



Charles N. Kahn III
President

June 21, 2010

BY ELECTRONIC MAIL

Lou Felice
Chair, Health Care Reform Solvency Impact (E) Subgroup

Re: Request for Information: Medical Loss Ratios; Request for Comments Regarding
Section 2718 of the Public Health Service Act [75 *Federal Register* 119,297
(April 14, 2010)]("RFI")

Dear Mr. Felice:

The Federation of American Hospitals ("FAH") is the national representative of nearly 1,000 investor-owned or managed community hospitals and health systems throughout the United States. Our members include teaching and non-teaching hospitals in urban and rural America, including inpatient rehabilitation, long-term acute care, cancer and psychiatric hospitals. We appreciate the opportunity to provide additional information in response to the NAIC Health Care Reform Solvency Impact (E) Subgroup with respect to the implementation of Section 2718 of the Public Health Service Act ("the Act").

This letter responds to the Blanks document discussed on the Subgroup's June 17, 2010 teleconference. As the NAIC's Blanks document evolves, the FAH is concerned that each new version appears to create increasingly greater opportunity for insurers to include what we believe to be administrative expenses as medical costs and/or quality improvement expenses in the MLR formula. As stated in our previous letters to the Subgroup, we strongly believe the MLR's quality improvement category should focus on medical costs related to *improving the clinical quality of care for individual patients*. We continue to strongly believe that the patient-clinician relationship is the foundation upon which meaningful quality improvement takes place and while earlier iterations of the Blanks document began to draw this boundary, the current version illustrates an erosion of this critical underpinning. It is with these overarching concerns in mind that we offer the following specific comments on the latest draft Blanks proposal.

Supplemental Health Care Exhibit - Part 1

The FAH recommends that an “exclude” section be added to Line 3 that clarifies that any payments based on achieving cost containment objectives or any purpose other than direct improvement of health care quality for individual patients as defined in Section 2717 of the Act be excluded from the reported cost.

Supplemental Health Care Exhibit - Part 2

The FAH recommends that the last sentence in the 4th paragraph in Line 2, “Direct Claims” Incurred,” be rewritten to include the following caveat – “This includes capitated referrals, *but only to the extent such capitation payments are for medical care provided by the physician, and shall exclude any amounts based on cost containment, utilization or other performance targets unrelated to the physician’s direct provision of medical care.*” We further recommend that an “exclude” section be added to Line 2 reinforcing that any payments based on cost containment objectives or any purpose other than the direct provision of patient care and/or the direct improvement of health care quality for individual patients, as defined in Section 2717 of the Act, must be excluded from the reported cost.

Supplemental Health Care Exhibit - Part 3

We have a number of specific concerns with Supplemental Health Care Exhibit – Part 3, which provides the underlying data for calculating total costs related to quality improvement activities. The FAH is extremely concerned that the latest draft of the Blanks document confuses the distinct roles of insurers and providers. For example, in the introduction to Part 3, the third bullet states that qualifying quality improvement activities demonstrate results that can be verified to, among other things, “improve patient safety and reduce medical errors, lower infection and mortality rates.” We strongly believe that while these objectives are laudable, they are achieved through improvements by health care providers in the delivery of direct patient care, not by insurers. We would also like to reiterate this overarching concern as it relates to the entirety of Part 3, Column 3, “Improve Patient Safety and Reduce Medical Errors.”

Further, in Part 3, Column 1(1st bullet, 1st sub-bullet), the FAH strongly encourages the Subgroup to strike “arranging and managing transitions from one setting to another” from the list of interventions related to “effective case management, care coordination, and chronic disease management.” To the extent these activities are performed by an insurer, we believe that they are traditional case management functions that are most often undertaken as a cost containment measure. Further, this functionality is one that hospitals are already doing effectively on behalf of patients. We have effectively the same concerns related to the inclusion of “comprehensive discharge planning” costs in Column 2, “Activities to Prevent Hospital Readmissions.”

While the FAH strongly supports quality measurement and reporting as mechanisms for providing actionable information on health care quality to consumers and providers, these activities in and of themselves do not improve the clinical quality of care for individual patients. As stated above, meaningful quality improvements are achieved by clinicians in the provision of direct patient care. Simply gathering data from providers cannot directly impact the quality of health care for individual

patients. We therefore recommend that “quality reporting and documentation of care,” as stated in Column 1 (3rd bullet), be considered an administrative expense in the MLR formula.

Additionally, the FAH believes the definitions in Part 3, as currently drafted, over-allow insurers’ inclusion of health information technology (“HIT”) costs as directly improving health care quality. Expenses outlined under “activities to prevent hospital readmissions” and “improve patient safety and reduce medical errors” exemplify our assertion. Health care providers are already actively adopting (and heavily investing in) interoperable HIT systems in response to the Medicare and Medicaid EHR incentive programs passed as part of the federal stimulus package which are set to begin for hospitals on October 1, 2010. Quality improvement resulting from the implementation of interoperable HIT occurs because of how providers are using the technology in the delivery of direct patient care. Further, we believe it is inappropriate to include expenses related to “activities to promote sharing of medical records to ensure that all clinical providers have access to consistent and accurate records.” Insurers are not “clinical providers” requiring access to “consistent and accurate records;” therefore investment in this area cannot improve health care quality for individual patients and should, in turn, be considered to be administrative expenses in the MLR formula.

We are also concerned that the section in Part 3, Column 5 related to 24 Hour Nurse Hotlines is confusing as currently defined. The note indicates that expenses for 24 nurse hotlines should be included in a number of activities such as Improve Health Outcomes, Activities to Prevent Hospital Readmissions, Improve Patient Safety and Reduce Medical Errors and Wellness & Health Promotion Activities. Immediately beneath the note there is a bullet point which indications that 24 Hour Nurse Hotlines should be broadly excluded as not meeting the criteria of this section. Because of the ambiguous nature of the descriptions as to when they do and do not qualify, and the mixed purposes of these nurse hotlines, we strongly recommend that they be excluded in their entirety and that 100% of their cost be considered administrative for MLR reporting purposes. To the extent that the primary reason for these hotlines is to redirect care and potentially avoid emergency department visits, we view them as performing cost containment activities, not improving the *clinical quality of care to individual patients*.

The FAH appreciates the opportunity to provide comments. If you have any questions about our comments or need further information, please contact me or Jeff Micklos of my staff at (202) 624-1500.

Sincerely,



cc: Todd Sells, NAIC