To: Commissioner Ted Nickel, Chair
Regulatory Framework Task Force

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NAIC Consumer Representatives

Re: Model Act 170
Date: August 6, 2014

The consumer representatives to the NAIC strongly support the decision of the NAIC to revisit Model Act 170, the Accident and Sickness Insurance Minimum Standards Model Act, and Model Regulation 171, which implements that Model Act. Both of these models have not been updated since 1999 and are outdated. In particular, the Model Act and Regulation pre-date the Affordable Care Act (ACA), which dramatically changed regulation of the individual health insurance market and preempts all state laws that prevent its application.

We understand that the Task Force is currently accepting comments on Model Act 170. We believe, however, that Model Act 170 must be read in conjunction with Model Regulation 171, as the Model Regulation gives content to the otherwise skeletal Model Act. We comment, therefore, on both.

To begin, some plan categories covered in section 5 of the Model Act no longer exist in the wake of the ACA and thus should be eliminated. These include:
- Basic Hospital Expense coverage,
- Basic Medical Surgical Expense coverage,
- Basic Hospital-Medical -Surgical expense coverage,
- Individual Major Medical Expense coverage, and
- Individual Basic Medical Expense coverage

Each of these forms of coverage is now covered by the ACA and by the NAIC Individual Market Health Insurance Coverage Model Act and Regulation as individual health insurance coverage. These categories should thus be eliminated from this Model Act and Regulation. Even if there were some reason for retaining them, provisions regarding these forms of coverage would need to be substantially revised to comply with the ACA. For example, Model Law 170 permits preexisting condition exclusions and Model Regulation 171 allows carriers to impose dollar limits and to exclude pre-existing conditions for up to a year as well as exclude coverage for mental health or substance abuse services. These restrictions are no longer permitted under federal law.
Other categories of coverage governed by Model Act 170 and Model Regulation 171 such as adult dental and vision coverage continue to be recognized under the ACA as excepted benefits. These categories could continue to be addressed by a rewritten 170 and 171. Dental and vision coverage are not regulated by the ACA, except for pediatric dental and vision coverage. Provisions of the Model Law and Regulation need to be reviewed carefully, however, to ensure that they are still appropriate for these forms of insurance.

Disability Income Protection, currently included in Model Act 170, should be regulated under a separate Model Act, since it is not medical insurance. Disability income protection coverage is currently addressed by other NAIC standards, such as the Discretionary Clause Model Act (#42) and IIPRC standards.

Most importantly, the provisions of the Model Act and Regulation that govern specified disease policies, hospital confinement indemnity insurance, and other indemnity insurance require substantial modification. These forms of coverage are illegal under the ACA as individual medical coverage because they impose annual limits. They also often fail to cover preventive services.

Indemnity and specific disease coverage are only permitted under the ACA as excepted benefits and then only to the extent that they offer independent, non-coordinated benefits to cover non-medical expenses incurred because of a disease or accident, such as loss of income. Under final regulations released by HHS in May, [http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/508-CMS-9949-F-OFR-Version-5-16-14.pdf%20](http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/508-CMS-9949-F-OFR-Version-5-16-14.pdf%20) as of January 1, 2015 indemnity insurance may also only be sold in the individual market to individuals who already have minimum essential coverage, and only if the application contains a notice found in the federal regulation informing the applicant that indemnity coverage is not minimum essential coverage for purposes of the individual responsibility provision.

Because individual excepted benefit coverage is not regulated under the ACA, it is very important that states regulate it appropriately to ensure that consumers understand the limits of this type of coverage, including the fact that it is not minimum essential coverage for purposes of the individual responsibility tax and is intended to supplement their existing coverage. The Model Act and Regulation should be rewritten to clearly define these forms of coverage and the conditions under which they can be offered.

It is particularly important that states mandate strong consumer disclosure requirements for limited benefit coverage. Any and all limits or restriction on other coverage provisions, such as preexisting condition exclusions (to the extent they are permitted) should be clearly explained. To ensure adequate disclosure, section 6 of the Model Act should be amended to require carriers to use the Summary of Benefits and Coverage form approved for coverage under section 2715 of the ACA. This will allow consumers to compare coverage under permitted limit benefit plans with ACA coverage and choose the coverage that best meets their needs. Disclosure forms should be provided to consumers no later than the time that they apply for coverage. This is necessary to permit informed shopping for coverage.

The NAIC consumer representatives will be actively involved as the Regulatory Framework Task Force proceeds with redrafting the Model Act and Regulation. We look forward to working together with you as this important effort proceeds.