



## Legislative Alert: HHS Issues MLR Regulations

The U.S. Department of Health and Human Services (HHS) issued today an "interim final rule" detailing the specific "medical loss ratio" (MLR) requirements for the health plan pursuant to the Patient Protection and Affordable Care Act (PPACA). The MLR regulation requires insurers to spend 80 to 85 percent of premium dollars on medical care, as opposed to administrative costs.

One legislative goal under PPACA is to make the insurance marketplace more transparent and easier for consumers to purchase plans. However, many have expressed concerns, including brokers and their clients, about how the mandated MLR formulas will impact the availability of brokers to provide services if commissions are lowered under the MLR formula because agent compensation is classified as an administrative cost.

As required by PPACA, this regulation originally was developed by the National Association of Insurance Commissioners (NAIC) and handed off to HHS earlier this fall. HHS states: "Today's regulation certifies and adopts the recommendations submitted to the Secretary of Health and Human Services (HHS) on October 27, 2010, by the NAIC. It also incorporates recommendations from a letter sent to the Secretary by the NAIC on October 13, 2010."

However, the Wall Street Journal reports today in its health blog page: "One of the proposed amendments that didn't make the NAIC's final recommendations was a proposal to remove insurance-broker commissions from the administrative-cost bucket. But the NAIC said the health-care law made it pretty clear that those costs were intended to be classified as administrative, and so it skipped a vote on the amendment and instead created a subgroup to work with HHS on the issue." ([click here](#) for more information)

Regarding agent compensation, HHS still is contemplating how to address this issue. BenefitMall will provide a more detailed analysis of the MLR regulation this week.

### **Here are some excerpts from the new regulation:**

"Notably, in correspondence with HHS, the NAIC raised concerns regarding the potential impact of this regulation on agents' and brokers' fees and commissions. Some companies in some States may be particularly reliant on producers to distribute their products. Agents and brokers perform a range of functions on behalf of consumers and companies. In some cases, issuers may have entered into longer term compensation arrangements with agents and brokers which the MLR standard may stress. The NAIC considered, but declined to incorporate in the model regulation, special treatment for such expenses in the MLR calculations. The NAIC opted instead to establish a working group with HHS to address the impact of the Affordable Care Act on agents and brokers, especially during years leading up to 2014. As discussed below, the potential impact of the MLR standard on agents and brokers merits recognition, and in this regulation the impact of the MLR standard on agents and brokers will be a factor in considering whether a particular individual markets would be destabilized. HHS seeks comments on the approach taken in this regulation and on the issues related to agents and brokers during years leading up to 2014..."

"...the Secretary will consider whether, absent an adjustment to the MLR

standard, consumers may be unable to access insurance agents or brokers. Access could be restricted if, in order to comply with MLR standards, issuers reduced compensation to agents or brokers to the point where agents or brokers were not available to assist consumers in finding coverage and other options for consumers were limited. In its October 13th letter, the NAIC noted the important role that agents and brokers will play in the next four years as markets transition to Exchanges, and encouraged HHS to 'recognize the essential role served by producers and accommodate producer compensation arrangements in any MLR regulation promulgated.' This criterion recognizes that role."

**Resources:**

- [Highlights of the new regulation](#)
- [The new MLR regulation](#)

As more information becomes available, BenefitMall is committed to keeping you up-to-date in a timely manner. Visit [www.BenefitMall.com](http://www.BenefitMall.com) to view past Legislative Alerts in the "Newsroom" section. Or, you may visit [www.HealthcareExchange.com](http://www.HealthcareExchange.com) for blog posts, polls, surveys and numerous resources. If you have any questions, please contact your local BenefitMall Sales Team and they will be happy to assist you. Thank you for taking the time to read through this important notification.

Sincerely,



Michael Gomes  
Executive Vice President

***The views expressed in this legislative alert do not necessarily reflect the official policy, position, or opinions of BenefitMall. This update is provided for informational purposes. Please consult with a licensed accountant or attorney regarding any legal and tax matters discussed herein.***

[www.benefitmall.com](http://www.benefitmall.com)