

No

PREMIUM on VALUE

The health care law's medical loss ratio brings dangerous consequences for consumers and the agents who serve them.



NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS

■ TABLE OF CONTENTS

Foreword	1
No Premium on Value	3
The Medical Loss Ratio	4
Impact on Agent Commissions.	5
Premiums Increase and Product Offerings Decrease	7
Competition Is a Casualty	8
Communities Suffer Consequences	9
Fewer Options and Services For Consumers	11
Make Agent Commissions an MLR Pass-Through	14

NO PREMIUM ON VALUE

Prepared by:
Mark Briscoe

Media Contacts:

Mark Briscoe
Senior Director,
Strategic Communications
mbriscoe@naifa.org

Sheila Owens,
Vice President,
Communications & Marketing
sowens@naifa.org

CEO:

Susan Waters

Vice President, Federal Gov't Relations:

Diane Boyle



The National Association of
Insurance and Financial Advisors
2901 Telestar Court
Falls Church, VA 22042

www.naifa.org
www.naifablog.com
www.twitter.com/naifa
www.facebook.com/NAIFANational

Copyright © 2011, NAIFA.
All rights reserved.

FOREWORD

It is perhaps expedient and short-sighted to overlook the vital role health insurance agents and brokers perform every day on behalf of their clients. Yet, these hard-working, experienced, highly trained professionals are too often seen merely as salespeople.

That is, however, until an individual needs assistance and guidance in selecting the right coverage to fit his or her budget and health insurance needs. Or when a family gets caught in the system attempting to sort out a complex medical claim. Or when small business owners need to make sure they are in compliance with a myriad of evolving federal and state laws and regulations.

These are the times when the value-added services of agents and brokers truly shine through and come to the forefront. These professionals provide service and advice, save their clients money, and improve the quality of the health care people receive. The work of health insurance professionals often flies under the radar and goes unheralded. We may not even conclude that we would miss these agents and brokers – until they are no longer in business.

And that's why NAIFA has put together this white paper on the medical loss ratio (MLR) provision of the federal health care law and the adverse impact it is having on health insurance agents and brokers, as well as services they deliver to their clients.

In the following pages you will read about how the MLR rule, perhaps



NAIFA President
Terry K. Headley

continued on next page...

continued from previous page...

well-intentioned, is having a devastating effect on agents and brokers and threatens to drive them out of business. You'll read about the valuable services they provide to their clients – services that are now being eliminated because of the MLR rule. Finally, you'll read about the clients, themselves, and how a rule intended to protect consumers is actually having just the opposite effect by forcing consumers to face the complex and ever-changing health care landscape alone – all without the professional guidance and service that consumers have come to know and expect from their trusted health insurance agent.



Terry K. Headley, LUTCF, LIC, FSS
NAIFA President

■ NO PREMIUM ON VALUE

Terry Frett used to meet clients in their homes to provide individual attention as he went over their complicated health care options. The Pewaukee, Wis., health insurance broker calls it the “old over the kitchen table approach.” Meanwhile, broker Ed Anderson’s Edina, Mo., office had a professional nurse on staff who could help clients make sense of their coverage and assist them with problems and difficult decisions.



Terry Frett

Now, Frett’s clients who want to meet face-to-face must visit him during regular office hours. Because of the cost, the kitchen table meetings are no longer possible, he says. Anderson’s colleague left the agency and returned to nursing. “We weren’t able to compensate her appropriately, because our income was so drastically reduced,” he explains.



Ed Anderson

The problem for both of these dedicated professionals, and hundreds of thousands of others like them across the United States, is that a provision in last year’s health care reform law went into effect early this year and has radically cut the commissions many insurance companies pay agents and brokers. This has changed the way producers operate their agencies, crippled their ability to provide clients with crucial customer service, and reduced competition and product offerings in the health care market. It also threatens to drive brokers and agents out of business altogether, leaving consumers to navigate a complex health care landscape on their own.

■ THE MEDICAL LOSS RATIO

In the world of health insurance, the medical loss ratio (MLR) is the amount of money an insurer must spend on health care and quality improvements as opposed to administrative costs and profits. For example, a company that spends 80 cents of every premium dollar on medical care and quality costs and holds back 20 cents for administrative expenses, marketing and profits is said to have an MLR of 80 percent.

Historically, carriers' MLRs have covered a broad range, depending on how much competition they have faced and other conditions that vary from market to market. This is reflected in the range of requirements among states that had regulations setting minimum MLRs for insurers. For instance, a policy brief by the Robert Wood Johnson Foundation notes that the state-imposed minimum MLR on individual coverage was 55 percent in North Dakota and 80 percent in New Jersey.

Beginning this year, however, the Patient Protection and Affordable Care Act (PPACA) requires health insurance companies across the country to maintain MLRs of at least 80 percent for their individual and small group business (fewer than 100 lives) and 85 percent for their large group business. The federal MLR provision – which is often more restrictive than those imposed by states – treats agent and broker compensation as an administrative expense for the companies. Therefore, companies that adequately compensate advisors may have more difficulty complying with the MLR rule, even though advisors' services are more crucial than ever to ensure that consumers have access to quality health insurance and get the best value from their policies.

Companies that fail to spend enough on medical services or quality improvements must issue rebates to their customers starting in 2012. This poses a real threat to the industry's profits. A staff report by the Senate Committee on Commerce, Science, and Transportation says that five of the six largest public insurance companies would not meet the 80 percent threshold. The report does not even consider medium-size and

“ I cannot imagine what the damage of the MLR has been to agents nationwide. It will take us a long time to get back to where we were service-wise. ”

– Ed Anderson

smaller insurers, which may have even more difficulty than their larger competitors achieving the minimum MLRs.

A separate investigation by the Robert Wood Johnson Foundation projects that approximately 106 out of 371 insurance entities¹ studied will not meet the federal 80 percent minimum MLR for individuals and small groups. In nine states, more than half of the insurers operating there are likely to miss the MLR target.

■ IMPACT ON AGENT COMMISSIONS

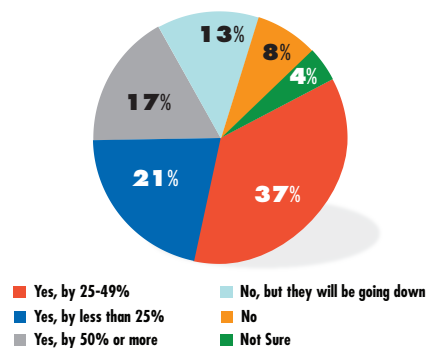
Both Anderson and Frett, who have been in the business for decades, said that companies' MLRs have never had an impact on their agencies or on the way they have been paid. That situation changed under the new health care law.

The quickest and easiest way for health insurance companies to preserve profits and avoid penalties under the MLR provision was to reduce agents' commissions. In preparation for the MLR rule, many carriers informed brokers late last year that commission reductions were imminent.

A typical letter began: "Due to mandates which are being imposed on our industry by the recently passed Healthcare Reform legislation, we are attaching a Commission Schedule Amendment..."

Another stated: "After a great deal of analysis and consideration, we have made the difficult decision to adjust the standard commissions that are included in our small group products."

NAIFA Member Survey:
Have Your Commissions Decreased This Year?



¹ The study refers to these as "company-state observations." For the purposes of the study, a company counts as a separate entity in each state in which it operates, because it may be penalized for exceeding the MLR in one or more states while meeting it in others.

Producers felt the effects almost immediately. An April 2011 survey of NAIFA members in the health insurance business found that 75 percent had seen the level of their commissions decrease since January 1, when the MLR provision went into effect. An additional 13 percent had received notices from insurance companies that commissions would be going down in the near future.

The decreases were often substantial. Nearly six out of 10 agents reported that their commissions had dropped by 25 percent or more during the first months of 2011. This includes 17 percent who said their commissions had decreased by 50 percent or more.

The majority of agents and brokers are middle-income earners who cannot absorb a 25- to-50-percent pay cut for long. According to the U.S. Bureau of Labor Statistics, the average annual income for insurance sales agents was \$62,520 in May 2010, and half of agents made less than \$47,000 a year.

Speculation by some vocal advocates of the MLR rule that agents have gotten wealthy off inflated commissions are wildly inaccurate. One group, for instance, has claimed in numerous media reports that “insurance salespeople are paid as much as 20%

“AN IMMEDIATE JOBS CRISIS IN OUR COMMUNITIES”

Rep. Mike Rogers (R-Mich.) speaking on the health care law’s MLR provision during a hearing of the House Energy and Commerce Health Subcommittee, June 15, 2011:

“Most health care agents are small business owners and their average income is \$50,000 a year. I don’t know about you ..., but I don’t consider that wealthy. They help other employers navigate complex health insurance markets and essentially serve as the H.R. department for small business owners.

“They provide incredible value to our health care system and the employer community, especially the small business community. These agents and brokers are very real people. They’re real business owners; they’re small; they tend to be independently owned. They’re in our communities. And they’re losing jobs today – today – because of this rule. And HHS knows it. I know it. And thousands of agents and brokers who’ve had to close their doors certainly know it. Yet HHS has refused to address this issue. They’ve ignored the job loss, turned a blind eye to real families who are suffering under the weight of this regulation. This is unacceptable. ...

“The fix is simple, and HHS could do it today. And I am baffled they’ve ignored the problem for so long. I have a bipartisan bill that would force change in the MLR rule that would protect these agents and brokers from this job-killing regulation. It has 90 cosponsors, including 15 Democrats and 23 members of this committee.

“I hope we can take action on this legislation soon. It is an immediate jobs crisis in our communities for thousands of hard-working small business owners who are already being crushed by the weight of this new health care law.”

of a consumer's health insurance premiums." In reality, the National Association of Insurance Commissioners' (NAIC's)

Supplemental Health Care Exhibit

for 2010 found that average producer commissions ranged from 5.86 percent on individual policies down to 1.84 percent on large group policies. That was before the recent decreases.

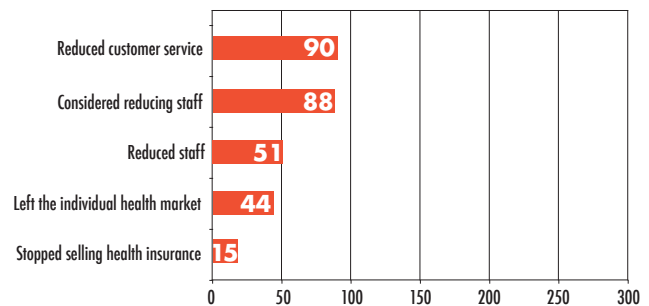
In fact, commissions on group and individual health plans are not a driving force behind premium increases. While advocates of the MLR provision have erroneously trumpeted high agent commissions, they have also claimed the recent drop off in commissions is part of a trend that has been going on for years. The NAIC staff said in a recent report that it could not find "a clear trend in commission reductions prior to 2011."

■ PREMIUMS INCREASE AND PRODUCT OFFERINGS DECREASE

Since the MLR went into effect in January 2011, most health care premiums have continued to rise. And at least one study predicted that the MLR rule could have the opposite of its intended effects by driving future premium increases and fueling additional health care costs.

The Heartland Health Plan Analysis by HealthLeaders-InterStudy says that the MLR rule will make it difficult for small insurers to stay in business, thereby reducing competition and eliminating a check on premium increases. Meanwhile, larger insurers may promote increased spending on medical procedures and pharmaceuticals to keep their spending on health care at or above the 80-to-85 percent thresholds. The MLR may provide a disincentive for insurers to negotiate with care providers for group discounts, the report says.

NAIFA Member Survey:
How Have Decreased Commissions Affected Your Business?



Health care blogger Roger Collier wrote last year that some insurers would likely change their product offerings to boost MLRs. “Restructuring coverage to increase benefits – for example, by lowering deductible limits – will increase a plan’s MLR, but will also increase premiums, hardly likely to be popular in the present economy,” he wrote.

Insurance brokers Anderson and Frett say they have seen evidence to bear out these predictions. “We believe the companies are restricting the amount of products available to our clients because of the MLR,” Anderson says. “And so we believe that the decrease in the supply or availability [of products] translates to increased costs for our clients.”

“The irony is that clients will be getting rebates at the same time they’ll be getting notifications of rate increases,” says Frett.

■ COMPETITION IS A CASUALTY

Although the MLR rule was supposed to foster competition, in reality it encourages companies to quit, rather than compete, in states where they might have difficulty meeting the standard. The law requires companies to achieve the MLR requirement in each state where they do business. If they have a high MLR in one state, it does not offset a low MLR in another.

Already, insurers are abandoning markets where they are unable to spend a minimum of 80 percent on medical care and quality improvements. “We have six health insurance companies left in our inventory, which is certainly less than we’ve had for many years,” says Anderson. “The biggest concern was the loss of regional companies that were swallowed up by bigger national companies. They plainly said that complying with the new [MLR] standards was impractical for them, so they saw it as the handwriting on the wall that it was time to leave the marketplace. We lost companies like the Principal that we’ve had in our inventory from day one, over 50 years ago.”

“ Although the MLR rule was supposed to foster competition, in reality it encourages companies to quit, rather than compete, in states where they might have trouble meeting the standard. ”

Frett has seen a similar situation in Wisconsin. Two large carriers and one regional carrier formerly in his inventory decided to stop doing business in the state and sold their operations to United Healthcare. “What I’m seeing emerge as a result of the MLR is we have one very, very large carrier getting larger.” As a consequence, the variety of products brokers can offer has decreased.

“The biggest problem I’m having right now,” explains Anderson, “is that there are certain categories of people almost all the companies are saying they don’t want. Because they are so concerned about claims now because it impacts their ability to survive, because they have to meet the MLR standard even when they have bad years.” Children, older people and anyone who carries above average risk may have trouble finding coverage.

“I cannot find a company in my inventory that will insure an expectant father, even though the mother and child have insurance someplace else,” Anderson laments. “Nobody will write that risk.” The fear is that the man’s wife and baby will either lose their coverage or decide they want to switch over to his.

■ COMMUNITIES SUFFER CONSEQUENCES

Many brokers are small business owners who operate agencies in their local communities. The MLR provision affects not only their personal income, but also their ability to operate their businesses. According to the NAIFA survey, 13 percent of agents have had to either lay off employees or reduce the hours of their staff, affecting an average of two employees per agency. Another 23 percent have considered staff reductions. More than a quarter (27 percent) said they will be forced to reduce staff in the future if commissions remain depressed. Nearly one in five of those who have not yet seen their commissions go down said that if a decrease of 33 percent should occur they will lay off employees or reduce staff hours. Other survey respondents said they had intended to hire staff this year to help clients navigate the rapidly changing health care landscape, but declining commissions have forced them to shelve those plans.

“With the drastic change in commissions, I’ve gone from a thriving family-owned agency for 23 years to having to let my staff go,” said Gloria

Kravetz, a broker from San Antonio, Texas.

“I’ve had to let my own son go. He’s had an insurance license since 1986, and now he’s on unemployment.”

And more agents may soon be looking for work because of the MLR provision. More than one in 10 of those surveyed by NAIFA have already stopped selling and servicing health care policies for individuals and nearly 30 percent foresee having to do so. Only a few, around 4 percent, have stopped selling health insurance altogether because of the MLR, but almost 20 percent will leave the business if commissions remain low. Some agents will be able to shift their attention to non-health insurance products, but others said they may have to retire early or change careers.

“[Brokers] are losing their jobs today ... because of this rule,” said Rep. Mike Rogers of Michigan, during a congressional hearing on the health care reform law. “It is an immediate jobs crisis in our communities.” Rogers has cosponsored a bill that would remove agent commissions from the MLR formula.

“I HAD TO LET PEOPLE GO”

Gloria Kravetz has been a successful health insurance broker for 23 years. Before the MLR provision went into effect in January, Gloria’s family-operated agency in San Antonio, Texas, had a staff of eight, including her son, Scott, who is himself a licensed insurance agent.

But times have changed.

“The cost of doing business has escalated and the volume wasn’t there,” Gloria explained. “First, I cut group health insurance. Then I cut group dental. Then I had to let people go.”

The layoffs affected her entire staff, including her son.

“The next-to-last person I let go was a single woman on Social Security disability with a child. She was a very valued employee, because she was very loyal and she knew what she was doing. She interacted with my clients for customer service and worked to solve their problems.

“Now I spend even more time on the phone trying to solve clients’ problems and I’m still operating at a loss.”

Gloria has worked with her commercial landlord to reduce her rent by cutting her office space in half. She no longer has anyone to answer the phone, so she has had all incoming calls forwarded to her cell phone. Gloria still struggles to provide the highest level of customer service to her clients, but without a staff doing so is difficult.

“It makes me feel like I’m not doing my job. My job is to educate, make a sale, follow up and give service after the policy has been issued. We were never a call center. We gave the old-fashioned service that people really expected and really benefitted from.”

■ FEWER OPTIONS AND SERVICES FOR CONSUMERS

As agents adapt to lower commissions or leave the business, consumers are suffering consequences. Brokers do much more than sell insurance. They explain critical differences in plan options and coverage. They advocate on behalf of their clients, not the insurance companies, helping people when they have trouble getting procedures approved or claims processed. They provide corporate clients with individual enrollment assistance for their employees. They create and administer company wellness programs. For some small businesses, health insurance brokers

“We spend a lot of time, money and resources as a kind of extension of our small employers’ business operations, as if we’re their backroom human resources department.”

— Terry Frett

serve a crucial human resources function and cannot be easily replaced. Now, almost a quarter of brokers whose commissions have decreased say they have had to reduce their customer service and 30 percent more say they will do so if commissions remain low.

“We spend a lot of time, money and resources as a kind of extension of our small employers’ business operations, as if we’re their backroom human resources department,” Frett said. He rattles off a list of letters and memos he creates for his small business clients: “This go around we’ve been having

to rewrite their summary plan descriptions because of [the health care reform law]; we’ve put together a memo announcing the special enrollment for dependents up to age 26, the special enrollment notice the government requires on the unlimited lifetime maximum, the annual notice about women’s health, the annual notice about CHIPRA.” And the list goes on.

“And we, of course, handle a lot of service issues if an employee is having an issue with a claim,” he says.

A U.S. Government Accountability Office report found that the percentage of health insurance claims denied by companies ranged from 11 percent to 24 percent in three states with complete data. In a large number of denials, up to 59 percent in some states, insurance companies reversed their initial decision and paid previously denied claims. The appeals process can

be confusing and time consuming, especially for those lacking a special insight into the insurance and medical businesses. This is an area where insurance professionals provide their clients invaluable assistance.

An earlier NAIFA survey found that health insurance brokers and agents receive an average of 223 requests each year from clients having difficulty resolving claims. For each problem claim, an overwhelming majority of requests requires the agent or staff to place at least two calls to the insurance company and two calls to the client. In addition, 43 percent of the agents surveyed say they call the health care provider at least twice. That works out to four to six calls agents have to make per problem claim. With agents being forced to leave the business, cut staff, or reduce service, many clients will have to resolve these problems on their own. A growing number will file complaints with their state insurance departments. Undoubtedly, many will give up and wind up paying more than they should for medical services.

Customer service could be the greatest casualty of health care reform, because consumers need agents to help them navigate the complex health care system, says

broker Kravetz. “They can’t handle it on their own,” she explains.

“They don’t know how the system works and without brokers to help them, they will get frustrated very easily. It’s gotten even worse because many insurance companies have scaled back their internal staffs.”

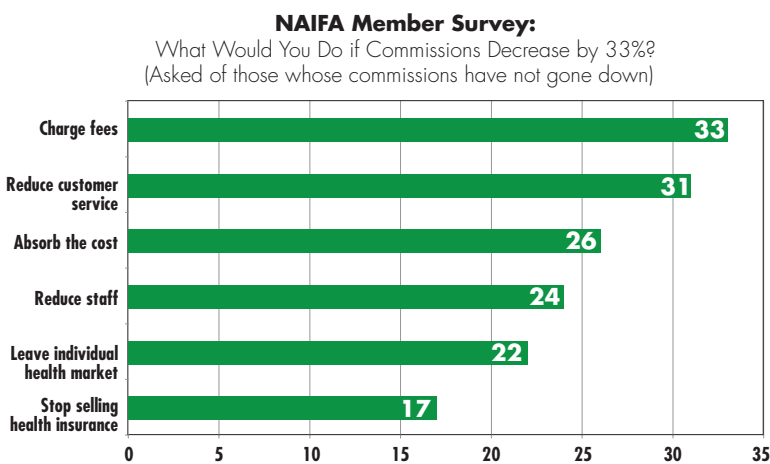
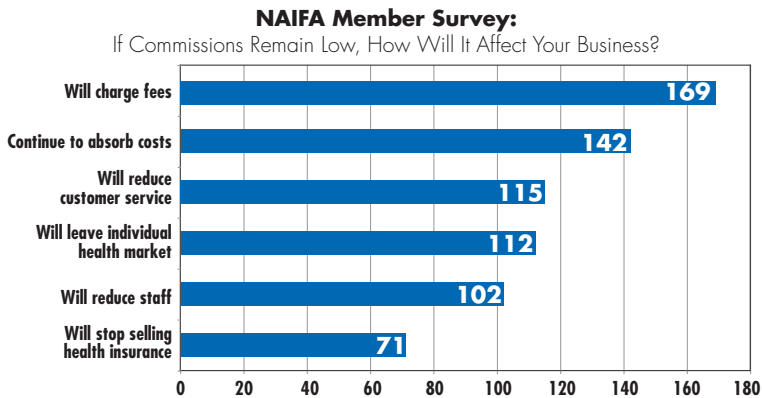
Anderson agrees. “Most usually, the unasked question is more important than the question a person

“THE SERVICES WE PROVIDE ARE INVALUABLE”

When an insurance broker makes a sale, his or her job has only just begun. While the agent’s compensation is built into the premiums of the products they sell (the vast majority charge no additional fees) customer service duties continue long after a client purchases a plan or policy.

“A lot of our clients would say the services we provide are invaluable because more often we’re almost fulfilling a role within their organization that they’re not having to hire and it’s almost as if they’re subcontracting out,” says health insurance broker Terry Frett. “The simple process of helping them with their health plan decisions is just a starting point. Then it’s assisting them when they’re complying with all the regulations from COBRA to HIPPA to everything else along the way. Being the intermediary when their employees have issues about their health plan, because an employer, especially an insured employer, really should not be involved with that protected health information.

“So I could clearly say that our clients realize the added value that we are providing. At this time we haven’t added fees on top of the embedded agent compensation, but with the MLR we’d have to look at that as we move down the road.”



asks,” he says. “When they call the insurance company, they get an answer to the question they asked, but the companies don’t have the time or inclination to dig for what is behind that question.”

He cites the example of a client who recently asked if a stay at an out-of-network hospital for her newborn daughter would be covered under her husband’s insurance. As it turns out, the answer to her question was, “No.” If she had called the insurance company, Anderson says, that’s all they would have told her. However, he asked additional questions and discovered a way for her to use a combination of her own employer’s coverage and her husband’s plan to provide what she needed.

“I firmly believe there was a potential there for her to be out thousands of dollars, maybe as much as five thousand out-of-pocket,” he says.

“Whereas using the resources that I was able to give her she’s going to be out only 20 percent of that, so she was a happy camper. And I think that’s what agents bring to the table. If I’m not able to do that, then the obvious result is that she and her family are going to suffer financially. And there’s nobody else she can ask. Who else could she call? There isn’t anyone else, other than the agent.”

“The expertise of the people at the insurance company call centers is limited to what they’re pulling up on their screens,” he says. “And I understand that they haven’t been in the industry for 26 years like I have, so they can’t have that kind of background to ask important questions. They don’t have the experience or the inclination to dig deeper and find solutions.”

■ MAKE AGENT COMPENSATION AN MLR PASS-THROUGH

Groups supporting the existing MLR rule contend that removing agent compensation from the equation will cost consumers billions of dollars in rebates from insurance companies. These interests fail to account for the valuable services agents and brokers provide, which are being lost because of the MLR provision. If an auto manufacturer offers a rebate on a car, consumers would obviously expect to receive the same vehicle they would have gotten had there been no rebate, not one with faulty steering and no brakes. The fact that consumers could receive rebates does not make up for the fact that they may no longer be able to count on insurance professionals to help them choose their coverage, enroll employees, help with claims and other problems, and provide vital human resources functions. Also, as insurance companies abandon markets or scale back their product offerings, consumers will no longer have access to the same coverages or plans as in the past.

These MLR advocates also fail to account for premium increases that may be driven by the MLR rule. They ignore the fact that without agents to help consumers get proper coverage, sort out claims, and fix other problems, people are likely to spend much more of their own time on these tasks or, in some cases, give in and pay for claims errors that their insurance should cover.

The Department of Health and Human Services recognizes that the MLR provision can disrupt insurance markets and harm consumers. That is why HHS has granted MLR rule waivers to five states. Maine was the first to obtain a waiver following an arduous six-month application and review process. Several other states received waivers only after HHS significantly modified their requests. To date, seven other states have applied for relief, and one of those, North Dakota, has had its request denied.

The waiver process is an imperfect solution. First, it requires states to spend scarce resources to argue their cases to HHS officials in Washington. Then, the waivers, if they are granted, offer only partial relief. They are temporary and cover only some segments of the health insurance market.

Fortunately, there is a simple way to fix the MLR problem once and for all. Under current law, some costs, including federal and state taxes, count as “pass-throughs” for the MLR equation. They do not count on either the medical/quality side or the administrative/profits side. It makes perfect

sense to count agent compensation, which pays for so much more than simply selling and administering policies, the same way.

Some members of Congress have taken notice. Sen. Mary Landrieu (D-La.) wrote HHS Secretary Kathleen Sebelius urging the agency to “delay the inclusion of agent compensation in the calculation of the MLR” and offering to work on an “appropriate legislative solution” to fix the MLR permanently.

Reps. Mike Rogers (R-Mich.) and John Barrow (D-Ga.) have proposed bipartisan legislation (HR 1206) that would exclude agent commissions from the MLR calculation. The bill has more than 100 cosponsors in the House of Representatives, and NAIFA and other agent groups have encouraged members of the Senate to introduce a companion bill. An influential group of state lawmakers, the National Conference of Insurance Legislators (NCOIL), passed a formal resolution urging Congress to enact the Rogers-Barrow legislation and calling on state governors, insurance commissioners and legislators to contact their congressional delegations on behalf of the bill. Similarly, the NAIC’s Professional Health Insurance Advisors Task Force recently voted to endorse the Rogers-Barrow bill and encouraged the full NAIC to do the same.

Of course, congressional action would not be necessary if HHS would simply reconsider the MLR rule. Nothing in the PPACA says agent compensation must be included in the MLR. Now that so many unintended consequences have come to light, HHS could and should revise the rule to treat agent compensation as a pass-through.

Even President Obama has acknowledged that parts of the national health care law are flawed. In his State of the Union he said “anything can be improved.” It’s time for government, whether it be elected members of Congress or officials at HHS, to step up and fix the broken MLR rule. Brokers and their staffs are losing their jobs. Consumers already have fewer health care choices and are losing access to quality customer service.

“I cannot imagine what the damage has been to agents nationwide like us,” says Ed Anderson. “We’ve lost valuable people because of this misunderstood – and maybe well-intentioned – action on MLRs. It will take us a long time to get back to where we were service-wise.”

But fixing the MLR rule is an important first step.



ABOUT NAIFA:

Founded in 1890 as the National Association of Life Underwriters, NAIFA comprises more than 600 state and local associations representing the interests of approximately 200,000 agents and their associates nationwide. NAIFA members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. The Association'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.