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Committee on Energy and Commerce

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***“PPACA's Effects on Maintaining Health Coverage and Jobs: A
Review of the Health Care Law's Regulatory Burden”***



Testimony Submitted by

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Good afternoon. My name is Janet Trautwein, and I am the CEO of the National Association of Health Underwriters (NAHU). NAHU is the leading professional trade association for health insurance agents, brokers and consultants, representing more than 100,000 benefit specialists nationally. Thank you for inviting me here today to talk about the regulatory impact that the Patient Protection and Affordable Care Act (PPACA) has had on my members directly, as well as on their clients.

NAHU members work on a daily basis to help individuals, families and employers of all sizes purchase health insurance coverage. They help their clients use their coverage effectively and make sure they get the most out of the policies they have purchased. Significantly, about three quarters of the members of my association are principals in their own small businesses and employ multiple individuals from their communities.

Since the passage of PPACA last year, our members are spending significant amounts of time both educating their clients about the new law's provisions and helping them comply with its resulting regulations. They are working to provide options to millions of employers struggling with grandfathered plan concerns. They are searching for coverage for families who cannot find child-only individual health plans in certain states any longer, and they are helping older children with working parents get back on their parents' health policies. They are trying to find small employers who qualify for the new small business tax credit and place uninsured and uninsurable clients in the new preexisting condition insurance programs. Most of all, they are answering many client questions about the pending employer responsibility requirements, the individual mandate, premium tax credits, essential benefits, actuarial equivalence, how exchanges may work and other changes that will occur both now, during this transition period, and in 2014. In short, they are busier than ever.

Unfortunately, the financial livelihood of independent health insurance agents and brokers nationwide is directly threatened by PPACA's medical loss ratio (MLR) requirement, which mandates that health insurance carriers spend 85 percent of their premiums (large group) and 80 percent of their premiums (individual and small group) on direct medical care. The MLR rule crafting by the Department of Health and Human Services (HHS) requires health plans to treat agent and broker commissions as part of their administrative costs. While carriers collect these fees, they don't count one nickel of them as part of their revenue stream, but instead pass along 100 percent of broker compensation. As a result brokers servicing the individual and small business markets – where their services are most needed by consumers and entrepreneurs – are seeing their compensation slashed by 20-to-50 percent. This means fewer agents and brokers will be able to afford to stay in business and will no longer be able to provide the counseling and advocacy services to their clients as they have in the past.

NAHU is seeking all possible solutions – be they regulatory or legislative -- to this critical problem, and to avoid any unintended job losses as a result of the MLR regulation.

I am here today to tell you about a desperate economic situation. I am not here to score political points. Before coming to NAHU, I was an insurance agent for 20 years, so I can speak about what brokers do from personal experience. Since the MLR requirements in PPACA became effective on January 1, 2011, they have had a devastating financial impact on my association members, their employees, and their millions of employer and individual clients. 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. In some instances, they are simply closing their doors.

A survey of NAHU members done in February shows that as a result of the new MLR requirements and the resulting commission reductions, 21 percent of agents have been forced to downsize their 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. Five percent of respondents who were not principals in their agencies have lost their jobs due to producer revenue reductions caused by the MLR regulation as it currently exists.

Role of the Insurance Agent/Broker

To clearly explain why the PPACA MLR regulation is having such a serious financial impact on this country's approximately 500,000 health insurance agents and brokers, I would now like to take the opportunity to briefly explain what exactly NAHU members do every day, who they work for, and what limitations existing state laws place on how they are paid.

Independent health insurance agents and brokers do not work for health insurance companies. They run their own businesses, hire their own employees and pay all of their own office expenses, such as professional liability insurance. To be in business, each state requires agents and brokers to take an examination, maintain a license and complete continuing education requirements. Agents and brokers are highly regulated by their state insurance departments, and they also have a legal responsibility for the performance of products they sell and the advice and assistance they provide to their clients.

Each agent decides which health insurance carriers he or she will represent. Agents and brokers are then hired by individual consumers and employers to serve as their agent/broker of record before all of the insurance carriers with which the agent is affiliated. Only the individual consumer or employer can decide whether to keep their agent. The agent's customer base (their book of business) has value, so it is in the agent's best interest to maintain client satisfaction not just at the point of sale, but throughout the life of each insurance policy. Major health insurance carriers report that policies originated by independent agents have better client retention rates.

It may seem that what agents and brokers do is simple—they sell insurance. But there is much more to it than that. They meet with each client and determine their specific needs, covering everything from which doctors they use to preferences regarding financial risk. With employers they also discuss issues such as the savings that can be achieved through wellness and disease management programs and the characteristics of a company's particular workforce. Once they have a complete assessment, they help their client find the best plan at the best price.

Once the sale is over, the agent's job really kicks in. They are responsible for solving all the problems that consumers may have once coverage is in place. An agent from Arizona recently wrote to NAHU describing the service calls she handled in one typical day. It is a fairly representative account, so I will share it with you.

“A recent call I had was from a client who found himself in the hospital from an unexpected accident, needing insurance information that he was not in any position to deal with at the time. The call before that was from a client whose son needed assistance in upgrading his insurance plan. Another call was from an older client who was very insecure in purchasing insurance and had a question about her recent bill. Another call was from a frantic young woman wanting to know what to do because she had not paid her premium and her policy was cancelled—I was able to get it reinstated.”¹

Brokers also help their clients save significant sums on their health insurance premiums as this story from another NAHU member shows.

“The second case I ever wrote was for a lumber company down in southern Mississippi. I met with the owner and showed him a plan with a new carrier that would save him \$40,000 a year... On seeing this new plan and the savings generated, he commented, ‘Do you know how much work we have to put in to make that kind of money?’ After two years of having that case, I’ve kept them under their costs when I took over the case—even with them incurring \$40,000 more in claims than they paid in premium the first year. I had to use every tool in my toolbox for that one. But that’s also why we spend 20-30 hours per year in Continuing Education and another 40-80 hours per year studying new plan designs and new regulations during long seminars at various hotels and such—to be able to provide the kind of expertise that I was able to with my lumber company.”²

Many times the role of the agent is invisible, particularly to the employees of a company. Typically when a worker has an issue with their health coverage they contact their supervisor or the company's human resources department. But what many employees do not realize is that to solve their coverage problems, their employer contact the health insurance agent. Most smaller companies do not even have an HR department for

¹ *Brokers Making A Difference: Real Life Testimonials*. National Association of Health Underwriters, 2009-2011. <http://www.brokersmakingadifference.com/forms/BMDBBooklet.pdf>

² Ibid.

employees to contact, and so, as the Congressional Budget Office (CBO) has noted, agents and brokers often “handle the responsibilities that larger firms generally delegate to their human resources departments -- such as finding plans and negotiating premiums, providing information about the selected plans, and processing enrollees.”³

Impact of the MLR on Broker Compensation:

Instead of agents billing their clients directly for their services, health insurance carriers have been including agent and broker commissions as a small percentage of the cost of each and every insurance policy for almost 100 years. This payment structure is a consumer convenience, but it is also deeply embedded in state-level licensing, consumer protection and tax laws.

Not one penny of agent/broker commission ever goes to a health insurer’s bottom line. Instead it is a pass-through fee that goes directly from the consumer to their health insurance agent. Unfortunately, the PPACA MLR regulation not only includes independent agent and broker compensation in an insurer’s MLR calculation, but also classifies it as an insurer-borne administrative expense.

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 embed 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. These commission changes have already decreased the majority of our members’ incomes by 20 percent to 50 percent.⁴

Some health insurance carriers have held off on making commission payment changes this year, in the hopes that the MLR requirements might be changed. But 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 for 2012 and beyond. Because many insurance carriers renew and adjust their commission rates on July 1 of each year, further cuts could be on the horizon in the near-term.

Most health insurance agents and brokers do not have high incomes. According to the Bureau of Labor Statistics, the average income for agents and brokers ranges from \$45,000 to \$62,000, with entry-level agents making less than \$26,000 their first year.⁵ If current commission reduction trends continue, the average health insurance broker would make around \$38,000 annually. In an economic climate where job opportunities are

³ Congressional Budget Office, *Key Issues in Analyzing Health Insurance Proposals*. Pub. No. 3102, December, 2008, p. 70.

⁴ *Economic Impact of Health Reform*. Survey conducted by the National Association of Health Underwriters. February 2011.

⁵ *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>.

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

Some may wonder why insurance agents and brokers do not just change their business models and charge a fee for their services instead. Unfortunately, it is not that simple. The reasons why agents are compensated this way, and cannot easily charge a separate fee for services, are a myriad of state-level licensing, consumer protection, anti-rebating and premium tax laws. These laws exist in each and every state, and PPACA did not include provisions that would pre-empt these laws.

The most obvious changes to agent compensation caused by the MLR rule are direct reductions in commission percentage rates. These cuts are widespread, and have most significantly occurred in the individual and small group health insurance markets. Beyond specific percentage commission reductions, though, the MLR has affected agent and broker compensation dramatically in other ways.

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. Commission reductions on newly placed business disproportionately hurt younger agents and brokers who are just starting out in the industry, as well as those agents who are looking to grow their businesses and enroll previously uninsured clients, since all newly generated business warrants a first-year commission payment.

Other Trends Affecting Broker Compensation

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 (PEPM) basis. However, the new flat PEPM fees being introduced in many cases are not comparable to the old percentage rates, resulting 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 their income in certain parts of the small group market by 75 percent.

Some carriers are changing what premium is used as the basis for commission payment. 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. As a result, the commission payment does not include any premium increases that an individual pays for things such as a tobacco use surcharge and would not include premium rate increases in the future. This decreases the amount of the overall commission both initially and over time and also could impact enrollment targets, since the agent's commission remains the same regardless of the individual's health and resulting claims needs.

Another trend that has both the potential to not only dramatically effect 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 major 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. This practice may help the companies save on administrative costs by reducing the number of producers they do business with, but it also means that agents will be able to offer their customers fewer product options, which will have a negative impact on both consumer choice and market competition.

Another MLR-driven trend hurting both choice and competition is that some 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 is 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.

Removing Commissions from the MLR Calculation:

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.

To do just that, Representatives Mike Rogers of Michigan and John Barrow of Georgia, both of whom serve on this committee, have introduced legislation, H.R. 1206, the *Access to Professional Health Insurance Advisors Act of 2011*. H.R. 1206 has 80 bipartisan cosponsors, including 22 members of this committee. NAHU fully endorses this legislation.

In addition to eliminating independent producer commissions from the MLR calculation, H.R.1206 also acknowledges that additional adjustments to the MLR calculation may still be necessary for certain markets in particular states. Current MLR regulation allows states to apply for an “adjustment” of the MLR standard for their individual markets for up to three years if they can document disruption to that market as a result of the MLR rules. H.R.1206 would allow states to apply for an MLR waiver for their small group health insurance markets as well. 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 uneven playing field and encourage adverse selection towards that market by small business owners. As has been proven time and time again with insurance market reform efforts in the states, creating adverse selection

and uneven playing fields only leads to market disruption and higher prices for insurance consumers.

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.

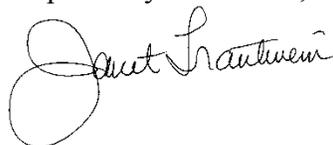
An optimal and expedited solution to the MLR calculation problem for health insurance agents and brokers and their clients is imperative. As we have documented, the need for health insurance agents and brokers is greater now, after the passage of PPACA, than ever before. Regardless of what the final outcome of PPACA may be, the need for licensed, trained professionals to help individuals, employers and employees with their health insurance needs will always be there.

Conclusion

Without immediate relief, the financial impact on our members, their employees and their clients has already been significant and will only 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 now and in the years to come -- a change to the MLR calculation is urgently needed. 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.

We urge Congress and the Administration to work with us to come up with an expeditious solution to this serious economic situation for brokers in order to preserve the valuable role they serve in our health care system. Thank you again for this opportunity to testify, and I would be glad to answer any questions you may have.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Janet Trautwein". The signature is written in black ink and is positioned above the typed name.

Janet Trautwein, Executive Vice President and CEO
National Association of Health Underwriters