MEMORANDUM

TO: Lou Felice, Chair, Health Care Reform Solvency Impact Subgroup, NAIC

CC: Steve Ostlund, Chair, Accident & Health Working Group, NAIC

FROM: UnitedHealth Group

DATE: May 17, 2010

SUBJECT: Health Reform Blanks Proposal

During the Health Reform Solvency Impact (E) Subgroup conference call on Wednesday, May 12, we requested some clarifications regarding the treatment of taxes in the discussion draft of the “Supplemental Health Care Exhibit - Part 1” and its related instructions. In response, you requested that we provide what we would consider to be a more comprehensive list of the taxes to be included in Lines 1.5 through 1.7 of the Exhibit. Below is our response to your request, starting with our general understanding of the relevant language in Section 2718 of the Patient Protection and Affordable Care Act (“PPACA”). In addition, we have provided some additional comments that we think should be considered in the proposal.

I. Taxes, Fees, & Assessments

General understanding.

Our understanding of the language regarding “Federal and State taxes and licensing or regulatory fees” under section 2718 of PPACA is that the intent is to be broadly inclusive. We believe that interpretation is reasonable on the following grounds:

- Taxes and fees are compulsory. Both a health carrier’s obligation to pay taxes and the procedures for determining the amounts owed are prescribed by law, and are neither discretionary nor negotiable on our part to any significant degree.
- Taxes and fees are not intended to be punitive (as opposed to, for example, regulatory fines).
- Taxes and fees are not payments for specific goods or services to be provided to us as a private corporation, but rather they are intended to fund publicly beneficial government programs.
- It seems that all taxes meeting the foregoing criteria should be included. It does not seem reasonable that the government should require us to pay such amounts for government programs, and then potentially require us to refund those same dollars to policyholders.

During the conference call referenced above, there a question raised about whether “Local” taxes should be included, given that Section 2718 refers to “Federal and State taxes.” Generally, states authorize local governments to impose taxes as political subdivisions of the state. Therefore, we believe that the term “State taxes” is inclusive of Local taxes. However, to clarify this point, we suggest that the instructions for the Exhibit should use the language “State and Local” or “State (or a political subdivision of a State)” where applicable.
Line 1.5, “Federal taxes and federal assessments.”

We believe the following items should be added to the instructions for Line 1.5 of the Exhibit.

- Include Federal Employment, Excise and Other taxes
- Include Annual Fee on Health Insurance Providers under section 9010 of PPACA
- Exclude Federal Tax Penalties

Line 1.6, “State and local insurance taxes.”

We believe the following changes should be made to the instructions for Line 1.6 of the Exhibit.

- Line 1.6 should be titled: “State and local insurance taxes and assessments”
- Change the first item in the instructions to: “Any assessments (other than surcharges on specific claims) imposed industry-wide (or upon a defined subset of the industry) that are paid to a State (or a political subdivision of a State), and premium subsidies that are designed to cover the costs of providing indigent care or other access to health care throughout the state (for example, CHIP assessments).”
- Change “State income taxes other than premium taxes” to “State and local income, franchise, business, and gross receipts taxes other than premium taxes.”
- Delete the “Exclude” item. (See the first item in the next set of bullets, below, for the treatment of sales taxes.)

We believe the following items should be added to the instructions.

- Include State and local sales taxes, unless included in expenses elsewhere
- Include State and local property taxes
- Include State and local business licenses
- Include other State and local taxes, excepting premium taxes reported on Line 1.7

That last item would address taxes (existing, or imposed in the future) that States or localities characterize with names other than those used in the preceding items, but that still meet the criteria stated above under the heading “General understanding.”

Line 1.7, “State and local premium taxes.”

We believe the following should be added to the instructions for line 1.7 of the Exhibit, as the first item in the list.

- Include State and local premium taxes
We also believe the following change (the underlined language) should be made to the existing “Include” item.

- Change the instruction to “State and local taxes based on policy reserves, if in lieu of premium taxes. Canadian and other foreign taxes should be included appropriately.”

II. Other Considerations

Lines 1.2, 1.3, and 2.4

We believe that clarification in the instructions should be added to address when these expenses can be a positive/negative number.

Lines 1.8 “Regulatory Authority Licenses and Fees”

We believe that the exclusion for fees for examinations by state departments of insurance should be removed and these expenses should be included in regulatory authority licenses and fees. Similar to taxes and fees these are compulsory fees beyond the control of the health insurer.

Line 2.4 “State Stop Loss, Market Stabilization and Claim Based Assessments”

We believe the following changes should be made:

- Line 2.4 should be titled: “State Stop Loss, Market Stabilization and Claim/Census Based Assessment.
- Change the first item in the instructions to read: “Any payments by insurers that are directly tied to claims or census based assessments.”

Line 4.4 “Net Incurred Claims after Reinsurance”

We believe that there should be + sign before 4.3 in this equation (“Rebates Paid”)

Line 5.1 “Type A: Expenses for Health Improvement other than Health Information Technology”

We believe that 24 Hour Nurse Hotline services are designed specifically to achieve the quality goals outlined in PPACA. We also believe that it will be challenging to make the type of narrow distinctions for determining qualifying expenses outlined in current instructions.

Line 5.2 “Type B: Health Information Technology Expenses Related to Health Improvement”

We believe that the list of allowable expenses is not sufficiently inclusive in light of the definition provided for this Line, which provides, in pertinent part: depreciation on hardware and expenses for software, integrated technologies or related licenses, intellectual property, upgrades, or packaged solutions sold as services that are designed for use by health plans, health care providers, or patients for the electronic creation, maintenance, access or exchange of health information and the personnel costs associated with implementing those technologies or licensees. We would suggest either modifying the language that provides, but limited to the following expenses, to state: including but not limited to, or alternatively adding to the list of expenses at a minimum, items such as personal health records, all payer, all claims data base, health risk assessors, provider quality/cost tools, and health coaching tools.
**Line 7.1 Cost Containment Expenses not included in Quality of Care Expenses in Line 5.4**

The exclusion of cost containment expenses referenced in Line 7.1 (e.g. case management, utilization review, fraud & abuse, internal/external appeals, network development and provider contracting) encourages health insurance issuers to cut their most effective premium cost containment activities in order to increase their medical loss ratio. Cutting in these areas will both decrease administrative costs and increase medical cost (increasing MLR). Unfortunately, since medical costs are by far the largest component of premium, this approach will undoubtedly result in higher overall premium, the opposite of the intent of this Section in the PPACA which is entitled: “Bringing Down the Cost of Health Care Coverage.”

- The cost containment items currently in Line 7.1 should be added to Line 5.3

**Line 7.2 All Other Claims Adjustment Expenses**

Consistent with plain reading of PPACA these expenses should also be included in the numerator of the medical loss ratio calculation

- The expenses set forth in Line 7.2 should be added to Line 5.3 or alternatively broken out into a new Line 5.4.

**Line 11 – Administering Self Insured Business**

We would recommend deletion of this line item since it is not relevant to health insurance lines of business and is not necessary for medical loss ratio calculation.