

SENT VIA E-MAIL

December 7, 2010

The Honorable Kathleen Sebelius
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: File Code OCIO – 9998 – IFC

Dear Secretary Sebelius:

On behalf of the National Conference of Insurance Legislators (NCOIL), I write to comment on the recently released interim final rule regarding the medical loss ratio (MLR) provisions of the Affordable Care Act. Our organization—which represents state insurance policymakers nationwide—cannot support the proposed rule’s treatment of insurance producer compensation and believes such compensation should be excluded from the MLR calculations. Accordingly, we respectfully urge the Department of Health and Human Services (HHS) to exclude agent and broker compensation from the proposed methodology in the manner that we outline below when the final regulation is issued.

The services of independent insurance agents and brokers are of vital importance to consumers of health insurance products. Insurance policies are complex documents, the variety of health benefit plans offered in today’s marketplace is large and the needs of consumers are varied. Agent and brokers serve consumers in numerous ways, not only in connection with the selection of plans and insurers and the final purchase of products, but also with respect to transactions and events occurring after the sale, such as the enrollment of new employees, addition of new dependents, and assisting in billing, claims and other matters.

This interim final regulation threatens the role of agents and brokers in the process of consumers’ purchase of health care coverage. In its own message to HHS regarding the MLR regulation, the NAIC said, “we are very concerned about the impact the medical loss ratio requirement could have on the ability of insurance agents and brokers to continue assisting health insurance consumers at a time of rapid change that makes their role even more essential.”

NCOIL echos the concern of the NAIC. Agent and broker commissions are pass-through fees that are merely collected from the purchaser of insurance and passed on to the agent. They are not properly included in any measure of premium for purposes of computing minimum loss ratio, and their inclusion under the current regulation threatens the continued participation of agents and brokers on behalf of consumers in the health insurance process.

For these reasons, NCOIL urges HHS to make the following revisions to the regulation before it is promulgated in final form:

- amend Section 158.130 of the proposed MLR regulation by adding the following language: “For purposes of this regulation, the term ‘earned premium’ shall not include fees or commissions included in premiums that are collected solely for the purpose of passing such fees or commissions on to a third party to the extent such fees or commissions are actually paid.”
- delete Sections 158.160(b)(2)(iv) and 158.321(d)(2)(iv)

Sincerely,

A handwritten signature in cursive script that reads "George Keiser". The signature is written in dark ink and is positioned below the word "Sincerely,".

Rep. George Keiser (ND)
NCOIL President on behalf of the NCOIL Executive Committee