National Association of Health Underwriters

February 19, 2016
The Honorable Sylvia Matthews Burwell
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Burwell:

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, general agents, 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 service this coverage on a year-round basis.

In our January 17, 2016, comments on the 2017 Letter to Issuers, we addressed the issue of the troubling and increasing prevalence of insurers reducing or eliminating broker commissions during the plan year. We would like to bring this to your attention once again as we are very concerned about the impact this practice will have on consumers and believe that it is within CMS's authority to address it with issuers on several fronts. While CMS has been very clear that it does not require or regulate broker compensation for marketplace products, CMS does stipulate that if an issuer provides broker compensation, then the issuer must provide the same level of compensation for all substantially similar QHP products whether they are sold via the exchange marketplace or in the off-exchange marketplace. The reasoning for this requirement is CMS's direct authority to both enforce the ACA's guaranteed-issue requirement and to ensure stability in the exchange marketplace.

If the compensation environment is not kept level for substantially similar products both on- and off-exchange, then the guaranteed-issue provisions of the law are undermined as individuals might not have access to all products through their brokers and people may be unknowingly directed to one market or another, creating an unlevel market playing field and consumer harm. The same threats to the ACA's guaranteed-issue requirements and market-stability protections apply to a mid-year commission policy change by an issuer. If an issuer provides brokers with one commission rate during open enrollment then reduces rates for the remainder of the plan year during the special enrollment period, an individual's access to coverage and exposure to all channels of consumer assistance will be diminished. This is especially true of a commission change that impacts the SEP, since consumers with SEP rights often need the most help taking advantage of their special status.

Furthermore, by reducing their rate to a noncompetitive level midway through the plan year, an issuer may be able to inappropriately shift risk to other issuers in the marketplace, causing instability for all. If an issuer reduces its commission rate to zero after the open-enrollment process ends, then the issuer can unfairly shift almost all of its potential SEP risk, and certainly all broker-driven risk, to other issuers. NAHU also believes that CMS has the responsibility and authority under its rate review and QHP certification processes to ensure that issuers maintain the services that they promise via filed and approved rates throughout the plan year. Much like CMS stipulates that issuers may not change and reduce their initially specified service areas mid-plan-year, we believe it would be appropriate for you to stipulate that the services promised as part of approved rates, including access to the purchasing services and plan year, and renewal consumer support offered by a licensed health insurance agent or broker, not be eliminated partway through a given plan year. Otherwise, consumer services that are promised as part of the approved rates of the policy may be reduced, and the consumer would see no corresponding premium reduction. Additionally, if brokers' commission rates are changed after open enrollment, consumers may be at risk as other aspects of the insurance agreements could potentially be changed mid-year under this dangerous new precedent.

We believe the reduction in insurance professionals' commissions is systemic of the misinterpreted medical loss ratio (MLR) requirement. The MLR requirements were designed to limit the amount that a health insurance company can spend on administrative costs. Unfortunately, the rules crafted to implement this requirement not only include independent agent and broker compensation in an insurer's MLR calculation, but also classify 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. One of the first places insurers looked to decrease their administrative expenses was in the area of agent commissions. While we agree with the goal of providing consumers with more value for healthcare dollars spent, the MLR requirement significantly and negatively impacts access to health insurance agents and brokers at the very time more Americans need the expert advice of a health insurance agent or broker to navigate the complicated plan-selection process.

Ultimately, consumers, especially those most at risk, are left with fewer choices and without experienced and educated insurance professionals. At a time when the market is changing and becoming more complex, this is unacceptable. In conclusion, we are asking HHS to open a dialogue and work more closely with stakeholders, insurance professionals and particularly state-level regulatory agencies to resolve this issue.

NAHU sincerely appreciates the opportunity to provide these comments and we look forward to working with you as you continue to make improvements for health insurance consumers. If you have any questions, or if NAHU can be of further assistance to you, please feel free to contact me at 202-595-0787 or jtrautwein@nahu.org.

Sincerely,

Janet Trautwein

Janet Trautwein
CEO, National Association of Health Underwriters