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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

May 20, 2010

Steve Ostlund
Chair, Accident & Health Working Group
National Association of Insurance Commissioners

Lou Felice
Chair, Health Care Reform Solvency Impact Subgroup
National Association of Insurance Commissioners

Dear Mr. Ostlund and Mr. Felice:

As you know, the Affordable Care Act included an important consumer protection and cost containment measure to ensure that consumers get value for their premium dollars. Specifically, the law requires insurers to spend a minimum percentage of premium revenue on clinical services and activities that improve health care quality. As members of the Committee on Health, Education, Labor and Pensions, which has jurisdiction over this provision, we write to provide comments on congressional intent. We hope these comments will inform your recommendations to the Secretary of Health and Human Services.

As NAIC has recognized, the statute differs from current practice in recognizing the value of activities that improve quality. While this is important, it also creates a strong incentive for insurers to reclassify as many expenses as possible. Broad categories of activities or “safe harbors,” as some have suggested, would undermine the intent of the law by creating a large loophole.

We therefore urge NAIC to define activities that improve quality with a high degree of specificity, using examples – and in such a way that they can be easily audited by regulators. Such activities should be proven to improve quality based on evidence and standards developed by the Agency for Healthcare Research and Quality, the National Committee for Quality Assurance, or other independent entities. They should also provide direct services to enrollees or directly improve their health or safety.

Some have suggested that “loss adjustment expenses” – administrative expenses incurred in adjusting and settling claims, which include cost containment expenses – should count as spending on clinical services and activities that improve quality. However, while the statute requires reporting of loss adjustment expenses, it is clear that they should not be included for

purposes of determining rebates required under the new law. These expenses do not reimburse for clinical services, and they do not improve quality.

In general, this consumer protection will be most useful to consumers if it recognizes their actual experience to the maximum extent possible. At a minimum, therefore, we urge NAIC to specify a methodology that sets minimum percentages for each market segment in each state. The intent of the statute is clear, because it specifies minimum percentages by market segment and allows states to set higher percentages.

Thank you for the opportunity to provide comments, and for your hard work to accelerate your recommendations to the Secretary. We look forward to working with NAIC as this provision and other health insurance reforms are implemented.



Tom Harkin
Chairman

Sincerely,



Al Franken
Member