



National Association of Insurance
and Financial Advisors

June 26, 2017

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-9928-NC
P.O. Box 8016
Baltimore, MD 21244-8016

Re: Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients; RIN 0938-ZB39, CMS-9928-NC

Dear Ladies and Gentlemen:

On behalf of the National Association of Insurance and Financial Advisors (NAIFA), this letter provides our comments in response to the Request for Information from the Centers for Medicare & Medicaid Services (CMS) soliciting public input to identify unnecessary or ineffective regulations implementing the Affordable Care Act (ACA) that could be eliminated or amended. NAIFA proposes that CMS consider amending regulations regarding the Medical Loss Ratio and short-term/limited duration health insurance. We also request that CMS pursue development of a national benchmark standard for health insurance policies, continue encouraging states to apply for Section 1332 waivers, and make adjustments to the requirements for agent training and certification to sell insurance coverage through the health insurance exchanges. We also inform CMS that NAIFA will raise the issue of the burdensome employer 1094/1095 reporting requirements with the Internal Revenue Services (IRS). In our comments below, we describe our recommendations in more detail.

Founded in 1890 as The National Association of Life Underwriters, NAIFA is the nation's oldest and largest associations representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members.

Medical Loss Ratio (MLR): NAIFA proposes that CMS consider amending federal regulation to exclude advisor compensation from the MLR calculation. The MLR requirement in the ACA mandates that, as of January 1, 2011, health plans are required to spend a minimum of 80% of premiums on medical claims (85% in the large group market) and rebate any excessive overhead to enrollees. To comply with these thresholds, many insurers have reduced various administrative costs, and in particular reduced agent commissions by as much as 50%. Eighty percent of NAIFA members surveyed have seen decreased commissions since the MLR requirement went into effect, and as a result of this requirement, agents are not able to provide the same level of services to their clients. Health insurance agents and brokers can

provide consumers with a variety of valuable services – from claims assistance to small business HR functions – but they cannot afford to continue doing so without adequate compensation.

This ultimately harms consumers by leaving them with little to no access to advice and counsel from a licensed, professional health insurance agent at a time when purchasing health insurance coverage has become significantly more complex. Agents help their clients navigate the complicated health insurance landscape, including the employer and individual requirements imposed by the ACA. Agents review coverage, suggest changes and counsel clients on ways to reduce costs – an on-going process since needs continuously change as a person’s family and employment situations change. Agents also assist their clients in reviewing the need for legal and tax compliance, recommending other professional assistance when necessary. Agents assist with claims, answer questions and serve as ombudsmen in helping their clients deal with insurance companies. Agents often spend an enormous amount of time helping clients assemble the proper documentation needed to file or follow up on a claim. In the group market, agents help business owners communicate their benefit packages to employees, and assist employees in understanding how the benefits coordinate with their personal financial plans and government benefits. For many small employers, the agent often serves as the de-facto benefits manager.

Action is needed to preserve the ability of licensed agents to provide their valuable services to consumers. Like taxes and regulatory fees, which are currently excluded from the MLR calculation, commissions are forwarded to agents and brokers and do not represent any part of the insurance company’s bottom line and therefore should not be included in an insurer’s non-claims costs.

NAIFA proposes that CMS consider amending 45 CFR 158.160 with the changes noted below in bold type:

§158.160 Other non-claims costs.

(a) General requirements. The report required in §158.110 of this subpart must include non-claims costs described in paragraph (b) of this section and must provide an explanation of how premium revenue is used, other than to provide reimbursement for clinical services covered by the benefit plan, expenditures for activities that improve health care quality, and Federal and State taxes and licensing or regulatory fees as specified in this part.

*(b) Non-claims costs other than taxes and regulatory fees, **and agents and brokers fees and commissions***

(1) The report required in §158.110 of this subpart must include any expenses for administrative services that do not constitute adjustments to premium revenue as provided in §158.130 of this subpart, reimbursement for clinical services to enrollees as defined in §158.140 of this subpart, or expenditures on quality improvement activities as defined in §§158.150 and 158.151 of this subpart.

(2) Expenses for administrative services include the following:

(i) Cost-containment expenses not included as an expenditure related to an activity at §158.150 of this subpart.

(ii) Loss adjustment expenses not classified as a cost containment expense.

(iii) Direct sales salaries, workforce salaries and benefits.

~~*(iv) Agents and brokers fees and commissions.*~~

(iv) General and administrative expenses.

~~*(vi) Community benefit expenditures.*~~

Short-Term Health Insurance Coverage: NAIFA also proposes that CMS consider reversing a recently adopted federal regulation which limits short-term health insurance coverage to only 90 days, effective as of April 2017. Prior to the new federal restrictions, short-term plans were often limited to a period of 12 months or less. While short-term plans do not cover the extensive mandatory coverage required under the ACA, they do give consumers access to temporary, basic, and affordable coverage.

The regulation limiting short-term plans to only 90 days is especially harmful to consumers by restricting their options for health insurance coverage at a time when some health insurers are exiting certain markets and state health exchanges. Many consumers now reside in areas where the very few available options for health insurance coverage are often cost-prohibitive, and a short-term health insurance plan may be the only affordable option. Further, while short-term plans do not qualify as ACA-compliant plans, they can provide temporary coverage while consumers shop for a more comprehensive plan. For example, if a consumer's ACA-compliant coverage is cancelled due to job loss or other factors, the consumer may have to wait until the next open enrollment period, which could well exceed 3 months. In this instance, short term insurance is critical so the consumer will not have a coverage gap and will be able to obtain a sufficient and affordable policy until the next open enrollment period.

To ensure that consumers have greater options and flexibility in the health insurance market, we suggest that CMS consider reversing the regulations limiting short-term health insurance plans to 90 days. NAIFA specifically suggests that the current definition of "short-term, limited-duration insurance" in *45 CFR Part 144.03* be repealed and replaced with its previous definition which as appears as follows:

"Short-term, limited duration insurance means health insurance coverage provided pursuant to a contract with an issuer that has an expiration date specified in the contract (taking into account any extensions that may be elected by the policyholder without the issuer's consent) that is less than 12 months after the original effective date of the contract."

To ensure uniformity in federal regulation on the definition of short-term/limited duration insurance, both *26 CFR 54.9001-2* and *29 CFR 2590.701-2* should be amended in the same manner as we propose for amending *45 CFR Part 144.03*.

Essential Health Benefits: NAIFA requests that HHS establish a national benchmark standard for health insurance plans and enforce limitations on the plan benefits that premium tax credits may cover as required by the ACA¹. The ACA requires HHS to develop a basic national standard for health insurance plans which includes the ACA's minimum essential coverage requirements, and it further stipulates that the ACA's premium tax credits will only apply to those federally-mandated benefits and not additional benefit mandates imposed by the states. Under the ACA, while states may require that health insurance plans cover benefits in addition to the federal minimum standards, states must provide financial assistance to the qualified individuals purchasing those plans through the health exchanges.

Establishing national, basic standards for health insurance plans will serve as a cost-containment mechanism for consumers and the federal government as it may incentivize states to reconsider state laws or regulations which impose costly benefit mandates and increase insurance premiums. This could ultimately help consumers by ensuring that more policies with only the benchmark federal standards are available - policies which will cost less than plans with both federal and state mandated benefits.

¹ See *42 USC 18022(b)* and *42 USC 18031(d)(3)(B)*

We therefore urge CMS to establish the national benchmark standards for health insurance policies and enforce restrictions on the benefits that the premium tax credits may cover required by the ACA.

Section 1332 Waivers: NAIFA commends CMS for encouraging states to apply for the ACA’s Section 1332 State Innovation Waivers which will permit states to develop innovative approaches to delivering high-quality health insurance coverage provided that a state’s approach meets the ACA’s waiver criteria by preserving the ACA’s consumer protections and not increasing the federal deficit. In particular, we commend Secretary Price for indicating in his March 13, 2017 public letter² to the nation’s Governors that state-run high-risk insurance pools may be options for states to consider implementing as a program to lower premiums and improve market stability. NAIFA supports the development of high-risk pools to meet the needs of those with costly medical conditions, and NAIFA further supports federal grants to states to fund these pools and ensure coverage for high-risk individuals. We hope CMS will continue to work with states who want to explore innovative approaches and apply for Section 1332 waivers.

Agent Training: NAIFA also requests that CMS consider changing the time frame for which agents must undergo training and certification to sell health insurance policies on the exchanges. We specifically request that CMS begin the training and certification process in June rather than August. We suggest this change because during the month of August many agents and brokers are assisting clients with group benefit plan renewals as well as open enrollment for Medicare Part D and Medicare Advantage, making it difficult to allocate sufficient time to complete the CMS training and certification. We would like the training and certification process to begin earlier, so it does not coincide with other activity in the health insurance market.

Employer Reporting Requirements 1094/1095: NAIFA is also concerned about the challenges employers who provide health insurance benefits and health insurance carriers face complying with the ACA’s employer and individual mandate disclosure requirements (using IRS Forms 1094-B, 1094-C, 1095-B and 1095-C). A 2016 survey³ of US employers and insurers found 53% of organizations viewed reporting and disclosure issues as their biggest ACA challenge and nearly 70% say the financial impact of reporting and disclosure requirements is significant.

NAIFA is aware that complying with the ACA’s reporting and disclosure requirements fall under the jurisdiction of the IRS. However, Executive Order 13765⁴ instructs other agency heads with authorities and responsibilities under the ACA to “exercise all authority and discretion available” to alleviate ACA burdens on purchasers of health insurance, health insurers, and other industry participants. To comply with the Administration’s Executive Order and address the challenges employers and carriers are facing fulfilling ACA’s reporting requirements, NAIFA believes the reporting requirements should be simplified and streamlined and we will plan to raise this area of concern with the IRS when the opportunity arises.

Thank you for your time and consideration of our views. Should you have any questions, please contact Steve Kline in the NAIFA Government Relations office at skline@naifa.org or (703) 770-8187.

² https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter_508.pdf

³ [International Foundation of Employee Benefit Plans, 2016 Employer-Sponsored Health Care: ACA’s Impact, \(Apr. 2016\).](#)

⁴ [Executive Order 13765, Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal, 82 Fed. Reg. 8351 \(Jan. 24, 2017\).](#)

Sincerely,

A handwritten signature in black ink, appearing to read "Paul R. Dougherty". The signature is written in a cursive style with large, sweeping loops and a prominent initial "P".

Paul Dougherty, LUTCF, FSS, HIA
NAIFA-National President