



October 15, 2021

Submitted via www.regulations.gov

Chiquita Brooks-LaSure, Administrator
Centers for Medicare & Medicaid Services,
Department of Health and Human Services
P.O. Box 8016
Baltimore, MD 21244-8016

RE: Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement (CMS-9907-P)

Dear Administrator Brooks-LaSure,

The Alliance of Community Health Plans (ACHP) appreciates the opportunity to comment on the proposed rule that will require health plans to report on compensation provided to agents or brokers who enroll individuals in health insurance coverage. Our member health plans strongly support consumers being informed about medical service costs and given clear and personalized information that helps evaluate and compare high quality health care options.

ACHP represents the nation's top-performing non-profit health plans improving affordability and outcomes in the health care system. ACHP member companies are provider-aligned health organizations that provide high-quality coverage and care to more than 24 million Americans across 36 states and D.C. They are leading the industry in practical, proven reforms around primary care delivery, value-based payment and data-driven systems improvement.

ACHP is committed to ensuring that every consumer has access to high quality, affordable coverage through the Marketplaces. Our member health plans stayed in the Marketplaces throughout the early and rocky years of the ACA to ensure their communities had access to comprehensive and affordable coverage, even when that meant offering coverage at a loss. We consistently advocate for policies that stabilize the individual market and expand access to affordable coverage options for working families across the country, including an amicus brief in the *California v. Texas* case to highlight the importance of a robust and stable individual market.

We support making a broker's self-interest and financial incentives transparent when recommending certain health benefit packages. We offer the following recommendations to improve the proposed rule:

Simplify Information in Disclosures for Improved Consumer Use

ACHP recommends the Administration simplify the disclosure requirements to make sure they are easily understood by consumers and considered during the enrollment process. We support introducing much needed transparency into the process, but remain concerned that without simplification, the disclosures could result in more confusion and potentially pose a deterrent to enrollment. Brokers for individual health insurance do not typically receive high commissions and

sell these plans because they believe it is important to help people get covered. As a result, any disclosure of low-level commissions to individuals is extraneous at best, and at worst, will be a source of confusion that will delay the transaction. Without ease of understanding and simplification, these disclosures will quickly become well-intentioned but overlooked.

We recommend the Administration prescribe a specific format for the issuers' commission schedules or other documents that detail the applicable direct or indirect compensation in disclosures to enrollees when this disclosure is delegated to the broker or agent. Otherwise, the brokers or agents would be allowed to determine not only which information was relevant to attach to enrollment materials, but also the form (printed, electronic, etc.). Indirect compensation arrangements, such as bonuses, vary across the country and among different insurers. This requirement will not result in a simple, consistent document that would assist with informed purchasing decisions.

Additionally, this lack of specificity and simplicity will only serve to support bad actors, who will game the system and display the information in a way that is purposefully difficult to understand. We recognize that smaller agencies with little to no support staff may find this difficult and we encourage the Administration to implement streamlined reporting based on an organization's size and capabilities.

ACHP does not recommend the Administration include National Producer Numbers as a required field as it is not consistently utilized outside of federal Marketplace business. We also request the Administration confirm that administrative fees paid to intermediary entities that are not agents or brokers are out-of-scope for any disclosure or reporting requirements.

We appreciate this Administration's Navigator provisions within the Notice of Benefit and Payment Parameters for 2022 to strengthen the navigator / broker role ensuring consumers have the assistance they need to enroll in Marketplace plans. The No Surprises Act broker rules should complement this effort by identifying when brokers are competing with or contrary to navigators, not forcing consumers to grapple with whether a commission fee is steering them to a plan that will not meet their needs. Unless these disclosures are simplified and tailored for consumer benefit, the transparency into broker fees will not result in the desired "informed consumer" effect. More likely, they will be ignored or introduce consumer wariness into the coverage purchasing process. It is the behind-the-scenes reporting from health plans to HHS about broker commissions that will better protect consumers from potential bad actors.

Target Brokers That Push Non-ACA Individual Plans

ACHP recommends distinguishing between incentives to enroll in individual coverage versus short-term, limited-duration insurance, as well as the total number of individuals enrolled in each type of plan. We support the annual reporting requirement in the proposed rule for health plans to file reports on the Health Insurance Oversight System after payments have been made to agents and brokers. This retrospective reporting requirement will be very useful in identifying which brokers are focused on short-term insurance that will not protect consumers from high out-of-pocket costs.

As an April 2020 [Urban Institute study](#) found, many brokers refuse to sell products that they believe are too risky for consumers, despite higher financial incentives. These backward-looking reports, if they are specific enough, will help identify when brokers are enrolling people in plans for reasons other than a short-term bridge to better coverage.

Eliminate the Broker Renewal Fee

According to the proposed rule, insurers, through their brokers, would make the same disclosure about commission fees when an enrollee renewed a policy. For individual coverage, this disclosure would occur alongside the plan renewal notice. Where there are no state requirements for documentation, the disclosure would have to be sent with the invoice for the first premium payment for the initial coverage term and for each renewal period. Again, this disclosure to the consumer will not help them make an informed choice about health insurance and will be all the more irrelevant upon renewal. Generally, consumers auto-renew policies without the help of, or with no advice from, an agent or broker.

Instead, ACHP recommends the Administration eliminate the renewal fee as it provides no real incentives for brokers and rewards them for consumer decisions they did not influence. As stewards of the premium dollar, there is no value in brokers or agents being compensated for coverage renewals at the expense of consumers.

Extended Compliance Timeframe

ACHP recommends at least a 90-day compliance window after the rules are finalized. Once these new requirements are finalized, issuers will need sufficient time to develop the disclosure materials, update initial enrollment packages and renewal documents, and work with agents, brokers and Marketplaces to disseminate the information. We recommend that in addition to applying the disclosure requirements to contracts executed between an agent or broker and issuer on or after December 27, 2021, issuers should be granted at least 90 days after the rule is finalized before the disclosure requirements become effective.

Thank you for consideration of ACHP's recommendations. If you have questions or require additional information, please contact our Director of Public Policy, Michael Bagel at mbagel@achp.org.

Sincerely,

Dan Jones

Dan Jones
Vice President of Federal Affairs