



TO: Colorado Health Benefit Exchange Board Members

FROM: Colorado Health Benefit Exchange Staff

SUBJECT: Broker Appointments with Carriers

DATE: March 11, 2013

On August 27, 2012, the COHBE Board voted on and unanimously approved four Broker Role & Relationship guiding principles. These included the following:

1. COHBE should partner with brokers and agents.
2. Broker and agent compensation should be comparable inside and outside the Exchange.
3. Brokers and agents will participate in both the Individual and SHOP Exchanges.
4. Individuals and small businesses should NOT be required to use a broker or agent.

An additional vote is now requested to clarify the issue of broker appointments and whether all carriers, except those who do not wish to use brokers, will be required to appoint all brokers. COHBE staff would like to provide you with a document that provides background information and considerations on carrier appointments of brokers. The SHOP and Individual Experience Advisory Groups have had meetings to discuss this topic and have provided recommendations for the Board to consider. These recommendations were originally presented to the Board on August 13, 2012 by the SHOP Advisory group. No vote was taken by the Board.

ATT: Broker Appointments with Carriers

BROKER APPOINTMENTS WITH CARRIERS

Background Analysis for Colorado Health Benefit Exchange (COHBE)

This paper outlines some important considerations for COHBE's Board as they consider broker appointments and carrier relationships. Specifically, this paper addresses the following question:

Should all carriers doing business through the Exchange, except those who do not market their product through brokers, be required to appoint all brokers who are certified by COHBE?

CONSIDERATIONS:

Requiring carriers to appoint all brokers does the following:

- Minimizes “steerage” to preferred plans.
- Encourages certified brokers to present health plans in the most unbiased way possible.
- Minimizes adverse selection.
- Aligns with COHBE's mission to increase access and choice for customers.
- Enables brokers to access plans that best meet the needs of the customer and/or the employer.
- Allows the Exchange to fulfill its mission as a true marketplace.

CARRIER PERSPECTIVE:

- The proposed solution goes beyond federal requirements for QHP certification.
- This is an unnecessary all-or-nothing approach. If a carrier chooses to appoint even one broker, then the solution would require the appointment of all certified brokers. This appointment process will be administratively burdensome.
- This burden will be felt most by smaller carriers and those new to Colorado's marketplace that do not have a robust broker management system already in place.
- Carriers should not be proactively required to appoint a broker until that broker writes business for that carrier inside the Exchange.

ADVISORY GROUP PERSPECTIVE:

July 19, 2013: SHOP Advisory Group

Question: How will brokers be appointed and certified?

The following guiding principles were met with general consensus:

- In addition to the licensing completed by DOI, brokers must be certified to sell through the Exchange.
- The certification process should enable brokers to sell all plans for all carriers on the Exchange.

August 2, 2013: SHOP Advisory Group Meeting

Broker Relationship and Compensation

- COHBE should partner with brokers in both the SHOP and Individual Exchanges.
- In addition to current DOI licensing, brokers should be certified to sell through the Exchange, both initially and ongoing.
- This certification process should enable brokers to sell all plans for all carriers in the Exchange.
- Individuals should NOT be required to use a broker.

Enabling brokers to sell all plans in Exchange – currently (but on rare occasions) brokers get dismissed (“dis-appointed”) by a carrier (i.e. can no longer sell that carrier’s plans); two examples of dismissal are lack of professionalism and ethics issues; by and large the market reins in such unethical practices such as steering and dumping.

COHBE will have to establish a policy to deal with broker issues, such as unprofessionalism and lack of ethics, and should consult with the DOI.

August 14, 2014: Individual Experience Advisory Group

Broker Recommendations Review of SHOP AG Meeting

The group reviewed the consensus areas from the SHOP Advisory Group related to the role and compensation structure COHBE should pursue with brokers and agents. Overall, the group was in support of the consensus areas and made a few additions.

- In addition to current DOI licensing, brokers should be certified to sell through the Exchange, both initially and ongoing.
- This certification process should enable brokers to sell all plans for all carriers in the Exchange. Whether it is called out explicitly, the groups both discussed the obligation brokers have to show plans that best meet the needs and preferences of the consumer/employer.

August 13, 2012 Board Meeting:

The Board received an update from the SHOP Advisory Group on Broker Relationships. Cindy Sovine-Miller reported the following group recommendation:

- 1) Broker compensation should be comparable inside and outside the Exchange.
- 2) COHBE should work with the DOI to develop an Exchange certification process and ensure it does not duplicate DOI licensing requirements.
- 3) Once certified and appointed to the Exchange, brokers should be able to present all QHP options available through the Exchange.
- 4) COHBE will have to develop a broker policy around professionalism and ethics.

No vote was taken on items 2, 3, & 4.

STATE AND FEDERAL LAWS:

Federal: FFE Rules regarding agents and brokers provide only limited information.

Colorado: Colorado does not monitor or regulate appointments.

WHAT ARE OTHER EXCHANGES DOING?

Some states have pursued appointments between all carriers and participating agents and brokers.

- Minnesota's Exchange is exploring the possibility of becoming a Managing General Agent, which would enable the Exchange to empower all brokers affiliated with the Exchange to all plans offered in the Exchange. (See Appendix A for Colorado statute on Managing General Agents.)
- Oregon's Exchange has created an Agent Management Program that affiliates agents to sell any plan in the Exchange. The Exchange will file as a "Business Entity" with the state in December 2012 to screen, train, and approve agents who may sell any plan and thereby receive commission from any carrier. The Exchange would collect and distribute these commissions from the carriers to the agents.ⁱ Oregon's Exchange website offers more details in its business plan and Agent Management Program draft plan.
- FFE: Federal regulations do not address broker appointments: "Agents and brokers, including web-brokers, may assist individuals with the eligibility application and enrollment process, plan selection, and applying for subsidies, where permitted by law. All agents and brokers, including web-brokers must be licensed as producers by the state and adhere to all applicable state laws. CMS will enter into agreements with registered agents and brokers to ensure compliance with federal rules and exchange requirements."ⁱⁱ

MOTION:

I hereby move that all carriers doing business through the Exchange, except those who do not market their products through brokers, be required to appoint all brokers who are certified by the Exchange for the sale of their products within the Exchange.

COHBE is willing to allow carriers to wait until the first business is placed before carriers actually appoint brokers as long as carriers review the list of prospective brokers and make known their concerns about the ones they consider unacceptable before that broker starts the certification program.

ⁱ Oregon Health Insurance Exchange Corporation, "Agent Management Program," draft plan <<http://www.ohix.org/pdfs/AgtMgmtProgram.pdf>> Feb. 2012.

ⁱⁱ Avalere Health, LLC, "Avalere – Summary of the CMS Annual Notice to Issuers Participating in Federally-Facilitated and Partnership Exchanges" 1 March 2013