September 7, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

RE: CMS-9919-P
Submitted electronically via www.regulations.gov

Dear Ms. Verma:

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 benefits specialists. We are pleased to have the opportunity to provide comments in response to the proposed rule titled *Patient Protection and Affordable Care Act: Adoption of Methodology for HHS-Operated Permanent Risk-Adjustment Program for 2018 Benefit Year.*

The members of NAHU help millions of individuals and employers purchase, administer and utilize health insurance coverage. Over the past eight years, since the passage of the Patient Protection and Affordable Care Act (ACA), our members have worked directly and tirelessly with millions of individuals and employers of all sizes to obtain coverage and implement health-plan changes related to the ACA. Ensuring market stability and competition, as well as improving health coverage affordability, are among our top goals. Since the workability of the risk-adjustment program has such a substantial impact on the health of both the individual and small-group health insurance markets, NAHU appreciates the willingness of HHS and CMS to hear from stakeholders on this critical topic.

NAHU understands CMS issued the proposed rule in response to a February 2018 district court decision vacating the use of the statewide average premium in the HHS-operated risk-adjustment methodology for 2014 through 2018 benefit years. The court ordered HHS to provide greater policy rationale for its use of the statewide average premium method, as well greater justification for its policy of keeping the risk-adjustment program budget-neutral. NAHU members appreciate the higher degree of explanation that the proposed rule provides.

However, this proposed rule only offers the greater policy context requested by the court. It does not make any substantive changes to the HHS-operated risk-adjustment methodology for the 2018 benefit year as established in the final rules published in the March 23, 2012, issue of the *Federal Register* and the

December 22, 2016 *Federal Register*. NAHU members, in their work helping individual and small-business consumers purchase and utilize health insurance coverage, have seen the current risk-adjustment program structure cause market instability. By assessing charges against plans with lower-risk beneficiaries and claims costs to make payments to plans with higher-risk individuals, HHS has unfairly penalized many smaller and more innovative plans. The inadequacy of the existing average premium adjustment formula is a reason that many issuers, including national plans and smaller entities, have cited as to why they can no longer serve the individual and small-group marketplaces. The lack of market competition, particularly in the individual market in many states, has led to high costs and reduced choice for many consumers.

Furthermore, litigation about the risk-adjustment formula brought by many issuers against the Trump Administration is what led to the Administration's July 2018 decision to halt risk-adjustment payments to issuers temporarily. Beyond the questions NAHU and others have about the risk-adjustment methodology itself, NAHU believes the importance of the certainty of risk-adjustment payments to carriers in a guaranteed-issue marketplace cannot be compromised without the risk of grave insurance market instability. Accordingly, NAHU urges HHS to evaluate the views of all issuers, regulators and actuaries that provide commentary on the proposed risk-adjustment formula changes carefully, and to heed the advice that will improve the adequacy of the methodology, issuer solvency and competition. NAHU believes that the Administration should strive to avoid unnecessary litigation and make it clear to issuers that its goal is to always spread risk amongst all players in the marketplace, and not compromise any future promised payments so that issuers will not be tempted to inflate premiums artificially or to leave the market altogether.

NAHU is grateful for the opportunity to provide comments on the proposed rule. If you have any questions or need additional information, please do not hesitate to contact me at (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

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