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COMMITTEE ON  
ENERGY AND COMMERCE

Congress of the United States  
House of Representatives  
Washington, DC 20515-4207  
November 15, 2010

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The Honorable Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Sebelius:

I would appreciate detailed information regarding the implementation of the Department of Health & Human Services (HHS) medical loss ratio (MLR) requirements, in accordance with the Public Health Service Act and the Affordable Care Act. I am concerned that MLR calculation and implementation will not focus on fraud *prevention* activities, and instead focus solely on fraud *recovery* efforts. I urge you to ensure that fraud prevention activities are appropriately captured in the MLR calculation.

As you know, on October 21, 2010, the National Association of Insurance Commissioners (NAIC) submitted to HHS their final recommendations on the MLR – recommendations presented in the form of a model regulation and that are intended to assist the Department in its efforts to promulgate a MLR regulation, which HHS has recently indicated will be issued in the coming weeks. I commend the work of the NAIC to reach consensus on this complex issue and the opportunities that have been extended to stakeholders to provide comments during the NAIC’s deliberations.

I, along with many of my colleagues, support the goal to ensure that a larger portion of health care spending is directed toward improving patient care, as opposed to other expenses, such as administration, that tend to have no direct bearing on the patient. To this, while many of the NAIC’s MLR recommendations are practical, including their recommendation to include in the MLR calculation costs associated with the *recovery* of fraudulent claims (i.e., after the claims have been paid), I urge you to exert your discretion in the forthcoming regulation to ensure that the costs associated with the *prevention* of fraudulent claims – such as those made through key investments in technology – are similarly included as a legitimate “Quality Improvement” expense for purposes of the MLR.

As noted recently by the National Health Care Anti-Fraud Association, there is a direct connection between fraud prevention and healthcare quality. The Association cited two examples of physicians that had been convicted of healthcare fraud that resulted in inappropriate

care and patient deaths. By detecting unusual billing and treatment patterns, fraud prevention technology can prevent the kinds of abuses that can cause direct harm to our citizens.

To not include fraud prevention costs in the MLR calculation would not only be inconsistent with Congressional intent but would represent a missed opportunity to generate significant system savings – savings that are far greater than those delivered under traditional “pay-and-chase” methods. The Administration and HHS have clearly made fraud prevention and detection a priority as evidenced by the work of the Center for Program Integrity, the HEAT Task Force, and other efforts. I encourage you to further support those efforts by fostering policies that will encourage investment across both the public and private sectors in technology that will help protect patients from inappropriate care and save billions of dollars in fraudulent payments each year.

Thank you for your prompt attention to this matter. If you have any questions, please contact Cara Dalmolin of my staff at (202) 225-2811.

Sincerely,

A handwritten signature in cursive script that reads "Marsha Blackburn". The signature is written in black ink and is positioned above the printed name and title.

Marsha Blackburn  
Member of Congress