



NATIONAL ASSOCIATION
OF INSURANCE AND
FINANCIAL ADVISORS



THE COUNCIL
of INSURANCE
AGENTS & BROKERS

May 22, 2009

Via Electronic Transmission
The Honorable Max Baucus
Chairman, Senate Finance Committee

The Honorable Charles E. Grassley
Ranking Member, Senate Finance Committee

Dear Chairman Baucus and Senator Grassley:

We, the undersigned organizations, representing more than 500,000 professional health insurance advisors, agents, brokers, consultants and employee benefit specialists, would like to submit the following comments on the Senate Finance Committee's policy options paper, *Expanding Health Care Coverage: Proposals to Provide Affordable Coverage to All Americans*, focusing on the provisions specifically concerning agents and brokers.

For decades, professionally licensed benefit specialists have delivered valuable services to individuals and employers to obtain prices for coverage that best fits their needs. Licensed specialists design benefit plans, explain coordination issues of public and private benefits to individuals/employees, and solve problems that may occur once coverage is in place. Our members are also at the forefront of helping to design and implement cutting-edge health promotion and wellness programs for employers—a focus that everyone agrees is key to combating increasing health care costs. In addition, our membership includes general agents that play a critical role with the broker distribution system. Multiple carriers rely on them for numerous administrative duties including new case set up and maintenance, broker education and client education, eliminating redundancies across the spectrum.

Agents, brokers, general agents and consultants are all subject to rigorous licensing and continuing-education requirements and we serve a proud and important role as advocates for our clients. We help gain coverage for, and service the health and benefit needs of, millions of Americans.

One key test of public approval for any sustainable and equitable reforms will be ensuring that all Americans have continued access to the services of state-licensed agents, brokers and consultants who serve as American consumers' counselors and advocates. We are very glad that all of the Committee's proposed coverage-reform options include a role for professional health insurance producers, including through the proposed coverage exchange. In particular, we are most supportive of the provision that the price for coverage must be the same no matter how the policy is purchased.

However, we do have some very significant concerns about the proposed "Functions Performed by the Secretary of Health and Human Services" if any health insurance exchange is created. Specifically, we stand in complete opposition of the use of the Medicare Advantage marketing requirements and commission schedule as a model for agents and brokers marketing products in the exchange. We also would like clarification of the proposed options for a government-run call center and the provisions for exchange health plan enrollment in certain public places.

All of the professional organizations representing health insurance agents and brokers agree that licensed agents and brokers should be expected to adhere to highest possible standards of education and professionalism. We also agree that those licensed professionals marketing products through an exchange should be specifically trained on all of the mechanics of the exchange, including all coverage options, subsidies and quality information available through the

exchange. But the rules that apply to accessing the services of agents, brokers and professional benefit consultants in the Medicare market are not at all an appropriate model for this purpose.

The Medicare Advantage marketing requirements were created by Congress and CMS during the past year to protect consumers from potentially unscrupulous actors seeking to sell Medicare beneficiaries an insurance product they may not want or need.

Insurance agents, brokers and consultants serving the group and individual insurance markets are highly regulated service professionals. They also carry errors and omissions insurance and have a professional liability to adequately answer all insurance-related questions posed to them by their clients. States have developed many requirements for this profession, including strict licensing and continuing-education laws to protect consumers and ensure that they receive the highest level of advice from insurance professionals. The extensive level of education and oversight already required by the individual states of agents and brokers in the marketplaces that would be included in any potential exchange are detailed in the attached chart.

Also, the Medicare Advantage rules were designed to protect a very different, distinct and vulnerable population. Medicare beneficiaries are buying completely different insurance products than what will be offered through any exchange. If the rules governing Medicare Advantage producers were applied to the exchange marketplace, they would not provide appropriate, adequate or necessary consumer protections. An example of one of the many Medicare Advantage marketing rules that would not translate at all to the exchange marketplace is the ban on simultaneously cross-selling other non-health insurance products. If that rule was applied to the exchange, it would mean that agents and brokers would not be able to discuss group life insurance products, dental insurance, long- and short-term disability and many other elements of a normal employee benefit package with an employer or employee at the same meeting. The agent would have to make an appointment to come back 48 hours later. Not only does this rule have no value in the under-65 health insurance marketplace, it would be extraordinarily problematic to virtually all American employers that might offer coverage through an exchange.

Instead of the application of rules designed for an entirely different insurance marketplace under markedly different circumstances that would not even provide adequate protections for individuals and small-employer groups buying insurance in the exchange, we would like to propose the use of a certification process specifically designed for this new marketplace. Agents and brokers marketing products in the exchange should be required to complete significant standardized and exam-based coursework that addresses both private coverage options offered through the exchange and public assistance/tax credit options. Such a certification process would ensure a much higher degree of professionalism among those producers working with exchange clients than the application of rules modeled after the Medicare Advantage program. A model for a certification program is already being developed by the agent and broker professional association community, with an anticipated completed date of mid-summer 2009. We would gladly work in partnership with the state and federal governments to ensure that all agents and brokers wishing to sell exchange-based products receive quality training based on the insurance market at hand and its specific needs and challenges.

Beyond the marketing rules, this paper calls for agents and brokers marketing products in the exchange to be subject to a regulated commission schedule, also modeled on the Medicare Advantage commission requirements. Medicare Advantage is a government-created and federally funded health coverage program. This is not true of private health insurance products that would be marketed and serviced by licensed professionals through an exchange. Private health insurance carriers elect whether or not to contract with health insurance agents and brokers to market their products. Consequently, it should be the individual private health insurance carriers that determine the amount of any commission paid to agents and brokers, as well as how those commissions should be paid as a function of health plan operations.

Also, the still-evolving CMS regulations on Medicare Advantage commission payments are inappropriate because they were designed to remove incentives for unscrupulous agents to “churn” Medicare Advantage policies since high rates of commission were paid to the agent in the first year of those policies.

The valid concerns about “churning” in the private Medicare market are a non-issue in the individual and small-group health insurance markets eligible for the exchange. Small-group commissions, as the attached chart indicates, are already level almost universally. Individual market commissions are sometimes slightly higher in the first year, but without the marked difference previously seen with Medicare Advantage policies.

In addition, individual consumers and small-business health insurance policies are annual contracts. It is both commonplace and responsible for an individual or small-group employer’s agent to annually review their client’s benefits and investigate whether or not it would be appropriate to make changes to either the existing policy or move to a new plan altogether. Life circumstances, financial needs and health insurance benefit plan options all change on a regular basis for the under-65 health insurance market. One of the goals of the exchange is to give individuals more annual flexibility in changing their benefits if needed, something that was not always an option in the individual market because of pre-existing condition clauses and rating requirements. A commission structure designed to discourage regular benefit changes is both inappropriate and unnecessary.

Furthermore, the reason why the federal government opted to regulate how commissions were paid in the Medicare Advantage market was that this program is federally funded, which is not the case for private health insurance premiums. As such, private health insurance commission payments, including the amount of the commissions and how and when they should be paid, are something that should be determined by the private health insurance carriers a function of normal health plan operations.

Regarding the proposed call center, clarification is needed about its functionality and purpose. Government-run call centers used for other purposes, such as 1-800-MEDICARE and the IRS help line, have proved to be ill-equipped to provide the personal service, timely objective information, guidance *and accountability* that professionally trained and licensed agents and brokers deliver on a daily basis. A government-run call center may have a place in providing basic information and referrals to certified licensed professionals, but in no way can it be assumed capable of replacing the high level of personal service, policy knowledge and accountability that distinguishes the professional agent, broker and consultant.

Finally, we have concerns about the language allowing health plan enrollment through the exchange in public places. While Web portal access in places like schools, local hospitals and departments of motor vehicles may be appropriate, it is imperative that any person assisting in health plan purchasing and enrollment must be licensed according to the rules of the state. Consumers enrolling in these locations will be the most vulnerable and in need of expert assistance. They should not be able to finalize their health plan purchase without the option of obtaining help from a licensed and certified professional.

We appreciate both this opportunity to provide comment and the Committee’s incredible work and initiative you have invested in health reform and the development of these coverage policy options. The nation’s health insurance agents, brokers and consultants are committed to working with you as this process moves forward to achieve our common goal: a world-class and affordable health care system for all Americans.

Sincerely,

AHIA – NAIFA Health & Employee Benefits (AHIA)
The Council of Insurance Agents & Brokers (CIAB)
Independent Insurance Agents & Brokers of America (IIABA)
National Association of Insurance and Financial Advisors (NAIFA)
National Association of Health Underwriters (NAHU)
National Association of Professional Insurance Agents (PIA)