

**New York Health Benefit Exchange
Implementation Review
Section 2.0 Consumer and Stakeholder Engagement and Support
August 13, 2013**

<u>Item Number</u>	<u>Topic</u>
2.8	Agents and Brokers
2.9	Web Brokers

The Role of Agents and Brokers in the New York Health Benefit Exchange

Small Business Marketplace

In New York State, agents and brokers (producers) play a vital role in facilitating the purchase of coverage in the small group health insurance market. Statewide, on average, eighty-eight percent of small group sales are assisted by producers. [“The Role of Producers and Other Third Party Assistors in New York’s Individual and SHOP Exchanges,” Wakely Consulting Group, June 2012].

Producers (which New York defines to include both insurance agents and brokers) are regulated by New York’s Department of Financial Services (DFS) and they are held to rigorous licensure and continuing education standards. New York’s producer compensation requirements support the Affordable Care Act’s goal of promoting competition based on quality and efficiency, rather than risk selection.

New York’s producers have well developed relationships with employers, insurers, chambers of commerce and business associations. Additionally, an extensive network of general agents is in place to support producers and insurers in servicing employers. Producers are well poised to assist employers and employees in navigating the new range of options that will become available in 2014 through New York Health Benefit Exchange. New York intends to allow insurers, at their discretion, to make the assistance of licensed, certified producers available to employers to enroll in New York’s Small Business Health Options Program (SHOP).

Individual Exchange

Although state law permits brokers and agents to distribute insurance to individuals, producers currently do not play a significant role in New York’s individual direct pay market which currently covers less than 20,000 lives. New York’s goal of enrolling 615,000 people in the Individual Exchange at full implementation is a considerable change for this market. Moreover, sole proprietors, many of which currently work with producers when purchasing coverage, will enroll in the Individual Exchange. Accordingly, the Exchange intends to allow insurers, at their discretion, to make the assistance of licensed, certified producers available to individual consumers, including but not limited to sole proprietors, who enroll through the Individual Exchange, subject to their having agreements with health plans starting in 2014.

2.8 Brief Description of the Strategy, including Compensation Policy for Producers

New York intends to Leverage Producers

Producers will be invited to enter into agreements with the Exchange to enroll and service employers and/or individuals pursuant to their agreements with health plans. As a condition of participation with the Exchange, the producers will be required to have an active producer's license and a certification that they have completed necessary educational requirements. Separate certification will be required for the SHOP and Individual Exchanges, as described below.

Compensation Requirements:

- **New York Requires Community Rating and Open Enrollment.**

New York currently requires community rating and open enrollment in its small group insurance markets. Insurers must accept all small employers and they must charge them the same premium without regard to age, sex, health status or occupation. New York actively regulates producer compensation levels to ensure they do not incentivize producers to "cherry pick" healthy small employees or avoid enrolling relatively smaller groups where individual selection plays a greater role.

All licensed HMOs in the State must offer coverage to individuals on a community rated and open enrollment basis and, while producers are generally not compensated by health plans for individual sales in today's market, the DFS' regulatory authority extends broadly to all brokers' activities.

- **Producer Commission Levels Will be the Same Inside and Outside of the Exchange**

In New York, insurers that extend producer commissions on any individual or small group products must apply the same commission level to all their individual or small group products.

Insurers may not apply higher compensation levels to products designed to attract relatively younger, healthier purchasers. Similarly, insurers may not compensate producers at higher levels for enrolling relatively larger small groups.

These protections will be applied to Exchange products in 2014.

Insurers will be required to apply the same commissions to products offered either inside or outside of the Exchange.

- **At the Outset, the Exchange will not Fix Producer Compensation Levels**

New York currently caps commissions on Health Maintenance Organization (HMO) products at four percent. Commissions on other insurance products approved in New York range from two to six percent. The New York Health Benefit Exchange does not intend to set producer compensation levels for products sold through the Exchange. However, compensation of producers is a changing landscape. Working in collaboration with the DFS as regulator of licensed producers, the Exchange will closely monitor and align its policies with the changing landscape.

Training and Process to Verify Compliance with State and Federal Law:

- **New York will Leverage its Existing Infrastructure for Licensure and Training.**
DFS currently licenses producers and maintains records regarding their licensure. Producers must pass an exam and obtain extensive initial and continuing education. New York uses private organizations to educate producers. Courses and their content are subject to the approval of DFS.

New York will rely on this infrastructure to provide Exchange specific education to new or existing licensed producers that wish to sell coverage through the Exchange. Producers will be required to be separately certified to sell products in the Individual and SHOP Exchanges, however SHOP certification will be required as a prerequisite for the Individual Exchange certification. A producer certified for the SHOP will be trained in SHOP eligibility and business tax credit rules and will enter into an agreement with the Exchange to assist only small businesses. A producer certified for the Individual Exchange will be trained in the eligibility rules for all Insurance Affordability Programs, including Medicaid and Child Health Plus, and will enter into an agreement with the Exchange to assist individuals. Commissions will not be paid to producers for Medicaid or Child Health Plus enrollments. Producers may elect to be certified to sell products in both Exchange markets, but are not required to do so.

The DFS currently certifies organizations to provide training and continuing education to producers licensed in New York. On August 5, 2013, the Exchange announced that the broker training course for the SHOP Exchange was available (<http://www.healthbenefitexchange.ny.gov/news/now-available-new-york-health-benefit-exchange-shop-certification-course>) and that it would be administered by 14 DFS approved training facilities throughout the state (<http://www.healthbenefitexchange.ny.gov/news/now-available-new-york-health-benefit-exchange-shop-certification-course>). The SHOP training course qualifies brokers for 8 continuing education hours. The training course for the Individual Exchange will be available in Fall 2013.

The Exchange Website and Call Center staff will be able to direct individuals and small employers to such listings for Broker/Agent assistance if it is desired.

2.9 Web-brokers:

Web-brokers will not be used in the Exchange in 2014. However, New York will continue to examine the potential use of web-brokers to distribute Exchange products.