



March 2, 2020

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](mailto:FFEcomments@cms.hhs.gov)

**Re: Comment on the Draft 2021 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 the Centers for Medicare and Medicaid Services (CMS) with comments in response to 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 2019, like every fall since 2014, NAHU members helped millions of people purchase Marketplace-based coverage. Our members will continue to support those clients throughout the 2020 coverage year that lies ahead. As such, we have a critical interest in the federally facilitated marketplace (FFM) and 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 designs and pricing, as well as other 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 releasing final issuer certifications on October 5-6, 2020, with open enrollment to begin on November 1, 2020. 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 before the beginning of open enrollment. However, to ensure that it happens in every case with every issuer, we respectfully ask that you include the release of information to Marketplace-certified health insurance agents and brokers in the official timeline.

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 always 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. In every other health insurance market space, agents and brokers have access to reams of information about the products they will sell and support well in advance. To level the playing field and ensure that consumers get the best possible support, we would appreciate a CMS-required disclosure of plan information and rates to certified agents, brokers, navigators and other certified assisters by October 12, 2020.

#### *QHP Data Changes*

NAHU requests that CMS stipulate in the final version of this letter that, for plan year 2021 and all out-years that 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 CMS 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.

No part of the Affordable Care Act (ACA) requires or regulates broker compensation for Marketplace products. However, 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. Further, 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 (SEP), an individual's access to coverage and exposure to all channels of consumer assistance are 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.



## **Consumer Support Tools and Public Information**

### *Medical Cost Scenarios*

According to the proposed guidance, CMS is considering whether to provide additional medical cost scenarios to QHP customers on HealthCare.gov in order to provide consumers with greater medical price transparency. NAHU supports this proposal.

## **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 2021 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. 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](mailto:jtrautwein@nahu.org).

Sincerely,

A handwritten signature in black ink, reading "Janet Trautwein". The signature is written in a cursive style with a large, stylized initial "J".

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