NAIC National Association of Insurance Commissioners & The Center for Insurance Policy and Research

November 6, 2013

The Honorable John Boehner Speaker US House of Representatives Washington, DC	The Honorable Harry Reid Majority Leader United States Senate Washington, DC
The Honorable Nancy Pelosi Minority Leader US House of Representatives Washington, DC	The Honorable Mitch McConnell Minority Leader United States Senate Washington, DC

Dear Speaker Boehner, Majority Leader Reid, Minority Leader Pelosi and Minority Leader McConnell:

We write as the chief insurance regulators of our respective states and members of the National Association of Insurance Commissioners (NAIC) to express our concerns about several issues related to the implementation of the Affordable Care Act (ACA).

Like you, we have been closely watching the launch of both federal and state health insurance Marketplaces. The technical problems plaguing the federal Marketplace, which serves consumers in 36 states, and intermittent problems affecting the federal data services hub, which is critical to both state and federal exchanges, are well documented. State regulators are particularly concerned about the impact these problems will have on the ability of consumers to enroll in a plan by December 15, 2013. For consumers who have ongoing medical needs and will have their coverage cancelled, or receive coverage through a state high risk pool and will have that coverage terminated, on January 1, 2013, it is critical that they be able to enroll in coverage by December 15th or they could face a gap in coverage.

The recent announcement from the White House that monetary penalties will not be enforced as long as people enroll by the end of the open enrollment period will help some consumers avoid penalties, but those that depend upon health insurance coverage to treat serious medical conditions cannot afford a gap in coverage. These individuals desperately need assurance that they will be able enroll in coverage that is effective on January 1, 2014.

State regulators are working with consumers, producers and carriers to make sure consumers receive the information they need to make good choices about their coverage, and can enroll in that coverage. However, to best protect consumers state regulators need more information from the federal Marketplace. We need timely and complete information about enrollments in order to ensure that carriers on the Marketplace have sufficient capacities, resources, and networks to serve all their enrollees and to ensure that consumers are being enrolled in the right coverage for them. An already out-of-date monthly report that provides limited information about enrollments will not be sufficient, especially since payments must be made by December 15th in order for coverage to become effective on

January 1, 2014. According to the schedule announced by Secretary Sebelius in her congressional testimony, states will at that point just be learning about November enrollments and will have no time to respond to any problems that might be revealed by this enrollment data.

In addition, these enrollment reports must include full information, including: the number of persons covered, locations of the enrollees, enrollment by carrier, and the type of coverage selected. The overall number of applications submitted or applications approved in each state will not provide sufficient information for state regulators to fulfill their responsibilities.

State regulators also need a full list of all individual agents and brokers, Navigators and Certified Application Counselors (CACs) that have been trained and certified by the federal Marketplace. We need to know that all agents and brokers certified to sell coverage through the federal Marketplace are properly trained and licensed to sell insurance in the state and that Navigator and CAC staff who have completed the federal training also meet any additional state certification and/or training requirements. At this point, states have little information about the individuals who are performing these functions for the federal Marketplace and whether they meet all of the state and federal requirements.

State regulators are also concerned about the impact of the ACA on health insurance markets in the U.S. territories. As outlined in a report forwarded to you on October 15, 2013, carriers in the U.S. territories are required to implement key consumer protections - guarantee issue, adjusted community rating, and no pre-existing exclusions - without an individual mandate or sufficient subsidies. Regulators in the territories believe this will lead to adverse selection and will threaten the affordability and availability of health insurance for territorial residents. Already, every insurer previously offering individual market health insurance coverage in the U.S. Virgin Islands has withdrawn from that market and other territories have been informed that their health insurers will cease offering coverage if the market reforms are implemented without an individual mandate or subsidies.

While each of the territories has taken the position that these reforms provide important consumer protections and fully support them in principle, they have not been given the same tools as the states to successfully implement these important protections. In order to prevent the unintended, adverse effects noted above, we have urged Secretary Sebelius to provide the territories with the flexibility that they need to determine whether and how the market reforms should be applied, in light of the statute's ambiguity regarding whether these provisions should apply. Some territories will likely choose to implement these reforms immediately, while others may choose to delay applicability or phase-in some or all of the market reforms.

Finally, any effort to delay or repeal the individual mandate and its penalties while the market reforms remain in place would result in adverse selection whereby individuals would wait to get sick before buying insurance. As we stated in testimony and letters as the ACA was being debated in Congress, reforms such as guaranteed issue, adjusted community rating, and prohibitions on pre-existing condition exclusions can encourage young, healthy individuals to wait until they get sick to purchase health insurance coverage, especially in the individual market. To mitigate this risk of adverse selection, the ACA includes both an individual mandate (with modest initial penalties) and subsidies.

If the mandate and penalties were to be delayed at this point, while the other reforms continue, the adverse selection would lead to significant increases in premiums for those purchasing coverage in health insurance Marketplaces and in the outside individual market, and immediate hardship on carriers, which have already set their rates for 2014 based upon the existence of a mandate and penalties. To create a stable marketplace, the focus should be on enrolling more consumers, not encouraging certain consumers to stay out.

Thank you for your time and consideration and any assistance you can provide in making sure consumers can purchase the coverage they need and state regulators have the information and flexibility they need to protect consumers.

Sincerely,

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