June 28, 2011

Commissioner Kevin McCarty, Chair
Professional Health Insurance Advisors Task Force
National Association of Insurance Commissioners

Dear Commissioner McCarty:

As organizations representing health care consumers, providers, employers and unions, we write to express our concern about proposed methods to weaken the minimum medical-loss ratio (MLR) provisions of the Affordable Care Act and to respond to the Report of the Health Insurance and Managed Care (B) Committee Regarding Producer Compensation in the PPACA Medical Loss Ratio Calculation.

We appreciate the NAIC's efforts to quantify and analyze some of the serious consumer impacts of changing the treatment of producer compensation in the MLR formula. In developing policy recommendations, we hope the Task Force will consider the following issues:

Data about the extent of commission changes and their causes are inconclusive, suggesting that amending federal law is unwarranted. The Health Insurance and Managed Care (B) Committee Regarding Producer Compensation (the Working Group) drew on several outside sources for information. Two proprietary sources, Connecture and insurer data, were not available for public review. The producer trade association, National Association of Health Underwriters (NAHU), made its data public but blinded the company names and noted, appropriately, the limitations of the data. Among those limitations: (1) commission data in a number of states were available from very few carriers; (2) because the NAHU report covers only three years, it provides no basis for inferring long-term trends; (3) the fact that many carriers are changing their producer compensation models makes drawing conclusions about changing levels of commissions problematic; and (4) the NAHU data do not include dollar commission amounts, making it very difficult to ascertain actual changes in compensation.

In fact, the NAHU data illustrate that many carriers have not altered commission levels between 2010 and 2011, and some have actually increased commissions. For example, in Texas, carriers were as likely to leave commissions unchanged as to decrease them, and more decreases occurred between 2009 and 2010 than between 2010 and 2011. The Working Group noted that the Connecture data revealed no consistent patterns in renewal or group market commissions. Dramatic declines in commissions were seen in some states, and level commissions or smaller decreases were found in others.

To the extent that reductions in commissions have occurred, in general it appears the main impact has been on very high first-year commissions in some states; commissions have by and large been reduced in high-commission states to levels typically found in lower-commission states, and high-paying insurers have cut commissions to levels paid by their competitors. Widespread reductions across the country and all plans were not apparent. The California data included as supplemental data to the report demonstrates that producer commissions have increased very dramatically in recent years and suggests that recent changes in compensation may in fact represent a market correction rather than an unreasonable reduction in income.

The uncertainty and unreliability of the data, the variation in commission changes across insurers and states, and questions about whether these changes reflect a market trend unrelated to the MLR, taken all together, render any proposed change to federal law unwarranted and inadvisable.

No evidence has been presented to indicate that consumers have lost access to brokers. The impact of reduced producer compensation on consumers is most clearly addressed by the state data. Information reported by states that already had MLR requirements similar to the federal requirement definitively demonstrates that producer services remain available to consumers and that raising MLR minimums has not hurt consumers. The report observes that states that previously established higher MLR requirements "have not observed any problem with consumer access to insurance or to producers." None of the other data reviewed by the Working Group was designed to gather information on consumer access to producers or insurance.

Proposals to weaken the MLR would reduce consumer rebates and relieve pressure for insurers to decrease premiums. Modification 2, similar to H.R.1206 as introduced by Rep. Mike Rogers, excludes all producer compensation from the MLR formula at a loss of $1.271 billion in rebates to consumers – more than two-thirds of the rebates promised by the law. Most other modification proposals also substantially reduce consumer rebates.

Rebates, per se, are not the goal of the minimum MLR requirement. If implemented as intended, the MLR can also moderate increases in insurance premiums. Obviously, insurers with high overhead must make adjustments to achieve the minimum MLR thresholds. But the bigger payoff to consumers will come as insurers reduce premiums or seek smaller premium increases to ensure their premiums track the slowing growth in medical costs. It has been widely noted that insurers' medical care cost growth has moderated recently, in part because of deductibles and higher cost sharing, but in part because of other factors.[1] Insurance companies' 2011 premiums did not reflect this trend, leading to another quarter of increased premiums, lower MLRs and record profits.[2] The minimum MLR requirement will deliver relief soon to consumers through reduced rates or insurer rebates. The net effect of these factors is certainly going to be reduced growth in insurance premiums for consumers, perhaps even actual reductions in premiums themselves, as was recently witnessed in Connecticut when Aetna cut rates by 10% for some policyholders.[3]

If producer compensation is removed from the MLR calculation, however, insurers will have less pressure to reduce premium increases, and this tool to rein in premium costs will be substantially weakened.

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[1] See Russ Britt, Health Care's 2011 Secret? Fewer Patients, MarketWatch, May 25, 2011, http://www.marketwatch.com/story/health-cares-2011-secret-fewer-patients-2011-05-25?reflink=MW_news_stmp; http://www.altarum.org/node/590

[2] See Reed Abelson, Insurers Making Record Profits as Many Postpone Care, N.Y. Times, May 13, 2011, http://www.nytimes.com/2011/05/14/business/14health.html?scp=1&sq=reed%20abelson%20insurance&st=cse; Matthew Sturdivant, Cigna Reports 52 Percent Increase in Quarterly Earnings, http://blogs.courant.com/connecticut_insurance/2011/05/cigna-reports-52-percent-incre.html

[3] For example, Aetna recently filed a request to lower its rates in the nongroup market in Connecticut, attributing the decrease in part to the effects of the MLRs. See Health Care Reform Forces Aetna to Lower Rates, http://www.whatisworking.com/2011/05/health-care-reform-forces-aetna-to.html

Proposals will increase costs for consumers, employers, and taxpayers. Consumers will be financially harmed, not primarily because rebates will decrease, but because premiums will increase more than they otherwise would without changes to the law. The assumption of the bill is that producers must be paid more and that insurers, despite earning record profits in many cases, will not pay them more unless compensation is removed from the MLR formula. The additional pay for producers will most likely come from the consumers and employers who pay premiums. The Rogers bill is, in effect, a legislated premium increase, and it must be recognized as such.

Not only consumers and employers would bear the financial burden of weakening the MLR. The legislation will also impose additional costs on taxpayers and increase the federal budget deficit. In 2014, taxpayers will finance increased compensation for producers. Under the formulas used in the Affordable Care Act to calculate premium tax credits for uninsured Americans with incomes under 400 percent of the federal poverty level (FPL), the federal government will pay the full marginal cost of health insurance premiums with tax revenue. At 200 percent of FPL, the tax credit covers all costs above 4 percent of income; at 400 percent of FPL, the tax credit covers all costs in excess of 9.5 percent of income. For a family already paying its full share of the premium, a change to producer compensation that increases the cost of a $15,000 family health insurance policy by 5 percent will increase the cost to the taxpayer by $750. As a result, the Rogers bill is likely to add tens of billions of dollars to the federal deficit over the 10-year budget window.

Despite increased costs to consumers, employers, and taxpayers, the Rogers bill or similar policy changes still do not guarantee relief to producers. There is no evidence to support the assumption that carriers will adjust their commission and compensation schedules upward. As noted by Citigroup analyst Carl McDonald: "Even if the MLR calculation were adjusted to exclude broker commissions, there is no guarantee health plans would subsequently adjust their commission schedules, rather than just improving their own profit margin."[4]

We urge you to report out a recommendation supporting no change to the minimum MLR requirement. The limited evidence of a change in producer compensation suggests a market correction more than a legislated crisis for producers. And most of the proposed modifications described in the report come directly at the expense of consumers, employers and taxpayers in the form of reduced rebates and higher premiums. We urge the NAIC not to support any legislative change in the MLR formula.

Sincerely,

AFL-CIO
Alliance for a Just Society
American Academy of Family Physicians
American Cancer Society Cancer Action Network
American Federation of State, County & Municipal Employees (AFSCME)
American Heart Association
American Medical Student Association
Center for Medicare Advocacy

[4] Carl McDonald, "We Make a Living by What We Get, But We Make a Life by What We Give," Citigroup Global Markets – Equities, June 13, 2011.

Community Catalyst
Community Organizations in Action
Consumers Union
Direct Care Alliance
FamiliesUSA
Health Care for America Now
Main Street Alliance
National Education Association
National Women's Law Center
Raising Women's Voices for the Health Care We Need
Service Employees International Union (SEIU)
USAction
US PIRG

Action NC
ACTION United (PA)
BluewaveNJ
Citizen Action of Wisconsin
Connecticut Citizen Action Group
Health Access California
Health Care for All (MA)
Maine People's Alliance
Michigan Citizen Action
Montana Organizing Project
NJ Citizen Action
Ohio Communities United
OLÉ - Organizers in the Land of Enchantment (NM)
Oregon Action
Organize Now (FL)
Progressive Leadership Alliance of Nevada
Progressive Maryland
Sunflower Community Action (KS)
United Action Connecticut
Vermont Public Interest Research Group
Virginia Organizing
Washington Community Action Network