Testimony for the

United States House of Representatives

Committee on Energy and Commerce

Subcommittee on Health Hearing

"Cutting the Red Tape: Saving Jobs from PPACA's Harmful Regulations"

September 15, 2011

Submitted by

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September 15, 2011

Good morning. My name is Janet Trautwein, and I am the CEO of the National Association of Health Underwriters (NAHU). Thank you for inviting me here again today to talk about the regulatory impact that the Patient Protection and Affordable Care Act (PPACA) has had on NAHU members directly, as well as on their clients.

NAHU is the leading professional association for health insurance agents, brokers and consultants, representing more than 100,000 benefit specialists nationally. The members of NAHU 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 NAHU members are principals in their own small businesses and employ multiple individuals from their communities.

The leadership of this committee invited me here this past June to talk about the desperate economic situation PPACA's medical loss ratio (MLR) regulation has created for the half-million health insurance agents and brokers nationwide. Unfortunately, I do not have a positive update for the committee today. The economic outlook for many health insurance agents and brokers across the country continues to be bleak. As health insurance companies renew and revise their agent and broker contracts for the coming year, it is clear that the financial situation for many of these business owners is getting worse.

The problem is clearly PPACA's MLR requirements, which mandate 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 interim final rule as designed by the Department of Health and Human Services requires health plans to treat independent agent and broker compensation as part of health plan administrative costs. This is despite the fact that independent agents and brokers aren't employed by health insurance carriers. They run their own businesses, hire their own employees and pay all of their own office expenses, such as professional liability insurance. 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.

Health insurance carriers do collect and remit agent and broker fees to them, but they only do so as a consumer convenience and also to comply with overlapping webs of state-licensing, consumer-protection and premium tax laws. Not one penny of independent agent or broker compensation ever goes to a health insurer's bottom line. Instead it is a pass-through fee that goes directly from consumers to their health insurance agent.

The MLR provisions in PPACA were designed to ensure the appropriate use of premium revenue by the insurance companies. However, two recent nonpartisan analyses of the situation clearly show that one of the key ways health insurance companies have been attempting to comply with the MLR is by cutting agent and broker fees even though they were never part of their revenue stream in the first place.

In May 2011, a national actuarial study conducted for the National Association of Insurance Commissioners' (NAIC) Professional Health Insurance Advisors (EX) Task Force regarding producer compensation in the PPACA MLR calculation found that "in 2011, a significant number of companies have reduced commission levels, particularly in the individual market."

A Government Accountability Office (GAO) report released in August 2011 titled Private *Health Insurance: Early Experiences Implementing New Medical Loss Ratio Requirements* contained similar conclusions. It states: "Almost all of the insurers we interviewed were reducing brokers' commissions and making adjustments to premiums in response to the PPACA MLR requirements. These insurers said that they have decreased or plan to decrease commissions to brokers in an effort to increase their MLRs."

As a result of these cuts, brokers servicing the individual and small-business markets are seeing their overall business revenue slashed by 20 to 50 percent. This means fewer agents and brokers will be able to afford to stay in business. It also means that the agents who do survive will have to make service cuts and will no longer be able to provide the counseling and advocacy support to their clients at the same levels as they have in the past.

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. Agents are responsible for solving all the problems that consumers may have once coverage is in place. Many times, the role of the agent is invisible, particularly to the employees of a company. Typically when workers have issues 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 will contact the health insurance agent. Many smaller companies do not even have an HR department for employees to contact so, as the Congressional Budget Office 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."

HHS officials have made repeated public statements, including to this committee, about the valuable role licensed agents and brokers play in the health care delivery system. HHS has even recently specifically sought out the expertise of agents to try and help make PPACA-related reforms work better. The federal government's Preexisting Condition Insurance Plan (PCIP) recently decided to use and traditionally compensate health insurance agents, in hopes of increasing its meager enrollment. In just one week, several thousand agents signed up nationwide to assist health insurance consumers with serious medical conditions find coverage. Just this past week, Director Larsen sent a letter to both the NAHU membership and all health insurance agents and brokers working with the federal PCIP plan encouraging them reach out to their small-business owner clients and help them apply for PPACA health insurance tax credits if the businesses are eligible.

Consumer need for health insurance agent and broker services is at an all-time high due to the passage of PPACA. NAHU members are spending significant amounts of time educating their clients about the new law's provisions and helping them comply with its resulting regulations. 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. So we need to make sure this industry survives.

Earlier this year, President Obama announced a new executive order aimed at removing "regulatory burdens that have stifled innovation and have had a chilling effect on growth and jobs." It called for "a government-wide review of the rules already on the books to remove outdated regulations that stifle job creation and make our economy less competitive." In his State of the Union Address, the president promised that "when we find rules that put an unnecessary burden on businesses, we will fix them." In his speech to the joint session of Congress last week, the president said, "I agree that there are some rules and regulations that put an unnecessary burden on businesses at a time when they can least afford it. That's why I ordered a review of all government regulations. So far, we've identified over 500 reforms, which will save billions of dollars over the next few years. We should have no more regulation than the health, safety, and security of the American people require. Every rule should meet that common-sense test."

I am here to tell you today that the administration has missed few big regulations along the way. PPACA-related regulations have not been part of the administration's regulatory burden review process, yet they are costing American jobs and hindering American business owners every single day. 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.

NAHU recently surveyed its members and found that 21 percent of independent health insurance agency owners have been forced to downsize their businesses, including laying off employees. Twenty-six percent have also had to reduce the services they provide to their clients. Many agents are no longer able to provide basic services like travelling to clients' homes and offices to walk them through the application process. Employee hours spent solving problems that clients routinely encounter with their health insurance coverage, such as resolving billing and claims issues, have also been drastically cut. Five percent of respondents who were not principals in their agencies have already lost their jobs due to producer revenue reductions caused by the MLR regulation, and agency owners report that if their compensation continues to plummet more job loss will follow.

Some health insurance carriers have held off on making commission payment changes in 2011, with 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 very soon, they will be forced to reduce the amount of producer commissions for 2012 and beyond. Most insurance carriers renew their agent and broker contracts and adjust their commission rates in the fall of each year. So we know that, absent immediate congressional or federal regulatory action, further cuts are on the horizon in the near-term future.

So far, the data collected by both the GAO and the NAIC shows that 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 hurts 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.

It’s not like the typical health insurance agent or broker has a high income to start out with either. 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. 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 scarce, the MLR as currently structured is causing irrevocable harm to tens of thousands of small businesses and jeopardizing desperately needed American jobs.

This is why NAHU is seeking all possible solutions – be they regulatory or legislative – to this critical problem. We need to prevent additional job losses and economic disruption being caused by the MLR regulation, and we need this relief as soon as possible.

One way to do that would be H.R. 2077, which has been introduced by Representative Tom Price of Georgia and would completely repeal the PPACA MLR provisions and the resulting regulatory requirements. This solution has merit, as MLR regulation as it currently stands is causing disruption in all insurance markets. Its immediate impact has been diminishing access to health insurance agents, particularly in the individual and small-group markets. There will also be a long-term impact as, over time, the current MLR rules will reduce the number of insurers altogether, hindering competition and raising coverage prices for every purchasing sector.

I think it is critical for this committee to recognize that the solution to this urgent problem needs to both quick and bipartisan. I am here to save agent and broker jobs and preserve individual consumer and employer access to professional health insurance advocates. I am not here to score political points. There are too many American businesses at stake.

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 120 bipartisan cosponsors, including 24 members of this committee. NAHU fully endorses this legislation, as do all other national agent professional organizations, the National Conference of Insurance Legislators (NCOIL) and the NAIC's Professional Health Insurance Advisors (EX) Task Force, a group of insurance commissioners the NAIC established last year to specifically monitor the impact of PPACA on agents and brokers, especially during years leading up to 2014.

Removing agent and broker pass-through commissions from the MLR calculation would restore economic stability for licensed health insurance advisors nationally and it would 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.

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.

While H.R. 1206 will provide the needed MLR relief, we believe the fastest way to solve this problem rests with HHS. The secretary has a great deal of statutory authority over PPACA implementation and could effect a change in this area on an immediate basis. We have asked the secretary to amend the current interim final rule interpreting the MLR requirement to properly classify agent and broker commissions as pass-through amounts, and to exclude them from the overall MLR calculation. However, since HHS officials have indicated to our association that there may be statutory authority concerns with that approach, we have also told HHS that we would appreciate an immediate hold being placed on implementation and enforcement until these matters can be resolved by HHS and/or Congress. Similar holds on enforcement and implementation have been issued for many other provisions of PPACA that would have caused a detrimental impact on American businesses.

An optimal and expedited solution to the MLR calculation problem for health insurance agents and brokers and their clients is imperative. As I have documented, the financial impact on NAHU members, their employees and their clients has already been significant and will only continue to 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 at the point of sale and throughout the life of the health insurance policy – a change to the MLR calculation is urgently in order. Without an immediate fix, 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.

Finally, while the focus of my remarks has obviously been PPACA's MLR requirements, other panelists have addressed the impact the new law's grandfathering provisions are having on employers and individual health insurance consumers everywhere. I would be remiss if I didn't briefly speak about them too. NAHU represents tens of thousands of people who not only make a living helping people and business owners with their health insurance coverage needs , but who also purchase small group health insurance coverage for their employees. Plus, I am the CEO of an organization that purchases small group health insurance coverage for its employees. So I know firsthand how the central promise of health reform, "If you like the coverage you have, you can keep it" isn't being upheld for most Americans. PPACA's interim final rule on grandfathered plans severely limits the ability of employers and individual health insurance consumers to keep their grandfathered status, even if they wish they could do so.

I greatly appreciate this opportunity to testify, and I would be glad to answer any questions you may have. My organization and I look forward to working with you, other members of Congress and the Obama Administration to come up with an expeditious solution that will preserve the valuable role independent health insurance agents and brokers play in our health care system and prevent additional economic harm to our industry.

Respectfully Submitted,

Janet Trautwein

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

Testimony Summary for Janet Trautwein, CEO of the National Association of Health Underwriters

NAHU is the leading professional association for health insurance agents, brokers and consultants, representing more than 100,000 benefit specialists nationally. Our members work on a daily basis to help individuals, families and employers of all sizes buy health 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 NAHU members are principals in their own small businesses and employ multiple individuals from their communities.

PPACA's MLR requirements have created a desperate economic situation for the country's half-million health insurance agents and brokers. The MLR interim final rule as designed by the Department of Health and Human Services requires health plans to treat independent agent and broker compensation as part of health plan administrative costs, even though independent agents and brokers aren't employed by health insurance carriers. Health insurance carriers do collect and remit agent and broker fees to them, but they do so as a consumer convenience and also to comply with overlapping webs of state licensing, consumer protection and premium tax laws. Not one penny of independent agent or broker compensation ever goes to a health insurer's bottom line.

The MLR provisions in PPACA were designed to ensure the appropriate use of premium revenue by the insurance companies. However two recent nonpartisan analyses of the situation clearly show that one of the key ways health insurance companies have been attempting to comply with the MLR is by cutting agent and broker fees that were never part of their revenue stream in the first place.

As a result of these cuts, brokers servicing the individual and small-business markets are seeing their overall business revenue slashed by 20 to 50 percent. This means fewer agents and brokers will be able to afford to stay in business. It also means that the agents who do survive will have to make service cuts and will no longer be able to provide the counseling and advocacy services to their clients at the same levels as they have in the past.

NAHU is seeking all possible solutions – be they regulatory or legislative – to this critical problem. We need prevent additional job losses and economic disruption being caused by the MLR regulation, and we need relief as soon as possible. It is critical for this Committee to recognize that the solution to this urgent problem needs to both quick and politically viable.

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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 the preserve the valuable role they serve in our health care system.