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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

WEB SITE: <http://commerce.senate.gov>

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November 21, 2011

Commissioner Kevin McCarty
President Elect
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108-2662

Dear Commissioner McCarty:

A number of times this year, you have attempted to persuade the National Association of Insurance Commissioners (NAIC) to endorse weakening the important consumer protections provided by the minimum medical loss ratio provision of the health care reform law. Your fellow Insurance Commissioners have been understandably hesitant to publicly support your efforts because there is growing evidence – some of which comes from NAIC itself – that the medical loss ratio law will save consumers billions of dollars over the next few years through lower health care premiums and rebates.

Your latest attempt to get the NAIC on record in opposition to the minimum medical loss ratio law is a resolution that you and your fellow Insurance Commissioners are scheduled to consider in a conference call tomorrow, on November 22, 2011. The current draft of this resolution calls on Congress and the Department of Health and Human Services (HHS) to take steps to address the negative impacts you claim consumers are experiencing as a result of the minimum medical loss ratio law. Yet in the many “whereas” clauses that precede this resolution, you offer no evidence that the law is harming consumers. Even worse, your resolution pointedly ignores the months of careful work conducted by NAIC’s professional staff that shows just the opposite – that the law is helping millions of American consumers get a better value for their health care premium dollars.

Lawmakers entrusted the NAIC with a number of important responsibilities during the implementation of the health care reform law, including the development of definitions and methodologies for the minimum medical loss ratio law. The NAIC has performed this challenging work with skill and professionalism, and has developed a well-deserved reputation for fairness and integrity. You and your fellow Insurance Commissioners risk damaging this reputation by putting forward a resolution that appears to be placating one special interest group and that so clearly contradicts evidence in the NAIC’s carefully assembled record.

1. There is Little or No Evidence that the Minimum Medical Loss Ratio Law is Reducing Consumers' Access to Agents and Brokers

The premise of your resolution is that the minimum medical loss ratio law is hurting consumers by reducing the commissions that health insurance companies pay to agents and brokers. Because commission payments are shrinking, you argue, agents and brokers are less able to help consumers purchase health insurance, and consumers are losing access to the services of agents and brokers. While I share your appreciation for the valuable services that agents and brokers provide many individuals and businesses, your resolution provides absolutely no evidence that the “adverse effects” you describe in the resolution are actually occurring.

At the NAIC’s March 2011 meeting in Austin, Texas, the Executive Committee’s Professional Health Insurance Advisors Task Force, which you head, instructed the Health Insurance and Managed Care (B) Committee to collect agent and broker commission data. Your Task Force took this step because some of your fellow Insurance Commissioners, as well as many consumer advocates, complained that you had not presented convincing evidence to support your claim that the law was harming consumers’ access to agents and brokers. Over the next several weeks, the B Committee’s Health Care Reform Actuarial Working Group gathered commission data from industry groups and state regulators.

In early June, the B Committee reported back to you that the quality of the available data was not high enough to reach reliable conclusions about trends in agents and brokers’ commissions.¹ In many markets, the report observed, insurance companies appeared to be lowering their commissions. But in other markets, commission levels were steady, or even increasing.² One of the report’s “observations” was the following:

In 2011, a significant number of companies have reduced commission levels, particularly in the individual market. **However, a significant number of companies have not reduced commissions in 2011.**³

¹ National Association of Insurance Commissioners, Report of the Health Care Reform Actuarial (B) Working Group to the Health Insurance and Managed Care (B) Committee on Referral from the Professional Health Insurance Advisors (EX) Task Force Regarding Producer Compensation in the PPACA Medical Loss Ratio Calculation (May 26, 2011) (online at http://www.naic.org/documents/committees_b_exposure_110607_phiia_charge_report.pdf) (hereinafter “May 2011 NAIC B Committee Report”). Commissioner Praeger also noted in her June 9, 2011, memorandum transmitting this report to you that the commission data sets “proved to be incomplete and have significant limitations.”

² Because commissions are generally calculated as a percentage of total premiums paid, a lower year-over-year commission rate does not necessarily mean agents and brokers have received lower payments from the insurance carriers; for the same reason, a steady commission rate generally means increased year-over-year revenues for agents and brokers.

³ May 2011 NAIC B Committee Report, *supra*, note 1, at 3.

Your resolution includes the first sentence of this observation to support your claim that the medical loss ratio law is causing agent and broker commissions to drop. But it does not include the second part of this observation (the bolded part above) because this sentence suggests that the law may be having no effect at all on agent and broker commissions. By selectively quoting this observation from the Committee Report, your resolution creates the misleading impression that the NAIC identified a trend in commission rates that it did not actually find.

Your resolution also fails to mention that when the Committee surveyed states with relatively high existing minimum medical loss ratios, the states reported that while the minimum ratios caused some reductions in agent and broker commissions, consumers “continue to have access to insurance and producers without noticeable problems.”⁴ This finding contradicts the assertion in your resolution that minimum medical loss ratio requirements reduce consumers’ access to the services of agents and brokers.

The Department of Health and Human Services (HHS) has reached similar conclusions when it has reviewed states’ requests for temporary adjustments to the minimum medical loss ratio law. To date, HHS has not yet found any convincing evidence that “consumers may be unable to access agents and brokers” under the minimum medical loss ratio law.⁵

For example, in its request for a temporary adjustment, the Kentucky Department of Insurance asserted that the minimum medical loss ratio law would reduce agents and brokers’ commission rates, “which will force a reduction in licensed personnel servicing the consumers in our market.”⁶ The data Kentucky submitted to HHS, however, showed that the insurance carrier that sells over 80% of individual policies in Kentucky, Anthem of Kentucky, had actually increased its agent and broker commissions in 2011. On that basis, HHS concluded that the law would have little or no impact on consumers’ access to agents and brokers.⁷

In a similar case, HHS rejected Georgia’s claim that the medical loss ratio law would reduce Georgia consumers’ access to agents and brokers. HHS based this decision in part on commission data submitted by the National Association of Health Underwriters (NAHU) to the NAIC. This data showed that none of the surveyed Georgia insurance carriers had lowered their

⁴ *Id.* at 7

⁵ Section 158.330(4)(c) of the minimum medical loss ratio regulations adopted by HHS requires the Secretary to consider this factor when assessing requests for medical loss ratio adjustments. U.S. Department of Health and Human Services, *Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements Under the Patient Protection and Affordable Care Act*, 75 Fed.Reg. 230, 74864, at 74931 (Dec. 1, 2010) (to be codified at 45 C.F.R. pt. 158).

⁶ Letter from Sharon P. Clark, Commissioner, Kentucky Department of Insurance to Katheleen Sebelius, Secretary, U.S. Department of Health and Human Services (Feb. 16, 2011), at 6 (online at http://cciio.cms.gov/programs/marketreforms/mlr/states/Kentucky/mlr_cover_letter_application.pdf).

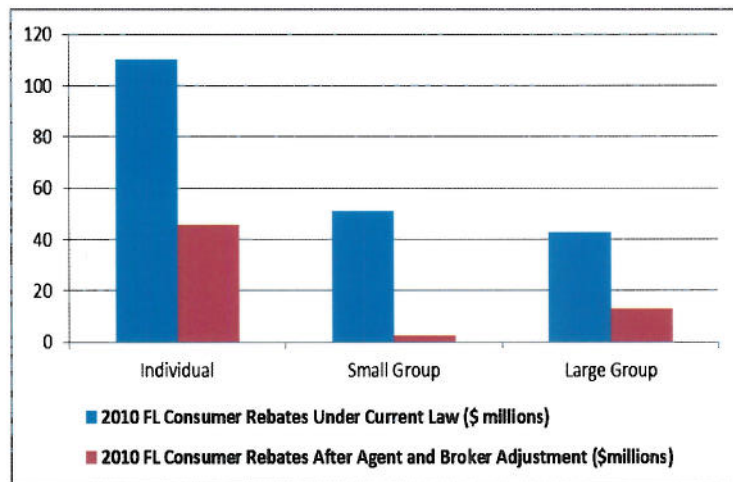
⁷ Letter from Steven B. Larsen, Deputy Administrator and Director, Center for Consumer Information and Insurance Oversight, U.S. Department of Health and Human Services, to Sharon P. Clark, Commissioner, Kentucky Department of Insurance (July 22, 2011), at 8 (online at http://cciio.cms.gov/programs/marketreforms/mlr/states/Kentucky/ky_ml_r_adj_determination_letter.pdf).

commission rates between 2010 and 2011.⁸ HHS rejected Delaware’s claim that the minimum medical loss ratio law would result “in a huge decrease in the number of active agents selling individual health insurance products,” after noting that eight out of the nine Delaware insurers that provided data to NAHU did not lower their commissions between 2010 and 2011.⁹

2. American Consumers are Getting Rebates, Lower Premiums, and Other Benefits Thanks to the Minimum Medical Loss Ratio Law

While there is little evidence that the minimum medical loss ratio law is affecting consumers’ access to the services of agents and brokers, there is a great deal of evidence showing that the law has created a strong incentive for health insurance companies to give their customers a better value for their health insurance dollars. To date, the best analysis of the financial implications of the minimum medical loss ratio law is the May Report that NAIC’s B Committee performed at your request.

The Report analyzed the detailed 2010 financial information that health insurance companies were required to disclose for the first time in the Supplemental Health Care Exhibit (SHCE) forms they filed with the NAIC and their state regulators. While the authors of the report were careful to note that their calculations differed in small ways from the calculations that will be performed at the end of 2011, the first year consumers are entitled to rebates under the law, they estimated that American consumers would have received almost \$2 billion in rebates in 2010.¹⁰ For example, the report estimated that Florida consumers and businesses would have received \$200 million in rebates from the insurance companies operating in your state.¹¹ These rebates are represented by the blue bars in the accompanying chart.



⁸ Letter from Steven B. Larsen, Deputy Administrator and Director, Center for Consumer Information and Insurance Oversight, U.S. Department of Health and Human Services to Ralph T. Hudgens, Georgia Commissioner of Insurance (Nov. 8, 2011), at 10-11 (online at http://cciio.cms.gov/resources/files/Files%202/11072011/final_ga_mlr_adj_determination_letter.pdf).

⁹ Letter from Steven B. Larsen, Deputy Administrator and Director, Center for Consumer Information and Insurance Oversight, U.S. Department of Health and Human Services to Karen Weldin Stewart, Delaware Insurance Commissioner (Sep. 9, 2011), at 6-7 (online at http://cciio.cms.gov/programs/marketreforms/mlr/states/delaware/de_mlr_adj_determination_letter.pdf).

¹⁰ May 2011 NAIC B Committee Report, *supra*, note 1, at 26-28.

¹¹ *Id.*

At your request, the B Committee analyzed the 2010 SHCE data to determine how exempting agent and broker commissions from the minimum medical loss ratio's calculation would affect the level of rebates American consumers receive. As you know, the B Committee found that exempting agents and brokers' commissions from the calculation would have wiped out more than 60% of the \$2 billion in estimated 2010 rebates. As shown by the red bars in the chart presented on the previous page, this change would have reduced rebates paid out to Florida consumers by \$142 million.¹²

Under this scenario, consumers do not lose just hundreds of millions of dollars in annual rebates. Just as importantly, health insurance companies lose the incentive the current law gives them to run their businesses more efficiently and deliver a better value to their customers at a lower cost. Furthermore, it is very likely that agents and brokers themselves will not benefit from this policy change, because health insurance companies would be likely to keep these canceled rebates as additional revenue rather than pass them on to agents and brokers as higher commission payments.

As was discussed in a report that the Senate Commerce Committee released in May 2011, health insurance companies operating at ratios below the law's 80% and 85% targets can comply with the law by either directly paying rebates to their customers, or by lowering their premiums to raise their medical loss ratios above the minimum targets and avoid paying rebates.¹³ Investigators from the Government Accountability Office (GAO) documented this latter strategy in a July 2011 report on how the health insurance industry is implementing the new minimum medical loss ratio law. According to this report:

A regulator from one state insurance commissioner's office said that some insurers in that state have not applied for premium increases and are making adjustments to lower premiums as a strategy to increase their MLRs, and commented that reducing premiums is the best strategy for insurers to improve value for consumers.¹⁴

It is already clear that the current minimum medical loss ratio law is benefiting American consumers and businesses by giving health insurance companies a strong incentive to spend their customers' premium dollars more efficiently and carefully. The law is helping consumers get more value out of each health care dollar they spend. Billions of premium dollars that the health insurance companies would have been able to keep as profits before the passage of the health care reform law, are now being used for patients' care and improving the quality of their care. These benefits will only continue to accrue as more and more Americans take part in a reformed

¹² *Id.*

¹³ Senate Committee on Commerce, Science, and Transportation, *Staff Report on Consumer Health Insurance Savings Under the Medical Loss Ratio Law* (May 24, 2011) (online at http://commerce.senate.gov/public/?a=Files.Serve&File_id=98f51e42-e9ef-441a-a5e3-6bdac44d6a27).

¹⁴ Government Accountability Office, *Private Health Insurance: Early Experiences Implementing New Medical Loss Ratio Requirements* (July 2011) (GAO-11-711), at 18. While your resolution contains one excerpt from this report that discusses lower commission rates, it omits the report's lengthy discussion of how the minimum medical loss ratio is causing insurers to lower their premiums.

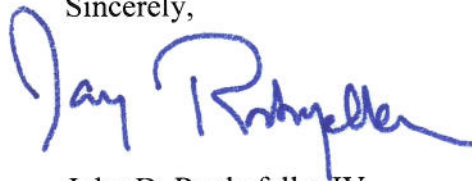
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health insurance market – a market in which agents and brokers will continue to play a valuable role.

Conclusion

As I wrote Commissioner Voss in a letter earlier this year, I stand ready to work with the NAIC and the health insurance industry to make sure that agents and brokers continue to play the vital role they play in today's health insurance market. I am heartened by the fact that HHS has taken concrete steps to make sure that agents and brokers will be able to serve American consumers in the new health insurance marketplace. But we should never lose sight of our ultimate goal - helping American families and businesses get better, affordable health care.

Sincerely,



John D. Rockefeller IV
Chairman

cc: Kay Bailey Hutchison
Ranking Member