

December 5, 2011

Dear Member of Congress:

The undersigned organizations urge you to reject legislation that would undermine the critical consumer benefits of the minimum medical loss ratio (MLR). These proposals could cost consumers more than \$1 billion in lost premium rebates and greatly diminish the ability of the MLR to reduce the growth of health insurance rates.

The MLR is a powerful tool to control health insurance premiums. It requires that insurers in the individual and small-group markets spend 80% of premium dollars on medical care and quality improvement activities instead of administrative expenses such as underwriting, marketing and profits; for large groups, medical spending must be at least 85%. Insurers that fail to meet these standards must rebate the difference to consumers. Based on 2010 figures, the National Association of Insurance Commissioners (NAIC) estimated consumers would receive rebates of \$2 billion in the first year alone.

After a contentious debate, the NAIC recently voted 26 to 20 to adopt a recommendation that Congress and HHS change the way insurance broker fees and commissions are counted in the MLR calculation. No specific proposal was endorsed; in fact, the NAIC specifically declined to endorse H.R. 1206, a bill to remove sales commissions and fees from the MLR formula. Instead, the resolution implied approval of a plan to reclassify all insurance sales-agent fees and commissions as “quality improvement” expenses – akin to nurse hotlines and case management costs – instead of administrative spending.

As the NAIC itself concluded a year ago after extensive deliberation, producers’ commissions are an unambiguous administrative cost. This new resolution contemplates allowing insurers to push these significant expenses out of the administrative cost category, artificially reducing administrative spending in the calculation of the medical loss ratio. Changing the MLR formula to allow these administrative expenses to be inappropriately reclassified as medical and quality expenses – or removing commissions from the MLR calculation altogether, as in H.R. 1206 – compromises the MLR as a useful benchmark for consumers and as a cost-saving device.

Commissioners of both political parties stated that this resolution circumvented the NAIC’s own process, contradicts its analysis of the effect of the MLR on broker services, and discredits the NAIC’s reputation as a nonpartisan expert body. Citigroup analyst Carl McDonald said the commissioners’ vote “sent a very clear message ... that they believe their primary job is protecting insurance companies and other interest groups, rather than protecting consumers.”<sup>1</sup>

The approval of the resolution contradicts the findings of the Government Accountability Office and the NAIC that the MLR is working as intended to encourage insurers to lower premiums for consumers. Implementation of this NAIC recommendation would ease the MLR standard’s pressure on insurers to bring down premiums—a dynamic that led Aetna in Connecticut to cut premiums by an average of 10 percent this year. The estimated impact of similar proposals is the

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<sup>1</sup> Managed Care Weekend Update, Citigroup Global Markets, Nov. 26, 2011.

loss of more than \$1 billion in rebates to consumers. Repealing or weakening the MLR provision would result in higher premiums for employers and families today and in 2014 would increase the federal budget deficit by raising the cost of the federal tax credits designed to help families afford insurance purchased through state-based exchanges.

Although we agree that consumers and employers who want to use agents and brokers should continue to have access to them, our consumer groups have heard few, if any, concerns from the public about decreased access to health insurance producers. In fact, the Insurance Information Institute recently reported that employment of agents and brokers increased by 5,500 nationally between July 2010 and June 2011. The NAIC's own findings suggest that consumers have reported no problems accessing broker services in states with MLR requirements that pre-date the Affordable Care Act. Further, removing agent and broker commissions from the MLR does nothing to guarantee that insurers will use the redirected rebate money to increase their payments to insurance agents and brokers. They could just as easily devote that spending toward other administrative costs, like marketing, salaries or profit.

For these reasons, we urge you to oppose legislation that will weaken or eliminate the MLR. Contact Tara Straw with Health Care for America Now at [tstraw@healthcareforamericanow.org](mailto:tstraw@healthcareforamericanow.org) or 202-454-6198 with any questions.

AFL-CIO

Alliance for a Just Society

Alliance for Retired Americans

American Cancer Society Cancer Action Network

American Federation of State, County and Municipal Employees (AFSCME)

American Federation of Teachers

American Heart Association

American Medical Student Association

Communications Workers of America

Community Catalyst

Community Organizations in Action

Consumers Union

Direct Care Alliance

Fair Share Alliance

Families USA

Health Care for America Now

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)

LULAC

Main Street Alliance

National Education Association

National Gay and Lesbian Task Force Action Fund

National Health Law Program

National Multiple Sclerosis Society  
National Partnership for Women & Families  
National Women's Law Center  
Raising Women's Voices for the Health Care We Need  
Service Employees International Union (SEIU)  
The Arc of the United States  
U.S. Public Interest Research Group (U.S. PIRG)  
United Transportation Union  
USAction  
Young Invincibles

Timothy Stoltzfus Jost, Consumer Representative to the NAIC

Action NC  
Action United (PA)  
Citizen Action of New York  
Citizen Action of Wisconsin  
Citizen Action/Illinois  
Connecticut Citizen Action Group  
Dolores Huerta Foundation  
Florida Consumer Action Network  
Georgia Rural Urban Summit  
Granite State Organizing Project (NH)  
Health Access California  
Health Care for All (MA)  
Iowa Citizen Action Network  
Maine People's Alliance  
Michigan Citizen Action  
Missouri Progressive Vote Coalition  
Missouri ProVote  
Montana Organizing Project  
Montana Small Business Alliance  
New Hampshire Citizens Alliance for Action  
New Jersey Citizen Action  
North Carolina Fair Share  
Ocean State Action  
Ohio Communities United  
OLE (Organizers in the Land of Enchantment) NM  
Oregon Action  
Organize Now (FL)  
Penn Action

Pennsylvania Health Access Network  
Philadelphia Unemployment Project  
Progressive Leadership Alliance of Nevada  
Progressive Maryland  
ProgressOhio  
Take Action Minnesota  
Tennessee Citizen Action  
United Action Connecticut  
United Action for Idaho  
Virginia Organizing  
Washington Community Action Network  
West Virginia Citizen Action Group  
West Virginians for Affordable Health Care