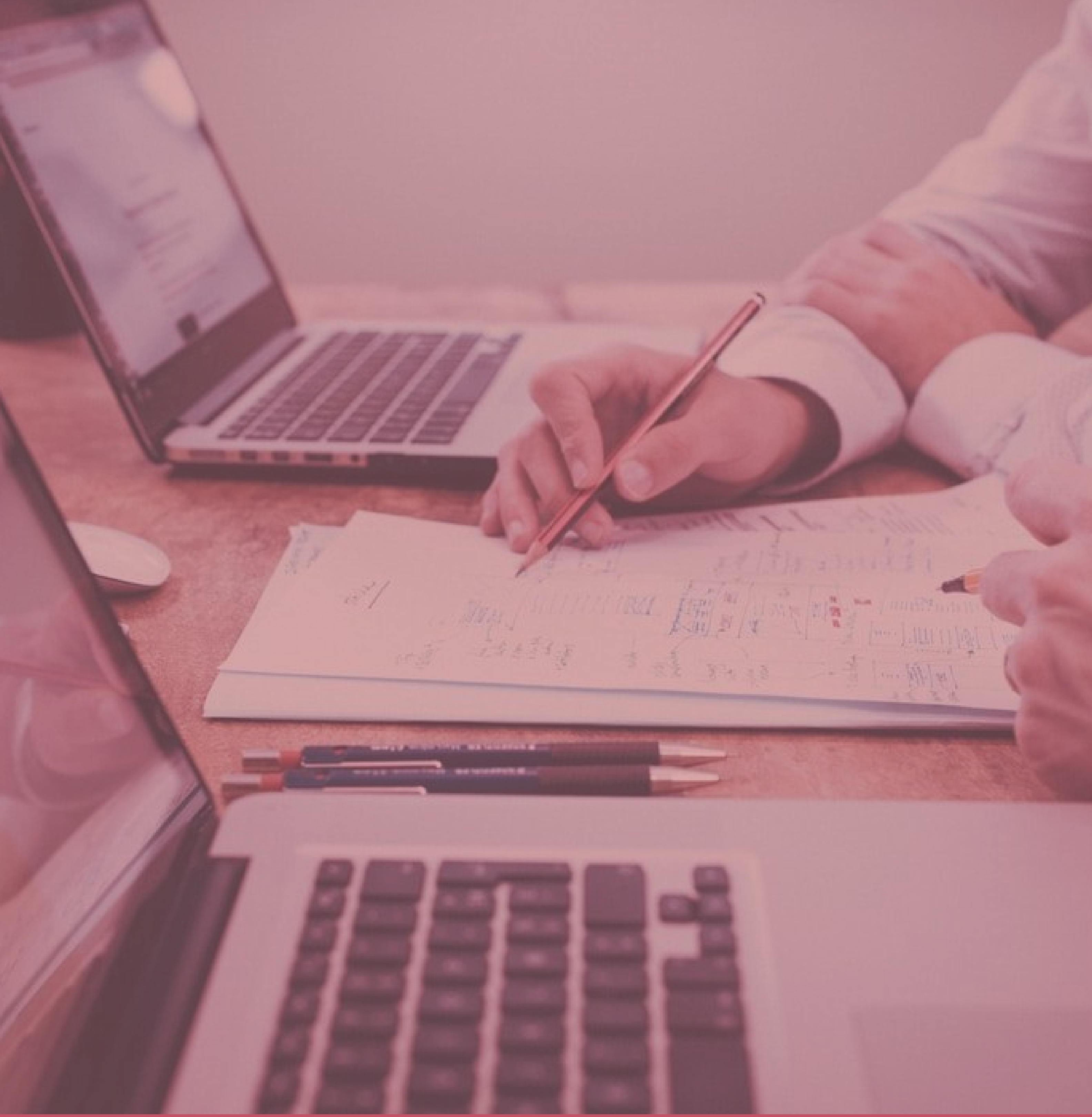

Broker Compensation Disclosure Requirements under the CAA, 2021 - Individual Health Plans

November 2021

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Broker Compensation Disclosure - Individual Health Plans

Background

Section 202 of the CAA requires that agent, broker and consultant compensation related to all group health plans and individual health insurance policies be disclosed for arrangements entered into, renewed or extended on or after December 27, 2021.This law requires agents, brokers and/or consultants (and their subcontractors) to disclose their compensation to plan fiduciaries.

Specifically, any covered service provider that receives compensation in excess of $1,000 annually must provide this disclosure. The disclosure must include amounts paid directly and those received indirectly related to group and individual health plans. This requirement applies to contracts with both fully insured and self-funded group health plan arrangements.

On September 10, 2021, HHS, DOL, and the Treasury, alongside OPM issued a **proposed rule** that provides further information on how they will implement the upcoming broker compensation transparency requirements for individual and short-term limited duration plans as well as information regarding surprise billing of air ambulances.

Under the proposed rule, insurers would be required to disclose compensation information to all potential or new policyholders, as well as upon renewal of a policy. Disclosures would be required before a consumer finalizes their plan selection and on any document that confirms initial enrollment in coverage. This could be on an initial enrollment package, or any document required by state or federal law for this purpose (for example, summary of benefits and coverage).

HHS acknowledges that “any documentation” that confirms an individual's enrollment could be construed broadly, but proposes a narrow definition so as not to overly burden insurers without a benefit for consumers. Insurers would make the same disclosure when an enrollee renewed their policy. For individual health coverage, this disclosure would occur alongside the plan renewal notice.

Where there are no state requirements for documentation (such as with short-term plans in most states), this disclosure would have to be sent with the invoice for the first premium payment for the initial coverage term and for each renewal period.

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What do insurers have to disclose?

HHS does not prescribe a single standardized format, but just minimum standards. Insurers would have to disclose the amount of direct and indirect compensation, including a commission schedule. By requiring disclosure of a commission schedule, HHS believes it would ensure that consumers receive a consistent document that could assist with informed purchasing decisions.

If the insurer offered compensation that is not covered by the commission schedule, the insurer would have to provide an explanation of the thresholds when an agent or broker qualified for indirect compensation (such as a bonus). Insurers not using commission schedules at all would have to describe their compensation scheme. All of this data would account for any differences between new enrollments versus renewals.

While these requirements apply to insurers, the obligations could be satisfied if agents or brokers made the required disclosure on an insurer's behalf. The agent or broker could attach a commission schedule and other information to enrollment materials or provide a link to the information.

All materials would have to be provided in accessible formats for those with disabilities and limited English proficiency. Insurers would also have to comply with other language and accessibility requirements, such as making the disclosures available in the 15 most common languages in the state.

Frequency of disclosure?

Under the proposed rule, insurers would have to report compensation information to HHS on an annual basis. The report would cover the prior calendar year and be due by the last business day of July each year (i.e., the report for calendar year 2022 would be due by July 31, 2023).

Since many short-term policies may not run for a full calendar year, these insurers may need to split reporting for a single policy between calendar years.

✳Information based on proposed rule that has yet to be finalized

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