February 19, 2019

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

Submitted via email: FFEcomments@cms.hhs.gov

Re: Comment on the Draft 2020 Letter to Issuers on the Federally Facilitated Marketplace

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 benefit specialists. We are pleased to have the opportunity to provide comments in response the "Draft 2020 Letter to Issuers on the Federally Facilitated Marketplace."

The members of NAHU work on a daily basis to help millions of individuals and employers purchase, administer and utilize health insurance coverage. During the fall of 2018, they helped millions of their clients purchase Marketplace-based coverage and will continue to support those clients throughout the 2019 coverage year that lies ahead. As such, we have a critical interest in the federally facilitated marketplace (FFM) and the decisions being made now that will impact its structure and functionality in the year ahead. We have grouped our comments on the proposed letter by topic, as requested, and appreciate your consideration of our point of view.

Certification Process for Qualified Health Plans
QHP Application and Certification Timeline
NAHU recommends that CMS stipulate in the official certification timeline that Marketplace-certified health insurance agents and brokers will be granted access to plan pricing, tax credits product designs and technical details at least two weeks before open enrollment. Ideally, issuers and the Marketplace should provide an even longer lead time to certified and licensed professionals. In the draft letter, CMS proposes sending its official certification letters to issuers on October 3-4, 2019, with open enrollment to begin on November 1, 2019. This time frame should, in theory, allow issuers ample time to release finalized QHP rates and plan designs to licensed and certified agents and brokers well in advance of the beginning of open enrollment.

Even though health insurance issuers must commit to participating in the health insurance Marketplaces at the end of each spring, and they must file and have their QHP products approved by the states and federal Marketplace each summer, plan information, pricing and technical details are not made available to health insurance agents and brokers ahead of open enrollment. Every year, brokers have to spend the first few precious weeks of open enrollment learning all the ins and outs of plan options to explain them to clients and help recommend appropriate choices. This flow of information is not standard practice in the rest of the private health insurance markets, where agents get volumes of advance information about the products they will be able to offer in the plan year ahead.

Giving brokers and other assisters adequate time to review rates ahead of time will better enable them to develop solid coverage recommendations for their clients right at the start of open enrollment. As we know from the past several years of open-enrollment seasons, when agents and brokers do not have this lead time, they are forced to spend valuable open-enrollment time learning about the costs and features of various plans and doing client-specific analyses. It would be far preferable if brokers could spend the whole of open enrollment directly reaching consumers and working through options with them. NAHU believes that giving the individuals who help consumers directly as much time as possible to familiarize themselves with plan choices and prices would be very beneficial to the Marketplace and consumers alike. We would appreciate a CMS-required disclosure of plan information and rates to certified agents, brokers, navigators and other certified assisters by October 11, 2019, so that when the individual market opens for the year, they are fully prepared.

QHP Data Changes

NAHU requests that CMS stipulate in the final version of this letter that, for plan year 2020 and all out-years for QHP certification and rate approval, if an issuer files a premium rate with the state that includes broker compensation and that premium rate and plan design is ultimately approved by the CMS QHP rate review and certification process, then, as a condition of approval, the issuer may not alter the general compensation rate for brokers proposed and approved for the duration of the plan year. Such a requirement should not preclude an issuer from suspending broker compensation in the case of individual broker proved misconduct, but should prevent an issuer from altering a commission structure included in filed and approved rates for all brokers or a set grouping of brokers (such as appointed brokers) in the midst of the plan year.

While it has been very clear that it does not require or regulate broker compensation for Marketplace products, CMS does stipulate that if an issuer provides broker compensation, then the issuer must provide the same level of compensation for all substantially similar QHP products, regardless if they are sold via the Marketplace or in the off-exchange Marketplace. The reasoning for this requirement is CMS's direct authority to both enforce the ACA's guaranteed-issue requirement and to ensure stability in the exchange Marketplace. If the compensation environment is not kept level for substantially similar products both on- and off-exchange, then the guaranteed-issue provisions of the law are undermined, as individuals might not have access to all products through their brokers and people may be unknowingly directed to one market or another, creating an unlevel market playing field and consumer harm. The same threats to the ACA's individual-market guaranteed-issue requirements and the stability provisions apply to a mid-year commission policy change by an issuer. If an issuer provides one rate during open enrollment then reduces rates for the remainder of the plan year during the special enrollment period, an individual's access to coverage and exposure to all channels of consumer assistance will be diminished. This is especially true of a commission change that impacts the SEP, since consumers with SEP rights often need the most help. Furthermore, by reducing its rate to a noncompetitive level midway through the plan year, an issuer may be able to inappropriately shift risk to other issuers in the marketplace.

NAHU believes that CMS has the responsibility and authority under its rate review and QHP certification processes to ensure that issuers maintain the services that they promise via filed and approved rates throughout the plan year. Much like CMS stipulates that issuers may not change and reduce their initially specified service areas mid-plan-year, we believe it would be appropriate to stipulate that the services promised as part of approved rates, including access to the purchasing services and plan-year and renewal consumer support offered by a licensed health insurance agent or broker, not be eliminated partway through a given plan year. Otherwise, consumer services that are promised as part of the approved rates of the policy may be reduced and consumers would see no corresponding premium reduction.

QHP Performance and Oversight

FFM Oversight of Agent and Brokers

In the draft letter, CMS indicates that it will use the same oversight strategy for FFM-certified agents and brokers in 2020 as is outlined in the 2018 CMS Letter to Issuers. NAHU believes it is critical that certified brokers be held accountable for their actions and we support efforts to enforce appropriate consumer-protection standards. We also support the current year's efforts to extend these requirements to web-broker direct enrollment entities and the specification that web-broker direct enrollment entities and issuers are responsible for the compliance of their downstream risks. However, as we have expressed in past years, we continue to have concerns about how CMS coordinates enforcement efforts with state regulators. NAHU believes that rather than the exchanges initiating separate investigations and processes in the case of potential broker misconduct, consumers, the exchanges, states, and agents and brokers will best served if exchanges would simply always work with state regulators within the existing enforcement framework at the state level.

NAHU sincerely appreciates the opportunity to provide comments on this letter and we look forward to working with you in the year ahead. If you have any questions or need additional information, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

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