



Charles N. Kahn III
President

May 24, 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 May 19, 2010 teleconference. On that conference call, the Subgroup indicated that the NAIC’s current plan was to send to the Department of Health & Human Services (“HHS”) by June 1st the proposed reporting form on medical-loss ratio (“MLR”) data, but that it would send definitions and other clarifying information related to the form’s data fields at a later date, planned to be by July 1st. The FAH is greatly concerned about the decision to separate the proposed MLR reporting form from the accompanying definitions, and urges the NAIC to wait until both parts are ready to be able to transmit a complete MLR package to HHS. Because the two parts are integrally intertwined, we believe it would be premature for the NAIC to send HHS one part before the other is complete.

Also, we have particular concerns with Supplemental Health Care Exhibit – Part 3, which provides the underlying data for calculating total costs related to quality improvement activities. We note that the headings for the columns on Part 3 reflect the categories included in the main Supplemental Health Care Exhibit – Part 1. We are concerned about including the “Other Approved Expenses” column in Part 3 when the NAIC does not appear to be proposing at this time any costs that should qualify for that category, as indicated by related Row 5.3 of Part 1 which states “Type C: Other

(TBD).” To include a data field when no costs are identified for inclusion in that category makes the form confusing and subject to misinterpretation and potential abuse. Moreover, in reviewing the remainder of Part 1, the NAIC has not included similar placeholders for other potential cost categories. Therefore, we strongly urge the NAIC to remove Row 5.3 from Part 1 and Column 4 from Part 3 to simplify the reporting form.

On Part 3, we are further concerned about certain rows that have been included for each of the individual, small group, and large group categories. We believe the row titled “Outsourced Services” is vague and overly broad. The draft definition of “Outsource Services” included in Part 3 appears to be completely related to administrative services, stating that what should be included are “expenses for administrative services, claim management services, new programming, membership services, and other similar services,” and only excluding “services provided by affiliates under management agreements.” It is hard to reconcile this definition with the current definition of quality improvement expenses included in Row 5 of Part 1, which properly focuses on costs that can be traced to improved quality of care for individual patients. Therefore, we believe the Subgroup should remove the “Outsourced Services” rows from Part 3.

Regarding accreditation and certification, the FAH has long maintained that, in relation to the provider network management part of the insurers’ business, these services are administrative and record keeping in nature, and do not add to quality improvement of care provided to individual patients. Again, these costs relate to insurers essentially collecting the accreditation and certification status (done by third parties) of the providers in their network. Those expenses should be excluded from the MLR calculation. If this category is meant to include accreditation of the health plan by a third party, then it would be important to closely review the scope of that accreditation program to determine if some of those expenses should be counted for MLR purposes, and those programs do not always relate to the quality improvement for individual patients.

The rows for “EDP Equipment and Software” remain undefined. On its face, it appears that most, if not all, “electronic data processing” equipment and software should relate to administrative services, especially given health information technology costs are specifically addressed in Column 4. In the absence of a clearly understood definition, this category of costs should be deleted from the rows on Part 3.

We understand that there will be another opportunity to consider modifications to the proposed definitions. The FAH looks forward to providing additional input on definitions in the near future. However, one definitional change in the current blanks document deserves mention here.

One material change to the Other Professional Services subcategory (Insured Claims category) is to now include “capitation payments by the reporting entity to such non-physician providers for delivery of medical services to reporting entity prescribers.” In our members’ experience, many capitation programs include metrics related to financial or cost-based performance, and such measures (often categorized as “efficiency measures”) do not qualify as quality improvement activities under section 2718. To the extent a capitation model bases payment solely on objective and measurable quality metrics and pays providers solely for direct care provided to patients, then such activities should be considered incurred claims. Otherwise, the data reporting will exceed those costs which are appropriate under section 2718.

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,

A handwritten signature in black ink, appearing to read "Todd Sells". The signature is stylized and cursive, with a large initial "T" and "S".

cc: Todd Sells, NAIC