440 1st St. NW, Suite 430 | Washington, DC 20001
O: 202.808.8848 | thehealthbenefitsinstitute.org

July 17, 2023

The Honorable Steve Westfall
Chair, Health Insurance & Long-Term Care Issues Committee
National Council of Insurance Legislators
616 5th Ave., Unit 106
Belmar, N.J. 07719

The Honorable Rachel Roberts
Vice Chair, Health Insurance & Long-Term Care Issues Committee
National Council of Insurance Legislators
616 5th Ave., Unit 106
Belmar, N.J. 07719

Delivered via email: wmelofchik@ncoil.org

*Re: Opposition to Medical Loss Ratios (MLR) for Dental Health Care Services Plans Model Act*

Dear Del. Westfall and Rep. Roberts

Thank you for the opportunity to provide public comments on the Medical Loss Ratios (MLR) for Dental Health Care Services Plans Model Act. HBI is very concerned with the ultimate impact of this bill, if passed. If implemented, the result will be reduced access to dental insurance, higher overall prices, and uncompetitive markets. The proposed loss ratio will force numerous insurers out of the market, reducing competition, and the remaining insurers will only offer high-cost dental plans.

The Health Benefits Institute is a group of agents, brokers, insurers, employers, benefit platforms and others seeking to protect the ability of consumers to make their own health care financing choices. We support policies that expand consumer choice and control, promote industry standards, educate consumers on their options and foster high quality health outcomes through transparency in health care prices, quality, and the financing mechanisms used to pay for care.

**A Solution Without a Problem**

HBI believes that a competitive market is the most important consumer protection. Dental insurance is generally not underwritten, and consumers have the ability to change dental plans. Dental insurance is also widely available across the country with affordable dental insurance plan options. Numerous insurers offer coverage, and consumers have access to a variety of policy types of insurance including employer coverage, voluntary purchase through their employer, and individual coverage. Consumers also have access to a variety of types of policies including coverage limited to basic and preventive services to comprehensive dental that includes orthodontia. Increasingly, insurers are facing competition from dentists who offer pre-paid dental care plans that allow consumers to pre-pay for some services and receive a significant discount on others.

In short, the dental market is competitive, and allows consumers a broad range of choices. We believe by maintaining a competitive dental insurance market, consumers will be best protected.

**MLR Leads to Less Choice and Less Competition**

Setting an MLR is supposed to lead to better "value" in insurance. Unfortunately, that isn't necessarily the case. The MLR divides costs up between direct patient care and "administrative costs." Many insurer administrative costs are fixed – for example the cost to process a claim, the cost of processing premium payments and other costs. In order to recover these costs, the insurer is forced to only offer richer, higher costs dental insurance benefits. In the long run, it will force some consumers out of the market.

Even more troubling is the impact an MLR has on overall market competition. Insurers with large market share have economies of scale that can help reduce overall administrative expenses and a large enough block of policies that ensures pricing is credible (i.e. predictable under the law of large numbers). Both new market entrants and smaller insurers can be driven out of the market with low loss ratios. We saw this play out in a number of state health insurance markets in which both pre-ACA and post-ACA have become dominated by a very few insurers. The net result for dental will be a market that is moving toward a monopoly and that will make it harder on dental practitioners to negotiate favorable contracts.

**Medical Loss Ratio or Minimum Loss Ratio (MLR)**

In most cases pre-ACA, MLR laws were treated as a minimum standard. These lifetime loss ratios set a minimum lifetime loss ratio based primarily on the renewability of the product with some variation on the product type. The lifetime loss ratio allowed that recognized claims could vary significantly from year to year, especially for insurers with relatively low enrollment or insurers who were seeing significant growth in their enrollment. In order to meet compliance with the act, insurers were not required to provide a rebate but rather to take corrective rate action. Corrective action could include premium reductions, premium discounts, or increased benefits.

Corrective Action

Lifetime loss ratio requirements rarely required insurers to issue a rebate check. In most cases, insurers adjusted rates – in some cases mid-year – or looked to increase the benefits available to consumers enrolled in the policy. The premium reduction or increased benefits had a more immediate impact on consumers than a very small dollar check. A Dental policy issuing a rebate check will often be less than $15 ($50 premium x 12 months x Loss ratio miss by 2%). Consumer confusion in receiving a small dollar check is significant.

Rebate Check Costs

The cost of issuing and mailing a rebate check to a consumer will be in excess of $9 per check. This takes into account the cost of programming, printing, envelope stuffing, and postage. Even more problematic is reality that many consumers will never actually cash the small dollar check.

During the pandemic, while insurers in various lines saw their loss ratios drop, and the insurance companies adopted a number of changes including increased benefits, premium discounts, and in some cases premium holidays. These alternative to rebate checks are, in fact, pro-consumer options allowing consumers to benefit immediately without having to deal with a surprise check.

Annual Rebates

The ACA adopted the framework of the loss ratio guarantee products that were in various states, but applied the standard MLR on annual rebate calculated based on a **three-year rolling average**. This approach ensures that rates are consistent from year-to-year and protects against solvency concerns from unexpected market issues. It also provides some protections against insurance blocks whose data is not credible – small policies blocks who experience can vary widely from year to year.

**NCOIL Alternative: MLR Reporting**

Our understanding is that one of proposed alternatives to the *Medical Loss Ratios (MLR) for Dental Health Care Services Plans Model Act* is language that would require dental insurers to report their loss ratios to the state department of insurance. HBI and its members support this alternative.

HBI and its members continue to believe the competitive market is the best consumer protection, but we understand the need for policymakers to collect information on the market. We believe any reporting requirement should include the following:

1. The MLR report of an individual dental insurer should be treated as confidential.
2. MLR reports should collect data seperately based on individual, small group, and large group market's.
3. Similar to the ACA, the MLR report should focus either on meeting the lifetime loss ratio or should be based on a 3-year rolling average.
4. Any language should expressly allow the insurer to make mid-year adjustments to plan benefits or premiums if it is in the insured person's favor.

Thank you again for the opportunity to provide public comments. Please do not hesitate to contact me if you have further questions at jpwieske@thehealthbenefitsinstitute.org or (920) 784-4486.

Sincerely

JP Wieske
Executive Director