October 17, 2014

Honorable Ted Nickel
Chair, Regulatory Framework (B) Task Force
c/o National Association of Insurance Commissioners
444 North Capitol Street NW, Suite 700
Washington, DC 20001

ATTN: Jolie Matthews, Senior Health and Life Policy Counsel

Re: NAIC Proposed Individual Market and Small Group Market Health Insurance Coverage Model Regulations

Dear Commissioner Nickel:

The National Health Council (NHC) welcomes the opportunity to comment on the National Association of Insurance Commissioners (NAIC) Regulatory Framework (B) Task Force’s proposed Individual Market Health Insurance Coverage Model Regulation and the proposed Small Group Market Health Insurance Coverage Model Regulation.

The NHC is deeply concerned with the sections in the proposed regulations related to cost-sharing requirements and believe that all health care costs should count toward the annual out-of-pocket limitation.

The NHC is the only organization that brings together all segments of the health community to provide a united voice for the more than 133 million people with chronic diseases and disabilities and their family caregivers. Made up of more than 100 national health-related organizations and businesses, its core membership includes the nation’s leading patient advocacy groups, which control its governance. Other members include professional societies and membership associations, nonprofit organizations with an interest in health, and major pharmaceutical, medical device, biotechnology, and health insurance companies.

The annual limitation on out-of-pocket costs created by the Affordable Care Act (ACA) is one of the greatest benefits for people with chronic conditions. Millions of Americans are benefitting from this protection that limits the amount of money that they will have to spend in order to access health care services.
In your proposed regulations, Section 12 of the individual market model and Section 15 of the small group market model state that plans that use provider networks do not have to apply out-of-network spending toward the out-of-pocket cap.

While the Essential Health Benefits (EHB) regulation does state that out-of-network spending does not need to be applied toward the cap, it also states that “nothing in this proposal explicitly prohibits an issuer from voluntarily establishing a maximum out-of-pocket limit applicable to out-of-network services, or a state from requiring that issuers do so.” The EHB regulation allows enough flexibility for issuers to count out-of-network spending toward the cap, which we encourage them to do.

The NAIC’s proposed models will encourage issuers to not count this spending toward the cap. The intent of the out-of-pocket spending cap is to prevent patients from enduring overbearing health care costs, which may be due to accessing necessary services that are only available out-of-network. Furthermore, studies have shown that the provider networks in marketplace plans are much narrower than previously existing plans, and your proposed policy would exacerbate the hardship faced by patients whose plans include narrow networks.

Additionally, the EHB regulation is ambiguous as to whether services accessed through an exception will count toward the out-of-pocket cap. We feel that any service accessed through an exception should be considered “covered,” which would mean that the patient’s out-of-pocket costs for the service should count toward the cap. The ambiguity from the EHB regulation presents an opportunity for NAIC to establish a policy to count services accessed through an exception toward the cap, and we urge you to do so.

Please do not hesitate to contact Eric Gascho, our Assistant Vice President of Government Affairs, if you or your staff would like to discuss these issues in greater detail. He is reachable by phone at 202-973-0545 or via e-mail at egascho@nhcouncil.org. You may also reach me on my direct, private line at 202-973-0546 or via e-mail at mweinberg@nhcouncil.org.

Sincerely,

[Signature]

Myrl Weinberg, FASAE, CAE
Chief Executive Officer