June 28, 2011

To: NAIC Professional Health Advisers (EX) Task Force
Re: Producer commissions and MLR

The medical loss ratio standard is one of the very few provisions of the Affordable Care Act that tries to address how much consumers pay for health insurance. It was Congress's acknowledgement, however insufficient, of the need to address spiraling health insurance costs and make health insurers more efficient. It is a requirement that insurers spend *at least* 80% of customers' premiums on medical care, not an allowance that insurers *should* spend 20% on other things.

The proposal to carve producer compensation out of the MLR calculation would allow insurers to spend more on administrative costs and maintain higher profits, encourage excessive payments to brokers and agents, and directly contradict the goals of the Affordable Care Act. Consumers will pay higher insurance premiums and lose millions of dollars in rebates.

The proposal does nothing to protect or benefit consumers in any way.

The admirable efforts, under sharp time constraints, of the B committee's actuarial experts to collect data on the issue show that any change in accounting for broker income will have certain and negative effects on the consumer protections of the medical loss ratio standard. Their report also found no evidence that, even if broker commissions were to fall, consumer access to professional advice on health insurance issues would diminish. In fact, to our knowledge not one state has identified a consumer or business who complained or sought help from the department of insurance or elsewhere because they were unable to obtain the assistance of a health insurance adviser.

Consumer Watchdog urges the Task Force to recommend no change to the MLR treatment of broker compensation. The B committee's report and other findings show any other decision would be unreasonable and unjustified.

- **Excluding broker income from MLR would artificially boost median MLR by 5.2% for individual plans, according to the B committee's report.**
  - Take a sample insurer that reports a predicted 2011 average MLR of 81% for individual plans, after taxes are excluded and health quality adjustments are made.
  - **If broker commissions and payments were deducted from overhead, the final MLR would jump from 81% to 86.2%.**
  - The 80% MLR standard is a minimum that insurance companies have no incentive to beat. For this reason, an insurer with an MLR of 86.2% will be expected to increase rates to bring MLR back down closer to 80%. The 5.2% MLR boost that the insurer would be granted due to the broker deduction equals

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profit for the company (or more money to spend on executive salaries and overhead) after it raises rates.

- **Including broker compensation in MLR does not restrict consumer access to brokers.** The B committee reports that at least eight states have laws on the books requiring insurance companies to meet an MLR standard similar to that in the Accountable Care Act. These states report neither market disruption nor consumer complaints about loss of access to professional health advisers. Some of these states also have low commission schedules, and these states report no lack of access to broker advice. The experience in these states strongly suggests that neither a strong MLR standard nor a trend towards lower commissions will eliminate brokers from the market or limit consumer access.

- **The broker exemption would gut the only explicit consumer cost protection in the Affordable Care Act.** The B committee calculated the rebates that would have been paid if the MLR rules applied in 2010 as an example to illustrate the impact of removing broker compensation from the equation. Such a change would have reduced consumer rebates by $1.19 billion. This cost, and the increased premiums that are likely to result when insurance companies suddenly find themselves reporting MLRs well above 80%, will be borne by individual consumers and the taxpayers who subsidize employer and individual health insurance tax deductions and credits.

- **Any special treatment of broker commissions is likely to cause insurance companies to shift more administrative expenses to brokers and agents because they will be exempt from MLR limits.** In its May 10 data submission letter, NAHU notes that this is already happening:[1]

  > This report does not reflect additional costs that independent agent and brokers are now being forced to absorb as a result of the MLR requirements. Carriers are reducing their employee levels internally, including customer and broker support staff. This means that independent agents and brokers are taking on more client phone calls and administrative work and costs previously handled by some carriers directly without any increase to their compensation. A small, but costly example would be printed materials. …If an agent wants to give a client a printed copy of anything (even in this electronic age, this is still a paper-driven business), it must be printed in their own shop and at their own expense.

  While NAHU seeks to suggest this shift in administrative responsibilities should be blamed on their *inclusion* in the MLR formula, it is *excluding* broker payments from the MLR that is more likely to exacerbate the trend. The MLR standard limits how much insurance companies may spend on administration and overhead. If broker commissions are not subject to those limits, insurance companies have every incentive to shift as much administrative burden to brokers as they can, because broker commissions would be subject to no limits and insurers would have more room to maintain profits and other spending.

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[1] NAHU letter to B Committee, May 10, 2011. Accessible via: http://www.naic.org/documents/committees_b_ha_tf_110512_mlr_data_submission_letter.pdf

The evidence is overwhelming that this proposal would lock in an income stream for brokers at the expense of many millions in premium increases or lost rebates for consumers. Endorsing it would sideline the potential of the MLR standard to push insurance companies into greater efficiency. The cost is too great. We urge the Task Force to reject any change in accounting for broker compensation in the medical loss ratio.

Sincerely,

Carmen Balber