



National Association of Health Underwriters

America's Benefits Specialists

January 28, 2011

Via Electronic Transmission

The Honorable Kathleen Sebelius
Secretary, Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: OCCIIO-9998-IFC– Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements under Patient Protection and Affordable Care Act

Dear Secretary Sebelius:

I am writing on behalf of The National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, consultants and employee benefit specialists nationally. NAHU members work on a daily basis to help individual consumers and employers of all sizes purchase health insurance, use their coverage effectively and make sure they get the most out of the benefits they have purchased. They design benefit plans and solve problems that may occur once coverage is in place, and most are small-business owners themselves. We appreciate the opportunity to share with you our significant concerns regarding the Interim Final Rule (IFR) relating to Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements under the Patient Protection and Affordable Care Act (PPACA) as published in the Federal Register on December 1, 2010 (Volume 75, Number 230).

Earlier this month, President Obama announced a new executive order aimed at removing "regulatory burdens that have stifled innovation and have had a chilling effect on growth and jobs." It calls for "a government-wide review of the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive." Then, this week, in his State of the Union address, the president noted that "when we find rules that put an unnecessary burden on businesses, we will fix them." He went on to say that "government can create the conditions necessary for businesses to expand and hire more workers." NAHU hopes that the Department of Health and Human Services takes these sentiments to heart when considering changes to these MLR requirements.

The MLR IFR is currently having a devastating financial impact on the country's approximately half-million licensed professional health insurance agents and brokers, as well as on all of their employees and their millions of employer and individual clients. As a direct result of this IFR, many agents are seeing a net reduction of their business incomes of 30 to 50 percent. This means that fewer agents and brokers will be able to afford to stay in business, and many will have to begin reducing services to their clients and cutting jobs, at the very time our economy is the weakest and health insurance purchasers

have the most need for help.

MLR regulation as it currently stands is causing disruption in all insurance markets. Its immediate impact has been diminishing access to health insurance agents, particularly in the individual and small-group markets. But there will also be a long-term impact as, over time, it will reduce the number of insurers willing to write health insurance in the individual and small-group markets, or both, which will leave consumers underserved, reduce competition and cause countless insured individuals to lose coverage. If carriers are forced to pull out of state insurance markets altogether because of the MLR rules, this will hinder competition and raise prices everywhere, including in the new created state health insurance exchanges.

Also due to the IFR, insurers are being forced to eliminate or reduce key business areas, including claims, fraud prevention and disease-management services, which, although are not directly attributable medical expenses, reduce overall operational costs. Many administrative functions, such as providing customer-service lines and processing claims, are largely fixed costs and a smaller percentage of the premiums of higher cost policies. So the new MLR rules have reduced the ability of insurers to offer low-cost plan alternatives.

Specifically, NAHU is extremely disappointed that the IFR not only includes independent agent and broker compensation in an insurer's MLR calculation, but also that it classifies it as an administrative expense. In reality, health insurance agent and broker commissions are passed-through fees folded into insurance premiums as a consumer convenience and as a means of complying with state anti-rebating laws; they never have been any part of the insurer's bottom line. The medical loss ratio provisions in PPACA are designed to ensure the appropriate use of premium revenue to the insurance company. Therefore, it is entirely appropriate to remove independent agent and broker compensation, which is no way part of the insurer's revenue stream, from the MLR calculation.

Exempting pass-through fees from the MLR calculation would preserve existing cost-saving practices in current health insurance markets and further the intent of the PPACA MLR provisions to reduce overall spending on administrative costs. At the same time, it would preserve important operational conveniences and consumer protections for small businesses and individuals.

Making this change would not only support the will of the national insurance agent community; it would also respect the views of state-level insurance policymakers nationwide. Preventing the market disruption and reduced access to insurance agents and brokers the new PPACA MLR requirements will cause has been of primary importance to the National Association of Insurance Commissioners (NAIC). In August the group passed a unanimous resolution to protect the ability of licensed insurance professionals to continue to serve the public and affirms the important role of health care insurance agents play in providing services to consumers and businesses. Then this fall, when devising their MLR recommendations for HHS, the NAIC wrote to you that they were very concerned "about the impact the medical loss ratio requirement could have on the ability of insurance agents and brokers to continue assisting health insurance consumers at a time of rapid changes that makes their role even more essential," and recommended that the HHS MLR regulation "[accommodate producer compensation arrangements.](#)"

At its October 2010 NAIC meeting, a bipartisan group of 15 insurance commissioners signed a letter supporting an amendment to the group's proposed MLR recommendations to you, to ensure that the definition of earned premium in the MLR calculation exclude independent producer compensation. The

amendment was ultimately tabled and not allowed a formal vote, despite overwhelming bipartisan support, because of questions about legal authority and whether HHS would certify rules with such an exemption.

Further, on October 27, 2010, the NAIC submitted its recommended MLR regulation to you with the warning that adopting the regulation as submitted, without adjusting the regulation to account for its likely effect on insurance agents' future involvement in the purchase and servicing of health insurance and agents' compensation for those services, would likely create substantial market disruption. Also at this time, the NAIC created a task force of state insurance regulators to reach out to you and your staff to further examine the critical role that health insurance agents and brokers play in the marketplace, and how that role can be preserved within the MLR requirements. These concerns have been repeatedly raised by various state insurance commissioners in the task force meetings with your staff, but unfortunately they have not yet been heeded.

The National Conference of Insurance Legislators (NCOIL), a national bipartisan group representing legislators who serve on insurance-related committees in their respective states, also supports changing the IFR to exempt producer compensation arrangements. In its December 7, 2010, letter to you addressing this IFR, NCOIL wrote that the IFR "threatens the role of agents and brokers in the process of consumers' purchase of health care coverage" and that the organization "cannot support the proposed rule's treatment of insurance producer compensation and believes such compensation should be excluded from the MLR calculations."

NAHU urges you to remove producer compensation from the MLR calculations. To do so, we specifically request the IFR be amended as follows:

- Amend Section 158.130 of the proposed MLR regulation by adding the following language: "For purposes of this regulation, the term 'earned premium' shall not include fees or commissions included in premiums that are collected solely for the purpose of passing such fees or commissions on to a third party to the extent such fees or commissions are actually paid."
- Delete Sections 158.160(b)(2)(iv) and 158.321(d)(2)(iv).

Eliminating independent producer commissions from the MLR calculation will go a long way toward providing uniform and needed relief to all health insurance markets during the transitional period over the next three years, as PPACA requirements across the board are fully implemented. However, additional adjustments to the MLR calculation may still be necessary for certain markets in certain states.

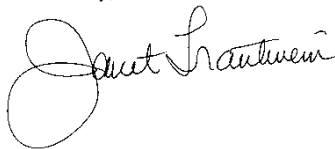
In the current IFR, you allow states to apply for up to a three-year "adjustment" of the MLR standard if they can document disruption to their individual market as a result of the MLR rules. NAHU appreciates the opportunity for state-by-state flexibility, but we find the terms of the adjustment lacking. First, they may only be applied to a state's individual market MLR calculation. NAHU very strongly feels that a state should be allowed to apply for an adjustment for its small-group health insurance market as well. These two markets are intrinsically linked, so a MLR adjustment for only one of them will just lead to further state insurance market instability, rather than help prevent it. Waivers for just the individual markets in states will create an unlevel playing field and encourage adverse selection towards that market by micro-business owners. As has been proven time and time again with insurance market reform experiments in the states, creating adverse selection and unlevel playing fields in insurance markets only leads to disruption and higher prices for insurance consumers.

Also, we find the process states must go through to document market disruption to be overly laborious for state insurance departments to complete. Particularly challenging are the requirements that the state official applying for the MLR adjustment provide DHHS with very detailed data for each individual market insurer covering more than 1,000 lives in the state, including the estimated amount of any rebate each such insurer may need to provide to its consumers if it is unable to meet the standard MLR requirements. Obtaining this level of detailed information has proved to be a difficult and time-consuming process for many state insurance departments, whose resources are stretched thin. The applications also require the explicit cooperation of all insurance carriers in this market, and some may be loathe to disclose the needed information publicly for fear of losing a competitive advantage in the marketplace.

State insurance consumers should not see their insurance marketplaces disrupted because the current waiver process is too difficult for their regulators to complete. Instead of requiring this level of technical data in the waiver applications, we request that you revise the adjustment process to allow much more leeway to each state's insurance commissioner. The state insurance commissioners are the primary regulators and have an immediate grasp of the intricacies of the insurance markets in their states. We believe you should heed their judgment as to whether or not the uniform MLR is actually destabilizing and the best means of adjusting it to meet the specific needs of their state's market and insurance consumers.

NAHU sincerely appreciates this opportunity to provide comments on the IFR, and we look forward to working with you as implementation of PPACA moves forward. If you would like more information, or if we can be of further assistance, please feel free to contact me at either (703) 276-3806 or jtrautwein@nahu.org.

Sincerely,

A handwritten signature in cursive script that reads "Janet Trautwein". The signature is written in black ink and is positioned above the typed name.

Janet Trautwein, Executive Vice President and CEO
National Association of Health Underwriters