Georgia Associations of Health Underwriters
Georgia's Benefit Specialists

December 14th, 2010

The Honorable John Oxendine
Georgia Department of Insurance
Two Martin Luther King, Jr. Drive
West Tower, Suite 704
Atlanta, Georgia 30334

Dear Commissioner Oxendine:

On behalf of the Georgia Association of Health Underwriters (GAHU), I am writing to formally request the State seek a waiver from the U.S. Department of Health and Human Services (HHS) on the implementation of the medical loss ratio (MLR) requirements in Georgia.

As you know, one of the provisions of the Affordable Care Act (ACA) requires health insurance carriers to comply with new MLRs that call for 80 percent of individual and small group and 85 percent of large group premium dollars be spent on medical care. The National Association of Insurance Commissioners (NAIC) was charged with the development of the calculation for MLRs in the individual and small group insurance market, specifically the definitions of administrative expenses and quality of care. Throughout its work developing the MLR definitions, the NAIC warned federal regulators that the final regulation would need to be adjusted to account for the impact the MLR requirements would have on insurance agents' involvement in the purchase and servicing of health insurance policies in the future. The NAIC did not believe it had the legal authority to act in this area, but indicated that unless HHS made an accommodation for agents' compensation for those services, the NAIC's MLR definitions alone would likely create substantial market disruption and limit consumers' access to professionally licensed and trained benefit specialists.

HHS released the Interim Final Rule on the MLR regulation on November 22. As currently written, the regulation is likely to diminish the role of agents and reduce the number of insurers willing to write health insurance in the individual and small group markets. The result will be underserved consumers, reduced competition, and disruption of the State's insurance market.

In Georgia, insurance market destabilization has begun to take effect. Principal Life Insurance Company, a well respected, well operated health insurer in the Georgia market has already announced it will leave our market and we would expect additional announcements if a waiver is not granted. Most carriers in the marketplace have reduced commissions by at least 20% with some individual market reductions of as much as 75%. Those reductions alone would cause a substantial reduction in the agent force in Georgia, but that is not the whole story.

Most health insurance in Georgia is not sold by individual agents but by small businesses – insurance agencies with from 2-10 agents and administrative personnel. The agent (or 2 or 3 agents) owning the business rely on the net income of the organization for their salaries. These businesses have overhead

248 Creekstone Ridge – Woodstock, GA 30188
PHONE: 770-516-4746 - FAX: 770-516-0236
www.gahu.org

costs, just like other businesses, that range from 50% to 80% of gross income. The gross income of the business just happens to be insurance commissions. When that gross income is cut by 20-30%, as is the case in many of the cuts in agent compensation, it translates into anywhere from a 50% loss of net income to an agency owner to a net loss and cuts to jobs or the business closing. So in most situations, the decrease in agent compensation from the carrier translates into at least twice the decrease in agency net income.

This, in turn, will lead to fewer administrative personnel and agents to help consumers and less help for the average individual or small business. One of the misunderstandings in the passage of the law and issuance of regulations is the idea that agent compensation primarily reimburses agents for sales. In fact, most of the work of agents is in handling billing and claims problems that are always present in such a complicated product.

An additional problem is created for the marketplace when you look at the effect of this provision on smaller and/or new carriers in the marketplace. A new carrier in a market may have a medical loss ratio of 50% but still lose money. New market entries require capital investment to create infrastructure prior to sales. The limitations of the new law make such new entries much less likely since they make a recovery of the investment much harder. The same is true of smaller companies that may lose money in some years due to fluctuations in claims that smaller blocks of business are subject to -- with recovery much harder due to the limitations. Such new/small carriers provide much of the innovation in the marketplace and create a more competitive environment. One way they attract new business is through slightly higher agent compensation which attracts new brokers to their offerings. Such an avenue will be closed to them under the new law.

We would also urge you to ask for the waiver to apply to MLR in both the individual and small group markets. We understand that HHS believes they can only grant waivers for individual market disruption but the two markets are so interlinked that problems in one of the markets leads to disruption of the other. For this reason, we believe a carefully worded request could allow a waiver to be granted in both markets, which are both impacted by all of the situations mentioned above.

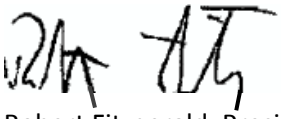
As assistance in requesting this waiver, we have provided, as an attachment, a listing of changes in compensation to agents and brokers that have taken place in the last month or so due to carrier reaction to the new MLR Regulation.

A diminished role for insurance agents and brokers would deprive consumers and employers of one of the greatest assets and trusted choices they have available. Agents and Brokers help consumers find the right health plan that fits their needs, and also navigate the complex health care system. They advocate on consumers' behalf when problems arise, identify cost-saving opportunities and keep consumers informed of new products and changes to the industry that may impact them.

HHS has given states the authority to request a waiver on implementation of MLR. GAHU, in coordination with our national organization NAHU, respectfully requests your consideration in seeking a MLR waiver and allow for producer commissions to be removed from the denominator of the calculation for individual and small group policies sold in Georgia. The regulation specifically states that the impact of the MLR standard on agents and brokers will be a factor in considering whether a particular individual market would be destabilized.

GAHU appreciates your time and attention to this important aspect of Affordable Care Act implementation. Working together, we are confident that we can preserve the vital role of the agent/broker profession in our health care delivery system.

Sincerely,



Robert Fitzgerald, President
Georgia Association of Health Underwriters

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