

To: NAIC President Jane L. Cline
Commissioner Alfred W. Gross, Chair, Financial Condition (E) Committee
Mr. Lou Felice, Chair, Health Reform Solvency Impact (E) Subgroup
Members of the E Committee

RE: Changes to NAIC Life and Accident & Health Blank and negative effect on MLR

Recent changes to the document that will guide what health insurers can define as Health Quality Improvements (and thus include in the medical loss ratio under PPACA) will largely diminish consumer protections and benefit insurance companies. The late and anonymous changes appear almost entirely to be the opposite of positions urged by the NAIC's own consumer representatives in their detailed letter of July 6. As the changes were made after the NAIC Financial Condition Committee approved the Blanks proposal by the E committee subgroup led by Lou Felice, we believe that they must receive a fuller public hearing, including knowledge of the source of each substantive change, before a final vote of the NAIC joint executive committee.

Consumer Watchdog protests these changes and asks that they be reversed.

In addition, we protest the lack of transparency regarding the changes. The NAIC's release of the revised document, signed by NAIC staff member Brian Webb, says the changes "[Reflect] discussions among members and with the U.S. Dept. of Health and Human Services (HHS)." Yet the document revisions do not state the source of individual changes. We ask that you identify the changes requested by HHS, if any, and those requested by commissioners or staff, identified individually. Otherwise, the amendments do not comport with the transparency promised when the NAIC took on the task of developing proposed regulations for approval by HHS.

The changes to which we object include:

+Inclusion of "all accreditation fees" as quality improvements, without restriction. (Supplemental Health Care Exhibit, Part 3 a, [page 14])
In a July 6 letter to the full committee (also attached, as PDF) the NAIC's own consumer representatives urged the committee against this inclusion, because while it may reassure prospective customers and investors, accreditation has nothing to do with health quality improvement;

+A potentially great expansion of inclusion of prospective utilization review as quality improvement rather than as a claims adjustment expense, which is counted as administrative. The new language (note b, page 16) states:
Prospective Utilization Review: Expenses for prospective utilization review should be included in Claims Adjustment Expenses to the extent they do not meet the criteria for the above defined columns of Improve Health Outcomes, Activities to Prevent Hospital Readmissions, Improve Patient Safety and Reduce Medical Errors, and Wellness & Health Promotion Activities, AND the prospective utilization review activities are not conducted in accordance with a program that has been accredited by a recognized accreditation body.

This is like saying, "Torture of prisoners is not allowed to the extent that it is banned by the Geneva Convention AND has not been approved by an officer of the rank of Major or above." Considering that national accreditation bodies have close ties to insurers, it is predictable that such recognition "by a recognized accreditation body" will expand to include much of what insurers desire to include as HQI.

+New inclusion in MLR of "Public health marketing campaigns that are performed in conjunction with state or local health departments" This is the sort

of activity that entirely blurs the line between marketing and health messages, and should only be recognized as a possible deduction to premium revenue to the extent that it is in lieu of premium taxes by the state.

+Inclusion in MLR of "Actual rewards/incentives/bonuses/reductions in copays, etc." tied to wellness programs." This, as the NAIC consumer representatives' letter noted, can be used as a sort of faux underwriting to cherry-pick the healthiest large and small groups and is not proven to improve health quality. The rewards are likely to be tied to cost reductions.

There are other changes that broaden permissiveness and add vagueness to what may be included as part of health quality improvement, particularly in regard to "wellness programs," which may be thinly disguised marketing. We ask that these changes be reversed in advance of a full executive/plenary vote.

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