

**America's Health
Insurance Plans**

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September 16, 2008

The Honorable Mila Kofman
Superintendent of Insurance
Department of Professional & Financial Regulation
Bureau of Insurance
#34 State House Station
Augusta, ME 04333-0034

Dear Superintendent Kofman:

On behalf of AHIP and our nearly 1,300 member companies, we write to you to confirm this organization's continuing desire to participate fully in the work of the Consumer Protections and Innovations Working Group. AHIP members wish to continue to provide useful and informative input into the working group project. However, we find it difficult to structure appropriate responses to this project given its lack of clarity and purpose.

We also write to again raise the serious concerns our members have raised twice before -- first in our letter of August 14th and again during the conference call on September 10th -- concerning the working group's creation of a list of disability insurance claims "best practices."

We understand that working group members believe a list of "best practices" will prove useful to them and will serve as a "guide for compliance." Nevertheless, that response did not provide us with an adequate understanding of the goals and anticipated work product of the working group. Rather, the discussion and commentary during the September 10th call left us more concerned that the working group is effectively embarking on a rule making exercise without complying with the procedures established by the NAIC, and ultimately without providing any clear guidance how those rules will be implemented and enforced. We do not reach this conclusion lightly, but from careful consideration of the working group's discussions and circulated materials.

The working group announced its activity in June as a "look at the best practices developed by the regulated community – practices that make products work better for consumers." The draft materials provided for the September 10th call consisted of an updated list of "best practices" developed by the regulatory community and stated for the first time that the working group is now considering "raising and clarifying standards (emphasis added) for reasonable claims practices." The process of regulators "raising and clarifying standards" for regulated entities is not the process of identifying regulated entities' best practices. The process of regulators "raising and clarifying standards" for regulated entities is the regulatory process of legislating and rulemaking.

This written indication that the working group is focusing on standards was confirmed during the call when working group members discussed -- but could not agree upon -- how the standards could be used. Suggestions included their use as an examination tool, specifically as an examiner's checklist for examining a carrier's organizational structure and claims processes. This is a far cry from voluntary best practices identified within an industry, by industry participants, and intended to be used as a "gold standard."

The fact that working group members believe that the proposed best practices outline represents "good common sense" and "good customer service," does not qualify any item as an industry best practice. The fact that an item on the outline satisfies a regulator's belief that the item is in the best interest of purchasers, or is the "best" way for a carrier to manage a particular activity or function does not qualify the belief as an industry best practice, or indeed as any kind of standard at all. A "best practice" is an action by an entity that goes beyond statutory or regulatory requirements, and is one that is undertaken voluntarily by participants. This working group, acting as the voice of the regulatory community, cannot develop *voluntary* industry "best practices," which is why it is critical for industry to understand precisely the goal this working group is attempting to achieve.

It is also critical for industry to understand precisely why current regulatory tools are inadequate to attain this goal. We suggest that there already exist adequate regulatory tools in state law and regulation to permit appropriate oversight of the disability income insurance industry. If there is a suggestion that these tools are inadequate, AHIP and its members would be pleased to participate in that discussion.

The fact that the working group intends to raise and clarify standards for "responsible claims practices" and then publish them under the auspices of the NAIC, will, despite protests to the contrary, necessarily subject carriers to additional scrutiny and potential liability for any failure to comply. Since such extra-legal standards would never be subjected to state legislative or regulator oversight process, this is an inappropriate undertaking for an NAIC working group.

Accordingly, and on behalf of our members, we again request that the working group address the concerns raised in our letter of August 14th, so that we may have a clear understanding of the activities being undertaken by the working group, and the uses to which the working group and the NAIC will put the work product.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitchell, Jr." with a stylized flourish at the end.

Martin L. Mitchell, Jr.

Cc: Tim Mullen
NAIC