



August 10, 2010

Commissioner Jane L. Cline  
President, National Association of Insurance Commissioners  
and  
NAIC Executive and Plenary Committee  
2301 McGee Street, Suite 800  
Kansas City, MO 64108-2662

***Comments regarding suggested amendments to Blanks Proposal re Medical Loss Ratios,  
Section 2718 of the Public Health Service Act***

Dear Commissioner Cline:

This is a letter with comments from Consumers' CHECKBOOK/Center for the Study of Services, a nonprofit consumer organization. In our earlier comments letter, dated July 30, 2010, we provided background on our organization, and the experience we have gained in our more than 30 years of providing the public with evaluations of the performance of health plans, physicians, hospitals, and other service providers.

We focus in this letter on two points. First, it is of great importance that the Blanks form makes clear that health plan expenses related to measurement and public reporting on the quality of performance of doctors, hospitals, and other health care providers on scientifically valid measures of clinical quality and patient experience should be classified as "quality improvement expenses." Second, strongly believe that there should be a policy that filings health plans make with the Secretary of HHS and with insurance commissioners related to medical loss ratio calculations must be open to the public.

Quality Measurement

On the first point, we propose that, for clarification, the bullet item under Column 1 that now reads "Quality reporting and documentation of care in non-electronic format" be changed to read as follows:

- Quality reporting and documentation of care in either electronic or non-electronic format, including measurement and public reporting on the quality of performance of doctors, hospitals, and other health care providers on scientifically valid measures of clinical quality and patient experience.

We believe that this is actually a clarification of the intent of the existing language. It is not opposed by the NAIC consumer representatives. And it is consistent with the provisions on quality reporting on the specific types of activities addressed under Columns 2, 3, and 4.

Measurement and public reporting on the quality of performance of health care providers is one of the most powerful available tools for improving quality in the health care system. Such activities can guide and motivate providers to improve and can assist consumers in the selection of providers. Some health plans have been leaders in such measurement and reporting—moving more aggressively than either provider organizations or governments on this front.

Some plans have their own measurement and reporting activities. Others participate in collaborative programs. At the national level there are collaborative efforts like the High-Value Health Care Project,

of the Engelberg Center at the Brookings Institution, which is working to lead the aggregation of data from health plans and government payers to make sure consistent information becomes widely available to consumers, providers, and public and private payers of health care. At the regional level, there are efforts like the work of Massachusetts Health Quality Partners, which uses data and financial support from health plans to calculate performance measures for medical practices on clinical measures—including measures of care of heart disease, asthma, and diabetes—and uses data and financial support from health plans to conduct surveys and produce public reports on patient experience with medical practices—including reports on how well doctors communicate, coordinate care, and give preventive care and advice. Reports are available free to the public at [www.mhqp.org](http://www.mhqp.org).

Our own experience includes programs we have sponsored in which leading health plans have collaborated with one another and with organizations like the Kansas City Quality Improvement Consortium and Healthy Memphis Common Table to identify samples of patients to survey about their experience with their doctors. The collaborating plans share in the survey and analysis costs by purchasing licenses to use the survey results in their provider directories and other programs—including information on how well each physician listens, explains things, maintains familiarity with the patient's medical history, makes care accessible when needed, and performs on other dimensions that patients can judge. Reports are available free to the public at the websites of collaborating organizations and at [www.checkbook.org/patientcentral](http://www.checkbook.org/patientcentral).

But there are considerable pressures on plans not to engage in such measurement and reporting, and there are substantial costs. Even now, many plans choose not to participate. It would be a major disincentive for participation in such activities if there were any ambiguity as to whether these expenses will be recognized as “quality improvement expenses.”

#### Public Disclosure of Plan Filings Related to Medical Loss Ratios

The committees and staff members who have been developing the policies and the Blanks form related to medical loss ratios have devoted a great amount of effort and intelligence to getting it all right. But it is evident that there are grey areas—that there will be a need for wise interpretation of the rules in response to the actual filings health plans make, in order to ensure that the spirit of the law and the public interest are reflected.

This process will benefit from openness. It will be important for as broad a group as possible of experts and members of the public to see the actual factual situations that the commissioners have to deal with. This type of public scrutiny can be expected to lead to the development of strong, well-reasoned precedents; enlightened revisions and clarifications of the rules; and sharing of wisdom across jurisdictions.

We and other consumer organizations strongly urge you to express a policy that the filings of plans related to medical loss ratios be made public.

We appreciate the opportunity to comment.

Yours truly,



Robert M. Krughoff, President  
Consumers' CHECKBOOK/Center for the Study of Services