

# Insurance Brokers: Regulatory Requirements and Market Challenges

## Consumer Assistance Small Group Consultation

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# Federal Laws and Regulations

**Starting point: federal law leaves most broker issues to the states, but does set some parameters**

## **Reinforces market pressures to manage distribution costs**

- Carriers must meet minimum Medical Loss Ratios (MLR) (ACA 158.103)
- The premium rate for qualified health plans must be the same, regardless of if it is sold through the exchange or offered directly from an insurer or through an agent (ACA 1301(a)(1)(C)(iii))

## **Adds Navigators and Consumer Assistants to support consumer outreach and enrollment**

- Agents and brokers are one of the listed categories of potential navigators (ACA 1311).
- Exchange must ensure that Navigators meet certain conflict of interest rules, including that Navigators can not receive any consideration directly or indirectly from any health insurance issuer in connection with the enrollment of any individuals or employees in a QHP or non-QHP (ACA 155.210(d))

## **Allows states to permit web-based brokers to help enroll consumers in QHPs**

- Federal regulations permit web-based brokers, at state discretion, to coordinate with the Exchange to enroll consumers in QHPs, applies both to state-based exchange and federally-facilitated exchange
- Web-based brokers must meet conditions to qualify, including: meeting standards for disclosure and display of all QHP information, not providing financial incentives to steer, maintaining audit trails and records in an electronic format for a minimum of ten years, and providing consumers with the ability to withdraw from the process and use the Exchange web site at any time.(ACA 155.220(c)(3))

# State Laws and Regulations

## Sample Definitions (§58-33-10)

- **"Insurance producer" or "producer"** means a person required to be licensed under this Article to sell, solicit, or negotiate insurance. "Insurance producer" or "producer" includes an agent, broker, and limited representative.
- **"Commission"** only agents who are duly licensed with appropriate company appointments, licensed brokers and licensed limited lines producers, or licensed limited representatives may accept, directly or indirectly, any commission, fee, or other valuable consideration for the sale, solicitation, or negotiation of insurance.
- **"Appointment"**. Individuals who hold a valid insurance agent's license shall not, either directly or for an insurance agency, solicit, negotiate, or otherwise act as an agent for an insurer by which the individual has not been appointed.



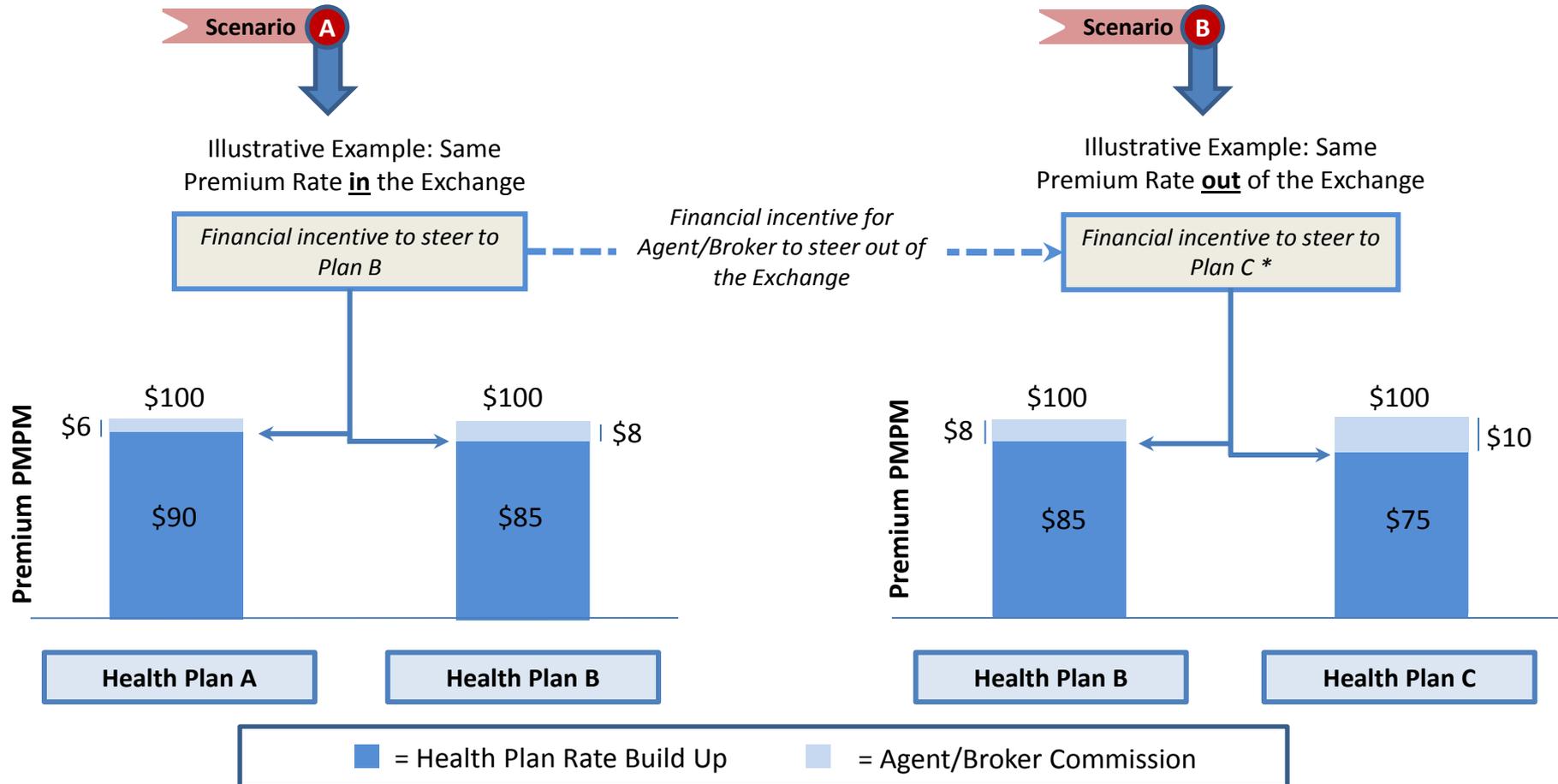
## Standard Insurance Regulation

- Insurance departments responsible for oversight of agents and brokers
- Typically includes training, licensing, and continuing education requirements
- Also the authority to fine agents or revoke licenses

Exchanges can add Exchange-specific requirements

# Case for Standardizing Commissions

While financial incentives for steering exist in market today, some states are considering options for standardizing commissions in 2014

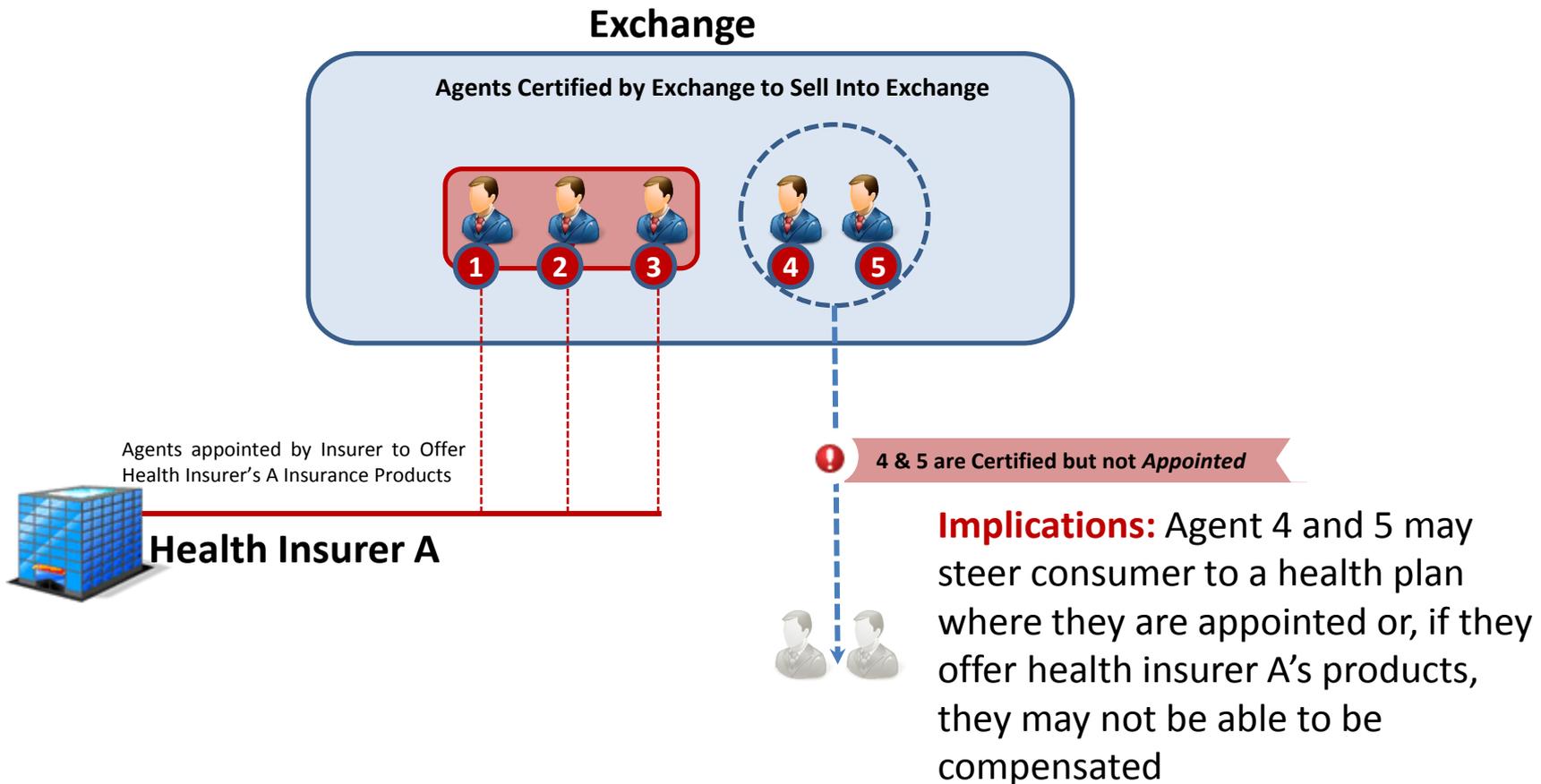


# Four Approaches to Standardizing Commissions

<b>1</b> <b>Across the Board</b>	<p>All insurers pay the same standard PMPM commission for all plans, including group and individual plans</p> <ul style="list-style-type: none"><li>• <b>Rationale:</b> Mitigates risk of agent/brokers steering to any particular insurer or plan</li><li>• <b>Action Steps:</b> Determine what specific amount should be set and how program could be enacted/implemented</li></ul>
<b>2</b> <b>Across Insurer Plans</b>	<p>Each insurer can set its own commission, but it must be the same for all plans offered by that Insurer on the Exchange</p> <ul style="list-style-type: none"><li>• <b>Rationale:</b> Mitigates risk of insurer setting attractive compensation rates for certain plans (e.g. bronze)</li><li>• <b>Action Steps:</b> Determine how program could be enacted/implemented and issue guidance to insurers on establishment of a standard commission rate across all plans</li></ul>
<b>3</b> <b>Parity Between the Exchange and Outside Market</b>	<p>Each insurer must use the same commissions outside the Exchange as they use inside the Exchange</p> <ul style="list-style-type: none"><li>• <b>Rationale:</b> Mitigates risk of steering across marketplaces</li><li>• <b>Action Steps:</b> Determine how program could be enacted/implemented and issue guidance to insurers on what “same” means</li></ul>
<b>4</b> <b>Status Quo</b>	<p>Maintain status quo allowing insurers to set their own commission structures within current regulations</p> <ul style="list-style-type: none"><li>• <b>Rationale:</b> Avoids market disruption</li></ul>

# The Case for Regulating Appointments

Another concern is the ability of Exchange-certified agents/brokers to represent and receive compensation for all products sold on the Exchange



# Four Approaches to Regulating Appointments

<b>1</b> <i>Require Agents to Obtain Appointments</i>	<p>Require agents to obtain appointments with all QHP insurers in order to conduct business in the Exchange</p> <ul style="list-style-type: none"><li>• <b>Rationale:</b> Mitigates risk of agent/brokers steering to any particular insurer or plan</li><li>• <b>Action Steps:</b> Issue requirement as part of broader certification requirement for agent/broker participation in the Exchange</li></ul>
<b>2</b> <i>Require Insurers to Appoint all Agents for QHPs</i>	<p>Require insurers offering QHP products in the Exchange to appoint all agents authorized to conduct business in the Exchange</p> <ul style="list-style-type: none"><li>• <b>Rationale:</b> Mitigates risk of agent/brokers steering to any particular insurer or plan</li><li>• <b>Action Steps:</b> Issue requirement as part of broader certification requirements for insurer participation in the Exchange</li></ul>
<b>3</b> <i>Oregon Model</i>	<ul style="list-style-type: none"><li>• The Exchange has authority to appoint agents as part of its agent certification program and then receives commissions from insurers and passes them through to agents, negating need for agents to be appointed individually by each insurer</li><li>• <b>Rationale:</b> Mitigates risk of agent/brokers steering to any particular insurer or plan</li><li>• <b>Action Steps:</b> Explore how option can be enabled as part of broader effort to establish the Exchange</li></ul>
<b>4</b> <i>Status Quo</i>	<ul style="list-style-type: none"><li>• Allow agents to sell in Exchange without having appointments with all insurers</li><li>• <b>Rationale:</b> Avoids market disruption</li></ul>

# Lessons from a Former Insurance Commissioner

## Agents are an excellent sounding board

- Their strengths are knowing the marketplace and having a genuine appreciation for both the consumer and insurer viewpoints (they are often caught in the middle)
- They typically are a lot easier to engage than insurers (they are the risk takers in a risk averse industry)

## A force to be reckoned with in every state

- Insurance agents and brokers are a well organized network in every state, with more than 50,000 licensees in most states
- They can be an invaluable ally or your worst enemy

## Market dynamics are a powerful force toward efficiency in distribution channels

- Always listen carefully when the topic is why some new regulatory idea will produce unintended consequences or otherwise not work
- Be more wary when the topic is why some new regulatory idea is necessary to protect agents against market dynamics

## Value proposition is clearer in the small group market than the individual one

- Agents are the human resource shops for small employers and integral to the success of SHOP
- Agents are fighting an uphill battle in the individual market, particularly with the Exchanges and guaranteed issue