



Kaiser Foundation Health Plan, Inc.
Program Offices

June 27, 2010

Mr. Lou Felice
Chair, Health Solvency Issues (E) Subgroup

Mr. Steve Ostlund
Chair, Accident and Health Working Group

RE: Medical Loss Ratio (MLR)

Dear Mr. Felice and Mr. Ostlund:

I am writing on behalf of Kaiser Foundation Health Plan (“Kaiser”), which is part of Kaiser Permanente, America’s largest private integrated health care delivery system, which both directly provides health care services (through 36 hospitals, 431 medical offices, 164,000 employees, most of whom are involved in the provision of health care services, and 14,600 physicians) and organizes the financing of care for its members. We would like to thank you for your consideration of our previous comments and appreciate the opportunity to provide additional comment.

As a 501(C)(3) charitable organization with a mission to improve the health of the communities we serve, Kaiser is exempt from federal income taxes. To maintain this tax-exempt status, federal law requires Kaiser to provide benefit to the communities we serve. If these community benefit (CB) expenditures are not appropriately accounted for in the MLR calculation, it will have a disproportionate and unfair impact on nonprofit, tax-exempt health plans, like Kaiser. Tax-exempt health plans are required to provide CB expenditures, just as for-profit insurers are required to pay taxes. Under Section 2718(b) (1) (A), taxes are deducted from the premium calculation for the MLR. PPACA recognizes that taxes are not discretionary expenses and thus should not count against health insurance issuers. Likewise, community benefit expenses for nonprofit health plans should be similarly treated. If these community benefit expenses are treated as administrative expenses under the MLR regulations, nonprofit tax-exempt health plans would be placed at a disadvantage relative to for-profit health insurers, thus creating a disincentive for health insurers to be organized as nonprofits and a strong incentive for health insurers to minimize community benefit expenditures, which is counter to sound public policy.

We greatly appreciate the Subgroup’s recognition of the need for comparable treatment of CB expenses and taxes. We are concerned, however, that this recognition was recently limited to CB required by states in lieu of state premium taxes. CB is not generally required under state law, so this limitation, in practical effect, means that the

vast majority of tax-exempt, nonprofit plans will not be able to deduct any of their CB expenditures from the MLR denominator.

We are not objecting to capping the amount of deductible CB expenditures to the state premium tax rate. We accept that the Subgroup wants to make this provision more comparable by limiting the CB deduction to the amount of taxes that taxable insurers pay, and agree that the premium tax rate is a far simpler substitute for the convoluted federal tax rate.

We urge you to delete the limitation to state required CB and allow a deduction for those CB expenditures that must be made to maintain an exemption from federal income taxes.

Recommended Language:

Line 1.7 – State and Local Premium Taxes

Include: State and local premium taxes plus state taxes based on policy reserves, if in lieu of premium taxes.

Payments by not-for-profit health plans for community benefit expenditures limited to the state premium tax rate applicable to for profit entities subject to premium tax multiplied by the allocated premiums earned for Individual, Small Group and Large Group. ~~These payments must be state based requirements to qualify for inclusion in this line item.~~

Thank you for consideration of our comments. We welcome the opportunity to discuss these matters with you further. If you have questions or concerns, please contact me at julie.h.stoss@kp.org or (510) 271- 6430.

Sincerely,



Julie Hutcherson Stoss