May 14, 2014

The Honorable Kathleen Sebelius
Secretary, Department of Health and Human Services
200 Independence Ave SW
Washington, DC 20201

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. Our members service the health insurance policies of millions of Americans and work on a daily basis to help individuals and employers purchase, administer and utilize health insurance coverage that best fits their needs and budgets and support enrolled individuals on a year-round basis.

Since the passage of the Affordable Care Act, health insurance agents and brokers have taken an active interest in the development of the new health insurance marketplaces as a means to provide coverage options to both their individual and small-business clients. During this past open-enrollment season, certified health insurance agents and brokers helped millions of individuals obtain health insurance coverage for the first time. Agents and brokers are the only group of marketplace-certified individuals who provide clients with support in utilizing their new health insurance coverage throughout the plan year and beyond the enrollment season. As such, NAHU members routinely work with individuals who had prior coverage that didn't need to be replaced during the open-enrollment period but now face events that will cause them to lose coverage or experience a coverage change before the beginning of next open-enrollment period.

NAHU commends you for the recent release of the bulletin titled "Special Enrollment Periods and Hardship Exemptions for Persons Meeting Certain Criteria." We believe the additional SEP qualifying events it lists will be very helpful for many consumers. However, based on our membership's daily encounters with people seeking coverage, we feel that it did not go far enough and that clarifications are needed in certain areas. Agents and brokers regularly meet with individuals who thought they would be eligible for an SEP based on unique circumstances but currently appear not eligible. Many of these people will be forced to go without health insurance for months or, in some cases, elect coverage that does not meet their needs or budget. To help these consumers, NAHU members from across the country have compiled the attached detailed list of additional potential SEP qualifying events for your consideration. Some of these certainly fall into categories that have already been created, but clarification would ensure their implementation.

The agent and broker community stands at the ready to assist marketplace consumers and bring new people into the health coverage system. We welcome a meeting to discuss the potential SEP qualifying events we have proposed and additional ways agents and brokers could better assist marketplace consumers with enrollment and coverage service in the years to come. I appreciate your agency's ongoing efforts to ensure that brokers are able to fully assist marketplace-based clients year-round and thank you for your attention to these matters.

Sincerely,

Janet Trautwein

Janet Trautwein
CEO, National Association of Health Underwriters

cc: Marilyn Tavenner, Mandy Cohen, Phil Schiliro and Jeanne Lambrew

**Proposed Additional**
**Special Enrollment Period**
**Qualifying Events**

The National Association of Health Underwriters (NAHU) is a professional association representing more than 100,000 licensed health insurance agents, brokers, consultants and employee benefit specialists nationally. During this past open-enrollment season our members helped millions of individuals obtain health insurance coverage for the first time. Agents and brokers are the only group of marketplace-certified individuals who provide clients with support utilizing their new health insurance coverage throughout the plan year. Agents and brokers regularly encounter individuals who thought they would be eligible for a marketplace special enrollment period (SEP) based on unique circumstances beyond their control, but currently they are not eligible. As a result, many of these people have limited or no coverage options until November 2015. To help such insurance consumers, NAHU members from across the country have compiled this list of additional potential SEP qualifying events for consideration by the Department of Health and Human Services. We propose that the following situations be deemed to trigger a new SEP:

- **Expiring Mini-Med, Short-term and Temporary Medical Policies**
  If an individual currently has a non-compliant individual policy that is not a grandfathered plan, or if individuals have an expiring mini-med policy that has been converted by the issuer into an ACA-compliant metallic plan outside of the open-enrollment window, they should be eligible for an SEP that allows him to enroll in that plan. Likewise, if individuals' short-term or temporary coverage expires outside of the open-enrollment window, they should be allowed to enroll in comprehensive coverage. Technically, such a person hasn't experienced a loss of minimum essential coverage, so these individuals cannot purchase new individual coverage via another issuer or shop for a marketplace plan with a potential premium tax credit/cost sharing subsidy. Instead, these individuals are being forced to either accept the policy offered by their current issuer at the price offered by their current issuer or go uninsured until the start of open enrollment 2015, and in some cases, there is no option available for coverage. This situation should trigger a SEP for both state-based exchanges and the federally facilitated marketplace (FFM) and could be limited to within 30 days of the individual's health plan renewal date.

- **Non-Calendar-Year Group Health Plans**
  A group plan renewal period that does not align with the marketplace open-enrollment period should trigger an SEP for all beneficiaries of the group plan. Prior to the ACA, such individuals always had the opportunity to review their group coverage options annually during the group plan open enrollment and "shop" for individual coverage as an alternative if the group coverage options for the next year did not meet their needs and/or budget. There are many reasons why individuals may feel that switching to individual coverage from group coverage during their group renewal period would be beneficial.

  For example, if their new premium contribution requirement made their coverage "unaffordable" according to the ACA test, they should be eligible for an SEP. Even if the coverage is not "unaffordable" according to the ACA employer shared-responsibility penalty test, the premium contribution required by the employee, particularly to insure dependents, may have risen to a level that even an unsubsidized individual policy might make more financial sense. Group plan changes could mean a doctor or hospital where the individual is receiving ongoing treatment may no longer be covered or in-network. Group plan changes could result in only lower levels of coverage being available to the individuals, and consumers might want to maintain the level of coverage they had previously, particularly relative to cost-sharing requirements. Now, instead of being able to make a plan change immediately, such individuals will have to wait until next year's open-enrollment season to make a switch to individual coverage if they deem it best, and many may not even be allowed to make such a switch at that time.

  In many cases, the regulations surrounding Section 125 cafeteria plans are further complication the situation. Virtually all group health plans offer the option for employees to pay their share of the premium on a pre-tax basis via payroll deduction and a Section 125 plan. Employees who remain enrolled in a group plan policy using a Section 125 plan to pay premiums on a pre-tax basis will not be able to drop such coverage at the marketplace's next open-enrollment

season due to Section 125 rules. The only ways individuals with payroll-deducted group coverage that renews outside of the marketplace's open-enrollment season today can preserve their right to select individual coverage during the marketplace's next open-enrollment period would be to either drop employer coverage entirely at the group plan's renewal and go without coverage until the next marketplace open enrollment, or stay on the group plan but specify up front the choice to pay the employee portion of premiums post-tax from date of group's renewal going forward. Not only would such an election be an administrative nightmare for the employer—and may not even be an option for an employee—it is highly unlikely individuals will know they have to make this election at the time of their group plan's renewal.

Making the group coverage open enrollment period an SEP for both state-based exchanges and the FFM would resolve this issue and restore individual choice. Many of the individuals who might exercise this SEP likely won't qualify for premium tax credits due to the availability of employer coverage, but they may benefit from the option to change issuers or metal levels, or select a plan that is better for their budget. The SEP could be limited to the group plan's open-enrollment period and the 30 days following it to prevent adverse selection.

- **Mid-Year Changes in Employer Plan Affordability**
  Individual who is covered by a group plan where the employer makes a premium contribution change or other material plan change outside of the group's plan year renewal should have an SEP. Our members report that some employers, especially those struggling economically, will make changes to the amount that they are contributing to employee and dependent premiums mid-year or make substantive changes to group plan benefits. While employer changes of this type are not the norm, they do happen. Prior to the ACA, employees had the option to drop their group coverage and purchase an individual policy if they found one that better fit their health needs and budget. NAHU believes such individuals should continue to have the option to review their individual-market options if their employer makes a substantive plan change. Such an SEP could be limited in time to perhaps within 30 days of the effective date of the group plan's material plan change. This SEP should apply to both state-based exchanges and the FFM.

- **In-Network Geographic Coverage Deserts**
  Individual who inadvertently bought coverage via the marketplace that does not offer in-network benefits in their immediate geographic radius should have an SEP. The radius could be specified, perhaps at a range of 25 miles. In some states, plans like this were inadvertently offered via the FFM as a valid coverage option to individuals. Many people realized their error and were able to make a plan switch prior to the end of the open-enrollment period, but in some cases, the carrier they initially selected does not offer in-network benefits in their service area at all and they did not have the ability to switch to a new carrier. In addition, some individuals made this error late in the open-enrollment process and did not have time to make a switch. Much like moving out of network can result in an SEP, we feel initial selection of plan with no in-network benefits nearby should warrant an SEP. This problem appears to be limited to FFM states, so the SEP could be limited to the FFM.

- **Mid-Year Income Increase in States Not Expanding Medicaid**
  Individual who live in states that did not opt for the Medicaid expansion and fell into a related subsidized coverage hole during the open-enrollment season but later in the year experiences an income increase that would place family income at above 100% of the federal poverty level should get an SEP to elect exchange coverage with a premium tax credit outside of the open-enrollment period. This SEP should apply to both state-based exchanges and the FFM.

- **Mid-Year Income Decrease**
  Individuals whose income decreases to 100% to 400% of the FPL during the coverage year but outside of the open-enrollment period should get an SEP to apply for coverage with a premium tax credit. This situation could occur, for example, if one spouse lost a job during the year but the other was working. This SEP should apply to both state-based exchanges and the FFM.

- **Significant Mid-Year Network Reduction**
  Individuals whose plans experience a network change that cuts or changes more than 30% of the providers in a particular area should get an SEP. While such dramatic network changes are not currently a market issue, given plan design change trends, we believe this issue could present itself in the future. This SEP should apply to both state-based exchanges and the FFM.

- **Judgments, Decrees and Domestic Relations Orders**
  Our members report that they are continually running into problems related to situations where a judgment, decree or domestic relations order, for which compliance is NOT optional, is interfering with the ability to enroll in health insurance coverage and/or enroll in coverage with a premium tax credit. We see this as an ongoing issue even during the open enrollment period, but when these events occur outside of the open enrollment period, the problem becomes even more significant. We would like to see a specific SEP that addresses the issue of this type of legal action, which can take many forms, and allows mid-year enrollment both in coverage and a premium tax credit.