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The Honorable Kathleen Sebelius, Secretary
Jay Angoff, Steven Larsen, OCIIO
Department of Health and Human Services

Jolie H. Matthews
Health Insurance and Managed Care (B) Committee
National Association of Insurance Commissioners

Dear Secretary Sebelius and Ms. Matthews:

On behalf of the California Conference of Local Health Officers (CCLHO), I am writing to express our concern about regulations applicable to the Medical Loss Ratios (MLR) in the Affordable Care Act (ACA). The ACA empowers the Secretary to implement the law in a way that benefits the public. The National Association of Insurance Commissioners (NAIC) approved proposed regulations on the key issue of Medical Loss Ratios on August 17, 2010. When completed the NAIC proposal will then be subject to certification by HHS.

CCLHO is comprised of the legally appointed Health Officers from California's 61 health jurisdictions (58 counties and 3 cities). It was established by statute in 1947 to advise the California Department of Public Health, other boards, commissions, government officials, and the Legislature on all matters affecting health.

The law requires health insurance companies to spend at least a minimum percent of premium dollars on the medical claims of subscribers. Companies that fail this test must provide rebates to subscribers. The intent of imposing the MLR is to "bring down the cost of health care coverage" and "ensure that consumers receive value for their premium payments." It should provide incentives to the health insurance industry to pay subscribers' claims rather than denying them, and to operate efficiently and negotiate assertively with health care providers, rather than simply passing on cost increases to consumers. Companies can frustrate the intent of the law by defining medical claims to include other expenses, including marketing expenses typically considered part of administration.

CCLHO, acting in partnership with the EQUAL Health Network, is concerned about a specific provision of the proposal that would count "Activities that increase the likelihood of desired health outcomes," and specifically "Public health education campaigns that are performed in conjunction with state or local health departments," as medical expenses rather than administrative expenses.[1, 2]

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[1] See items listed as Quality Improvement activities in Column 4 of the "Expenses to Improve Health Care Quality: Derived from Supplemental Health Care Exhibit - Part 3," beginning on page 26 of the 9/23/10 draft.

[2] A review of states' rules on MLR, compiled by the National Association of Insurance Commissioners (NAIC) and published by America's Health Insurance Plans (AHIP), shows that most states do not use this definition, and define administrative expenses straightforwardly. State Mandatory Medical Loss Ratio (MLR) Requirements for Comprehensive, Major Medical Coverage: Summary of State Laws and Regulations (as of April 15, 2010). AHIP.

This standard goes beyond the law (ACA Section 2718), and opens an entirely new category of expenses that insurance companies can rely on to justify reduced spending on care for subscribers, including by denying care. It will frustrate the aims of the law and instead give undue weight to the views and interests of the insurance industry. We urge the NAIC to strike this section.

In the event that any portion of this section remains, we insist on removing the sentence referring directly to state or local health departments from the final regulation, and replacing it with: "Public health education campaigns implemented by state or local health departments whose costs are covered by the insurance industry and which relate to the improvement of population health, and are non-proprietary, therefore making the campaigns a legitimate medical expense."

The ACA standard for including an expenditure for non-clinical care as a medical expense is that it must "improve health care quality." This standard carefully does not include activities that insurers claim will improve the health of the public generally. This is known to be the province of public health departments who could legitimately create and implement population health campaigns around issues such as health literacy that could "improve health care quality."

As public health officials, we object to being included in initiatives that will be, in effect, proprietary but legitimized by our participation. If the approved regulations placed the content and substance of these campaigns under health department authority, paid for and subsidized by the insurance industry, then our objections would be mitigated. Thank you for your consideration.

Sincerely,

Edward Moreno, M.D., M.P.H.
President
California Conference of Local Health Officers