To: Director Bruce Ramge, Market Conduct Examination Standards Working Group  
Fr: Timothy Jost, NAIC Consumer Representative  
Re: Market Conduct Examinations Standards: Direct Access to Providers  
Date: December 30, 2014  

I am writing to comment on the proposed Market Conduct Examinations Standards on direct access to providers, which creates standards for examining carrier compliance with section 2719A of the Public Health Service Act and was added to the PHSA as part of the Affordable Care Act’s patient bill of rights.

This section of the ACA requires non-grandfathered group health plans and health insurance carriers that require or provide for designation by a covered person of a participating primary health care professional to provide primary care services to allow a covered person to designate any participating primary health care professional who is available to accept the covered person. The section also requires that carriers allow a covered individual on behalf of a covered child to designate any participating pediatric physician as the child’s primary care health care professional, if the health care professional is available to accept the child. The provisions of this section further prohibit a health carrier that requires the designation of a primary care health care professional from imposing prior authorization or referral requirements before a woman can designate an obstetrical or gynecological care professional for providing obstetrical and gynecological care.

Finally, section 2719A requires carriers to provide a notice to a covered person that satisfies the requirements of HHS, DOL and the Treasury final regulations, regarding a covered individual’s right to designate a participating primary health care professional, including the designation of pediatric and obstetrical and gynecological specialists and the prohibition of a health carrier from imposing prior authorization or referral for a female covered person seeking coverage from an obstetrical or gynecological care professional.

The proposed examination standard basically reflects the statutory and regulatory requirements and I have only a few comments.

First, I note that the requirements of this section extend not just to the individual and small group market, but also to all group health plans, and thus the examination standard should extend to large group insured plans as well.

Second, the statutory requirement does not prohibit insurers from requiring prior authorization for obstetrical and gynecological care, but rather from requiring prior authorization prior to access to an obstetrical or professional health care professional.

Third, the list of documents to be reviewed should include utilization review and prior authorization protocols and procedures, and the review criteria and procedures should include review of these documents.

Finally, the federal regulations (45 C.F.R. § 147.138(a)(4)(iii)) provides model notices for carriers to use to provide notices of rights under this section. The Standards should at least mention the availability of these model notices.