA-California) may be reached at (916) 646-8600 and John Norwood may be reached at (916) 447-5053.