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March 21, 2011

Via Electronic Transmission

The Honorable Kevin McCarty
Commissioner, Florida Office of Insurance Regulation
Chair, NAIC Professional Health Insurance Advisors (EX) Task Force
200 East Gaines Street
Tallahassee, FL 32399

Dear Commissioner McCarty:

The Agent/Broker Alliance, which collectively represents more than 500,000 state-licensed health insurance producers, is pleased to submit this written testimony in advance of the Professional Health Insurance Advisors Task Force's March 27, 2011 public hearing regarding the impact of the Medical Loss Ratio (MLR) requirements of the Patient Protection and Affordable Care Act (PPACA) on health insurance brokers and agents, insurance consumers and insurance markets.

Independent health insurance agents and brokers work on a daily basis to help employers of all sizes and individual consumers purchase health insurance, use their coverage effectively and make sure they get the most out of the policies they have purchased. They design benefit plans and solve problems that may occur once coverage is in place. Most health insurance producers also are small business owners employing multiple individuals.

The MLR requirements in PPACA became effective on January 1, 2011. In less than three months time they have had a devastating financial impact on the collective membership of our associations, our members' employees, and on the millions of employer and individual clients of our members. In every state, as a direct result of the new law's MLR provisions, agency owners are reporting that they are reducing services to their clients, cutting benefits and eliminating jobs just to stay in business. At the same time, health insurance purchasers have more need for help than ever due to market and compliance changes related to PPACA.

Since the interim final rule on MLR was issued by the Department of Health and Human Services (HHS) on December 1, 2010, health insurance carriers across the country have had to reduce the amount of commissions they imbed in health insurance premiums. Our

members report that most health insurance carriers changed commission rates as of January 1, 2011, the date the MLR rule became effective. The majority of carriers have imposed the commission reductions on newly placed business, but a number of carriers across the country have also modified commissions for existing health insurance contracts. Those health insurance carriers that did *not* make commission changes for 2011 almost universally report to our membership that, unless a change is made in the MLR rules this year, they will be forced to reduce the amount of producer commissions from 2012 and beyond.

As professional associations with not-for-profit status, antitrust concerns have prevented us from collecting specific commission data from our members on a broad basis. However several media outlets and blogs have reported on commission reductions nationwide and we do regularly get informal reports.

- National Carrier A reduced individual market commissions by 55% in the first year and 50% for renewals in many markets.
- National Carriers B and C reduced individual market commissions by 50% both in the first year and upon renewal in many markets.
- State Carrier D reduced individual market commissions by 66% on all business, not just newly written contracts.
- National Carrier E reduced commissions by 40% for the initial policy year and 50% for subsequent years in many markets.
- Multi-state Regional Carrier F eliminated commissions entirely for the micro group market.
- Multistate Regional Carrier G reduced group commissions across the board by 15%.

Beyond specific percentage commission reductions, particularly in the small and mid-size employer group markets, our members report that carriers are shifting from paying commissions on a percentage of premium basis to a per-member or per-employee per month basis, which has resulted in a huge reduction of commissions for certain market segments. For example, agents report that one large state carrier's shift to PEPM payments has reduced commissions in certain parts of the small group market by 75%.

Some carriers are changing what premium is used as the basis for commission payments, which not only impacts producer compensation but may also influence enrollment targets. Instead of paying commissions based on the actual premium charged, the carrier is using commission eligible premium formulas. These formulas are based on the preferred rate at the time of a consumer's initial enrollment. So the commission payment does not include any premium increases an individual pays for things like tobacco use and will not include premium rate increases in the future.

Another trend that has both the potential to not only dramatically impact agent/broker compensation, but also consumer plan choices, is to vary commission levels by the volume of business an agent places with the health insurance issuer. For example, one carrier has specified that if any producer fails to meet new minimum production requirements, then they will be ineligible to sell individual and group product lines for that carrier for a

minimum of two years.

Also, our members report that health insurers have left specific health insurance market segments in certain states and that carriers nationwide are refining their business models to focus on market segments less affected by the MLR rules. Many smaller health insurance companies and regional carriers have reported to our members that unless MLR relief comes soon, their very ability to survive will be threatened.

The small businesses our members own, and the individual and employer health insurance consumer clients they serve, are being seriously harmed by these sudden compensation changes, all of which have occurred since the MLR regulation was released. A survey of nearly 2,400 independent health insurance agents and brokers conducted in February 2011 shows that just one month after the MLR rules went into effect, more than 70 percent of health agents witnessed their business incomes decline as a result of PPACA. [1] The survey shows 25 percent of respondents reporting business income reductions of 21 to 50 percent, and an additional 25 percent reporting losses between 11 and 20 percent.

The commission reductions have had an immediate impact on the business decisions of health insurance agents and brokers. The NAHU survey indicates that 50 percent of agents and brokers have had to stop offering certain health insurance products to their clients or have had to stop representing certain health insurance companies altogether due to financial infeasibility. Furthermore, 41 percent of respondents report that as a result of the MLR rules, they will have to cease to serve specific health insurance markets, such as the individual market, since they cannot make enough in these markets to even cover their costs.

Agents and brokers are largely small business owners and hire staff to assist with the day-to-day service to clients. As a result of the new MLR requirements and the resulting commission reductions, 21 percent of agents have been forced to downsize their own businesses, including laying off employees, and 26 percent have also had to reduce the services they provide to their clients. Many agents are no longer able to travel to clients' homes and offices to walk them through the application process, and employee-hours spent resolving billing and claims issues have also been drastically cut. According to the NAHU survey, 5 percent of respondents who were not principals in their agencies have lost their jobs due to producer revenue reductions caused by the MLR law as it currently exists.

According to the U.S. Department of Labor, the average insurance agent made $45,430 in 2008, with entry-level agents making less than $26,000 that year.[2] If current commission reduction trends continue, the average health insurance broker will be making around $38,000 annually, far less than the average American worker. In an economic climate where job opportunities are scarce—especially for trained professionals and full-time workers—

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[1] "Economic Impact of Health Reform." Survey conducted by the National Association of Health Underwriters. February 2011.

[2] *Occupational Outlook Handbook, 2010-11 Edition*. Bureau of Labor Statistics, US Department of Labor. December 17, 2009. Accessed at: http://www.bls.gov/oco/ocos118.htm.

the MLR as currently structured is causing irrevocable harm to hundreds of thousands of small businesses and jeopardizing desperately needed American jobs.

The Agent/Broker Alliance believes that if independent health insurance producer commissions were removed from what is currently defined as premium for MLR calculation purposes, either through federal legislative or regulatory action, it would significantly improve the dire situation that exists today. Besides stabilizing revenue for licensed producers and their employees, removing agent and broker pass-through commissions from the MLR calculation would also benefit health insurance consumers and health insurance markets. Exempting the pass-through fees would preserve existing cost-saving practices by the producers in the current health insurance market, furthering 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. Finally, eliminating independent producer commissions from the MLR calculation will go a long way toward providing uniform and needed relief to all health insurance markets – and the consumers who reside within them - during the transitional period as PPACA requirements are fully implemented over the next three years.

We believe that the inclusion of agent commissions in the MLR calculation was a mistake arising from a misunderstanding of the nature of the premium structure and the fast pace of PPACA's enactment. Health insurance agent and broker commissions are pass-through fees folded into insurance premiums as a consumer convenience and as a means of complying with state premium tax and anti-rebating laws; they never have been part of any insurer's bottom line. The medical loss ratio provisions in PPACA are designed to ensure the appropriate use of premium revenue paid to the insurance company. Therefore, it is entirely logical and reasonable to remove independent agent and broker compensation from the MLR calculation.

An optimal and expedited solution to the MLR calculation problem for health insurance agents and brokers and their clients is imperative. As we have documented, the financial impact on our members, their employees and their clients has already been significant and will only continue to grow. In order to help preserve consumer access to independent agents and brokers and all of the important services they provide to their clients -- both at the point of sale and throughout the life of the health insurance policy -- a change to the MLR calculation is urgently in order. Without an immediate fix, the current law puts American consumers, businesses and families at risk: they will be left without advocates to assist with coverage or claims problems and without professional advisors to assist in the economical selection of benefits tailored to fit their needs.

Our associations believe that the fastest path to MLR relief rests with HHS, since the Secretary has a great deal of statutory authority over PPACA implementation. We have asked the Secretary to amend the current interim final rule interpreting the MLR requirement to properly classify agent and broker commissions as pass-through amounts, and to exclude them from the overall MLR calculation.

However, since HHS officials have indicated to our associations that there may be statutory authority concerns with that approach, we have also told HHS that we would appreciate an immediate hold being placed on implementation and enforcement until these matters can be resolved by HHS and the states and/or Congress. Similar holds on enforcement and implementation have been issued for many other provisions of PPACA that would have caused a detrimental impact on American businesses, including but not limited to the requirement that American restaurants publish calorie counts on their menus beginning in 2010, and also the requirement that employers include the value of health insurance benefits on W2 tax forms beginning with the tax year 2011 and beyond.

Given the doubts that HHS has regarding its statutory authority, the only long-term solution to preserve consumer access to the services provided by independent health insurance agents and brokers is a statutory change. We have worked with a bipartisan coalition of members of the U.S. House of Representatives led by Mike Rogers (R-MI) and John Barrow (D-GA) on federal legislation to make this change, and we are pleased to say that H.R. 1206, the *Access to Professional Health Insurance Advisors Act of 2011,* was introduced on March 17, 2011, with 16 original co-sponsors. The Agent/Broker Alliance could not be more supportive of this measure.

In addition to eliminating independent producer commissions from the MLR calculation, the Rogers/Barrow legislation also acknowledges that additional adjustments to the MLR calculation may still be necessary for certain markets in particular states. Our associations agree. Current MLR regulation allows states to apply for an "adjustment" of the MLR standard for their individual markets for up to three years only if they can document disruption to that market as a result of the MLR rules. The Rogers/Barrow legislation, which we fully endorse, would allow states to apply for an MLR waiver for their small group health insurance markets too. The reasoning behind this proposal is that these two markets are intrinsically linked, so a MLR adjustment for only one of them will lead to further state insurance market instability, rather than help prevent it. A waiver for just the individual market in a state 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.

Finally, we support the effort to revise the HHS waiver process to allow much more leeway to insurance regulators, because the current process states must go through to document market disruption is proving to be overly laborious for state insurance departments. Consumers should not see their insurance marketplaces disrupted because the current waiver process is too unwieldy. Insurance commissioners are the primary regulators and have a keen and immediate grasp of the intricacies of the insurance markets in their states. We believe that HHS should defer to the judgment of each state's Commissioner as to whether or not the uniform MLR is actually destabilizing, as well as the best means of adjusting it to meet the specific needs of the state's insurance market and consumers.

We sincerely appreciate this opportunity to provide testimony on how the MLR requirements are impacting our industry. We look forward to continuing to work with the NAIC as you attempt to resolve the critical issue of how the PPACA MLR rules are affecting health insurance agents and brokers, and more importantly our individual and employer clients. If we can be of further assistance, please feel free to contact any of our respective organizations.

Sincerely,

The Council of Insurance Agents and Brokers
The Independent Insurance Agents and Brokers of America
The National Association of Health Underwriters
The National Association of Insurance and Financial Advisors

CC: Tim Mullen, National Association of Insurance Commissioners