



# Evolution of the Michigan Insurance Exchange

MDAHU Membership Meeting  
November 17, 2011



# Where We Started

- PPACA is law
  - HHS later released rules and regulations for establishing exchanges
  - Initially contained a provision that allowed agents to be compensated by carriers but after rules and regs were published that authority was left to the states
- Senator Marleau's office & LARA (Dept of Licensing and Regulatory Affairs)
  - Provided language that would differentiate agents and navigators and that would compensate agents traditionally
- Worked with the Business coalition (SBAM, MBPA, MMA, and Michigan Chamber) to present common exchange recommendations to the Legislature
  - These partners supported agent involvement from the beginning



# PPACA Requirements

- Every state must have an exchange as a health insurance purchasing option for individuals and small businesses
- Exchanges will be a purchasing portal for subsidized and unsubsidized qualified health plans, as well as the enrollment point for Medicaid, CHIP and other state public assistance programs



# More PPACA Provisions

- Every exchange must have a Navigator program to facilitate enrollment
- States may choose to allow consumers the choice to utilize the services of agents beyond the navigator program
- Navigators are funded through exchange grants
- Agents are specifically listed as a type of Navigator but the law stipulates a compensation method that conflicts with traditional agent compensation structures



# Navigator Duties Required by PPACA

- Conduct public education activities to raise awareness of the availability of Qualified Health Plans;
- Distribute fair and impartial information concerning enrollment in Qualified Health Plans, and the availability of premium tax credits and cost-sharing reductions in accordance with federal tax laws;
- Facilitate enrollment in Qualified Health Plans;
- Provide referrals to any applicable office of health insurance consumer assistance or health insurance ombudsman, or any other appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding their health plan, coverage, or a determination under such plan or coverage;
- Provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange



# Financing Navigators

- PPACA requires that states finance their navigator programs using grants
- Additionally, a navigator may not receive any direct or indirect compensation from a health insurance issuer
- States may not use federal exchange grant funds to establish or pay for navigators
- The state Medicaid/CHIP programs may claim a portion of the navigator expenses, if the navigator “facilitates enrollment” in those programs
- An Exchange may charge a separate fee to compensate the navigator



# What Happened Next

- SB 693 was introduced
  - Defined producer
  - Allowed an agent to be a navigator and be paid as a navigator through exchange grants
  - Did not clearly define “facilitate enrollment”
- MAHU formed an agent coalition with MAIA and NAIFA
- The three agent organizations testified jointly at the House Health Policy committee



# Why We Are Here

- Patient Protection and Affordable Care Act (PPACA) is law
- Discuss the problem of affordability, not access
- Discuss our recommendations for the Exchange
- Explain our role and importance in the industry



# Affordability Issue, Not Access

- We are not in favor of an exchange
- We are concerned about the ability to create an exchange without increasing costs
- In Michigan, the issue is affordability due to the complex, different regulations that govern BCBSM, the HMO's and commercial carriers
  - This prevents true market competition
- We have systems in place that are effective and do not cost more



# General Exchange Recommendations

- Based on the uniqueness of the Michigan market, Michigan should create its own exchange
- The Michigan Exchange should:
  - Operate as a “Market Organizer” to allow all health plans and carriers that participate the opportunity to offer innovative products and benefit designs to individuals and small businesses



# General Exchange Recommendations, cont.

- Have separate risk pools for individuals and small businesses to manage the unique risk and demographics of each segment
- Include independent licensed insurance agents in the distribution system
- Be governed by an independent non-profit
- Be self sufficient by 2015, while promoting efficiency

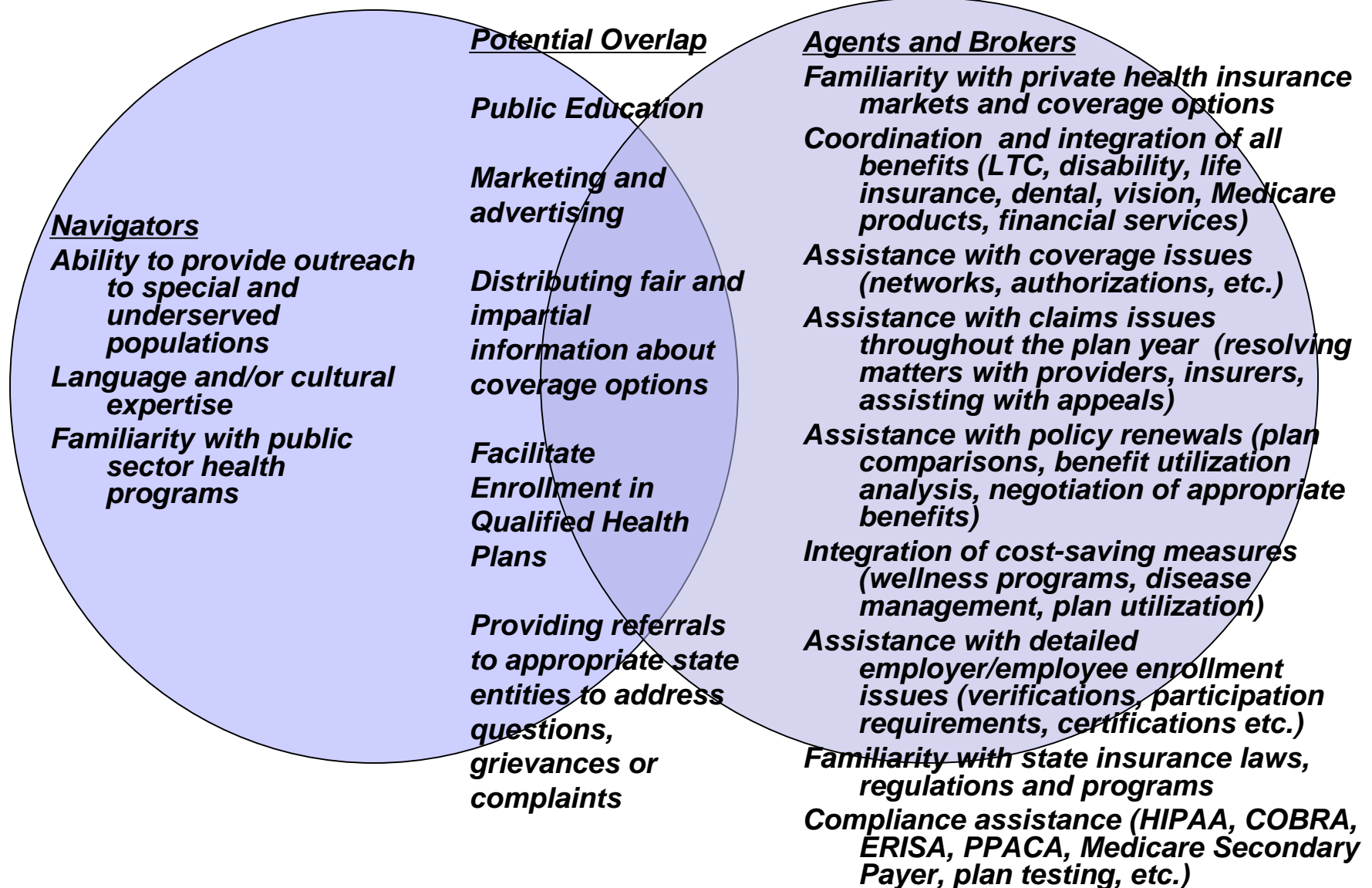


# General Exchange Recommendations, cont.

- The Michigan Exchange **should not**:
  - Become the exclusive health insurance distribution channel for individuals and small businesses
  - Grant unfair advantages to products inside the exchange via underwriting, tax, regulation or other means



# Strengths of Navigators & Agents/Brokers





## Examples of Agent Value

Benefit comparison – the exchange may compare benefits and prices but an experienced, licensed agent can help explain the nuances of networks, claims payment, drug formularies, etc.

Ongoing service – insurance agents receive a monthly commission because their involvement is ongoing. Their job is to advocate on behalf of their clients when claims or billing issues arise throughout the year.



# The Answer is in the Numbers

- In the current market, it does not cost an individual or small business more to enroll through an agent
- Small group business (under 50) in Michigan sold through an agent in 2010 and 2011:
  - BCBSM 100%
  - HAP 99.9%
  - Priority Health 98%



# Agent Compensation

- Agents are paid commissions by the carrier
  - Percentage of premium or flat dollar per contract, per month
- Price of individual or small group coverage does not change if using an agent
- Agents are paid monthly to handle ongoing service issues for their clients
- Agents can get removed from a group at any time if they are not servicing it properly
  - Commission generally ceases within 30 days



# Navigator Questions to Raise

- Are navigators paid in lump sum grants or on a per-head basis?
- Are payments made to individuals or entities?
- Are payments consistent across markets and/or products?
- Are accountability standards in any way tied to payments?
- Are exchange users charged a navigator fee?
- How do you segment exchange operating funds that may stem from a carrier?
- How are conflicts of interest prevented?



# Licensure Issues to Address

- Will navigators be individuals or entities?
  - *If entities, should that entity be appropriately licensed/regulated by the state?*
- How will the state ensure legitimacy and accountability?
- Should entities be responsible for the conduct of their employees and/or volunteers?
- What liability will navigators have?
- How will potential complaints and/or grievances be addressed?
- How should individual performing navigator functions be regulated and held accountable?
  - *Producer Licensure?*
  - *Exchange-specific Certification?*



# Consumer Protection Issues Involved

- Protection of Access to highly sensitive information
  - Financial information
  - Identifying information (SSNs)
  - Protected Health Information
- Fraud Prevention
- Protection against mistakes that could have severe financial consequences for consumers



# Existing Regulation of Agents/Brokers

- Agents and brokers have been regulated by state insurance departments for 100+ years and are legally accountable for their actions
- National Insurance Producers Registry (NIPR) is the national database and means of tracking producer activity in all states and territories
- To be in business agents/brokers must:
  - Comply with state licensing requirements (fees, background check, etc)
  - Pass licensing exam
  - Comply with CE requirements
  - Demonstrate financial responsibility
  - Maintain professional liability insurance
  - Maintain appointment standards with licensed insurers



# Definition of Agents & Navigators

- Michigan Insurance Code defines an agent as an insurance producer
  - “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.
  - “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf on an insurance company
  - “Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company
  - “Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that that person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.
- PPACA defines a Navigator as someone who facilitates enrollment
  - “Facilitate” is not defined



# Final Exchange Recommendations

Licensed insurance agents are an important part of the health insurance solution in Michigan and would like designation in the bill separate from Navigators

- Health insurance consumers should not be penalized, either by cost of premium or health plan benefits, for choosing to use the services of a licensed agent, broker or consultant, either within or outside the Exchange (i.e., benefits and rates for comparable plans should be the same, regardless of whether an agent, broker or consultant is being compensated).



# Final Exchange Recommendations, cont.

- As authorized under section 1312(a) of the federal act, the exchange shall permit licensed health insurance agents and brokers to:
  - (a) enroll qualified individuals and qualified employers in any qualified health plans or qualified dental plans offered in the exchange; [and]
  - (b) assist qualified individuals and qualified employers in applying for premium tax credits and cost-sharing reductions for plans offered in the exchange
- Michigan has the ability to add agent compensation in the bill:
  - An insurance producer can be compensated directly by insurance issuers for the sale of individual and small group insurance products both inside and outside of the Exchange. This compensation should be at the same level inside and outside of the exchange to ensure an equal playing field for both markets.



# Our Defining Moment

- Invited to a meeting with Rep. Gail Hanes, Chair of House Health Policy committee
- Invited to a meeting with Steve Hilfinger, Director of LARA and Shelly Edgerton, Deputy Director
- Had subsequent conversations with Sen. Marleau's office on acceptable language
- Held our Legislative Day and members took our message to their legislators



# Gaining Momentum

- Came to agreement on final language with Sen. Marleau's office
- Testified at the Senate Health Policy committee meeting where the sub bill passed out of committee that day
- Sent out an Operation Shout asking members to contact their Senator and ask for support of the bill
- MAHU Board members were in Lansing the following day and pulled Republican Senators off the floor to rally support
- Vote went to the full Senate two days after passing out of committee



# SB693 Passed 25 to 12

## ■ Yeas

Anderson	Gregory	Jansen	Papageorge
Bieda	Hansen	Johnson	Richardville
Booher	Hildenbrand	Jones*	Smith
Caswell	Hood	Kahn	Warren*
Emmons*	Hopgood	Marleau*	Whitmer
Gleason*	Hunter	Meekhof	Young
Green			

## ■ Nays

Brandenburg	Hune*	Nofs	Rocca
Casperson	Kowall	Proos	Schuitmaker*
Colbeck	Moolenaar	Robertson*	Walker

\*Members of Senate Health Policy committee




# SB693 (Sub S-2) Agent Provisions

- Defines producer
- Limits navigator duties by defining “facilitate” enrollment as everything leading up to enrollment, but not including enrollment
  - Michigan is the only state in the country to define facilitate in legislation
- Allows producers to:
  - Enroll qualified individuals, employers and employees in the exchange
  - Assist individuals in applying for premium tax credits and cost sharing reductions per the federal act




# SB693 (Sub S-2) Agent Provisions

- Allows producers to: (cont)
  - Receive commissions or other remuneration from a carrier for enrolling consumers in a qualified health plan
    - Michigan is 1 out of 3 states to include agent compensation by carrier in legislation
- Does not require enrollees to use services of a producer but if they do, the consumer will not be penalized, either by premium cost or coverage, for choosing to use the services of a producer




## **SB693 (Sub S-2) Provisions**

- Establishes exchange as “MIHealth Marketplace,” a non-exclusive clearinghouse for health benefit plans
- Requires the Marketplace to:
  - Foster a competitive environment for health insurance in Michigan
  - Serve as a market facilitator to promote the purchase and sale of qualified health plans (QHP)
  - Disseminate information regarding QHP’s to consumers




## **SB693 (Sub S-2) Provisions**

- Establishes a sunset clause in the event any part of the Federal act is declared unconstitutional, repealed or otherwise altered
- Limits the exchange to small employers until January 1, 2016
- Defines small employer as a sole proprietor or group of 2 to 50 employees
- Allows groups up to 100 employees to enroll in the exchange after January 1, 2016
- Creates a 7 member Board to organize and govern the Marketplace, of which a majority of members are to represent the interests of health care consumers




## **SB693 (Sub S-2) Provisions**

- Commissioner is a non-voting ex officio member of the board
- Board members cannot be current or former (within 12 months) employees of a carrier, producer, health care provider, or TPA
- Requires the Board to:
  - Establish the Marketplace as a nonprofit corporation
  - Appoint an Executive Director to manage the Marketplace



# SB693 (Sub S-2) Provisions

- Requires the Marketplace to:
  - Make QHP's available for purchase and enrollment by January 1, 2014
  - Establish a small business health options program (SHOP) through which qualified employers could provide coverage for their employees
  - Contract with OFIR to certify health benefit plans as QHP's
  - Provide at least an annual open enrollment period from Oct. 15 to Dec. 7 (additional open enrollment periods would have to reduce the likelihood of adverse selection)



## **SB693 (Sub S-2) Provisions**

- Does not authorize the Marketplace to spend State funds
- Authorizes the Marketplace to charge assessments or user fees to participating health carriers to support its operations
  - Marketplace is required to submit proposed assessment/fee increases and justification to the Insurance Commissioner and the Legislature
  - Commissioner can reject it as unnecessary within 60 days



# Where Do We Go From Here?

- Bill was referred to House Health Policy committee where it is expected to slow down
- Bill will be amended but since we have support from Senate, House and Governor's office, we expect agent language to remain intact
- Talk to your House of Representatives member about the value of an agent
- Please act upon any call to action that you receive--they are time sensitive



# **MAHU Legislative Team**

- Cathy Cooper, MAHU President
- Dominic Siciliano, NAHU Exchange Liaison for Michigan
- Jeff Thomas, MAHU Legislative Chair
- Gary Reed, Lobbyist – CKR



# Questions

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