and

The Center for Media and Democracy

The Engine of SourceWatch.org and PRWatch.org
520 University Avenue, Suite 260, Madison WI 53703
608-260-9713 • www.prwatch.org • editor@prwatch.org

August 11, 2010

The Honorable Kathleen Sebelius
Secretary, Department of Health and Human Services
Hubert Humphrey Building
Room 445-G
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius,

We write jointly as advocates for consumer rights and transparency to urge you to examine health insurers' reports of reductions in their proportion of medical spending in recent quarters, even as premiums have risen substantially in advance of the new health reform law. The major insurance companies' behavior looks suspiciously like that of credit card companies, which spiked annual interest rates in advance of consumer protection laws intended to restrict the conditions under which rates could go up.

Like the credit card companies, health insurers assume that they can get away with what amounts to bilking their customers now to set up higher profits in the future. The health insurers appear to be cutting the proportion of premium dollars spent on medical care, in the case of CIGNA by likely record proportions, in advance of regulations intended to make them spend a higher proportion on care, and less on administrative bloat.

Unlike with credit card companies, you have the power to curb their gaming of the system. The regulations that you put in place to enforce the new health law requirement that they spend 80% to 85% of customers' premium on health care will decide whether the companies cater to Wall Street or to their patients.

The outcome of the regulations that are now being written will depend on your resistance to a massive lobbying effort by the insurance industry.

In recent quarterly financial reports, all of the seven largest for-profit health insurers have reported healthy profits *and* reductions in the proportion of premium dollars spent on medical care (known in the industry as the "medical loss ratio," or MLR, a telling description of how providing health care is regarded by Wall Street.) The MLR reductions, and the insurance industry's heavy lobbying of state insurance commissioners who are writing proposed regulations, appear designed to evade the law's requirement that insurers provide better health care at lower administrative cost.

The most dramatic example of MLR reduction comes from CIGNA, which reported a 6.4% reduction in this key indicator of spending on actual health care in the second quarter of this year. Its year over year change from 85.2% to 78.8% MLR may be without precedent in the industry.

As you know, insurers already expect that changes in the MLR calculation specified in the Patient Protection and Affordable Care Act will allow more insurer activities to be defined as "health quality improvements" and counted as health care. At least some and possibly all of their state and federal taxes will also be deducted from premium revenue. The combined effect, depending on vagueness or laxness in final regulations, could amount to a 5% or larger insurer "bonus" in calculating the MLR. (See Consumer Watchdog comment on tax deductions at http://www.naic.org/committees_lhatf_ahwg.htm

The result of this bonus is that it pays for an insurer to suppress MLR as much as possible now, to keep future MLR at--but not above--80% for individual and small business policies, and 85% for large groups. It is not possible for the public to accurately determine how the company's drastic reduction in MLR--which increases its value to Wall Street--was accomplished.

The Center for Media and Democracy and Consumer Watchdog ask that HHS demand much more detail about the nature of the MLR reductions from CIGNA and lesser reductions by other insurers, and make the results public. The examination should seek to determine if financial coercion of employers and individuals (through unaffordable and unjustifiable spikes in the rates of less profitable plans, or the targeted closure of some plans) was part of any shift to higher-deductible and lower benefit plans.

HHS should also seek to tighten new definitions of what can be included in the medical loss ratio. The National Association of Insurance Commissioners, which is finalizing proposed regulations to decide how medical loss ratios are defined, is being lobbied by insurers and their lawyers with an intensity that makes the lobbying of Congress pale by comparison. As the proposed regulations are being finalized, they risk being further weakened. It will be up to HHS to right the balance.

Presumably the MLR reductions at CIGNA and other companies involved what insurers call "aggressive medical management" to reduce the amount of care provided enrollees. However, it likely also involved the movement of more enrollees into plans that require greater cost sharing and provide less care, through marketing or price coercion.

As noted in a Reuters story on CIGNA's results, ***most health insurers have reported a boost to their quarterly results from generally lower use of medical services, although they have largely been at a loss to pinpoint the reason for that decline.*** *http://www.reuters.com/article/idUSTRE67420920100805*

Insurers are not at a loss to pinpoint the reason, but they do not want to talk about it. They know consumers and policymakers would be outraged that they are reducing their proportion of spending on medical care now, counting on lax regulation to bloat their MLR later without affecting the corporation's value to Wall Street.

In previous years, CIGNA specified in financial reports how many members were enrolled in voluntary plans, including dental and vision, and limited-benefit plans with very low annual dollar limits and other restrictions,

typically the only insurance available to part-time and low-wage retail employees. Voluntary and limited-benefit plans also typically are more profitable, providing less care per dollar of premium.

Over the last several quarters when CIGNA did report such plans separately, membership in the high cost-sharing plans was growing rapidly, often as other types of plans were losing members. Membership in high-deductible comprehensive plans has also been growing rapidly while membership in more traditional plans has fallen. Blue Cross of California's push to close individual plans and switch members to more profitable high-deductible plans, for instance, is the subject of a lawsuit by Consumer Watchdog and others. (see http://www.consumerwatchdog.org/patients/articles/?storyId=33049 for details and link to court filing.)

All of the seven major for-profit health insurance companies have reported healthy profits and lower MLRs in the 2nd quarter, many of them on lower revenue and declining membership. Even CIGNA's reported profit decline for the quarter was due to a business completely unrelated to its health care operations; its adjusted income was far above analyst estimates and its forecast was for more profit growth.

With the MLR of a major insurer dropping considerably below 80% it is clear why the for-profit insurers are so determined to get the National Association of Insurance Commissioners, and ultimately HHS, to reclassify more of what insurers have always considered to be administrative expenses as medical expenses. If insurers have a big portion of their administrative costs reclassified as medical expenses, they will have far more leeway to reduce overall medical spending to meet shareholder expectations.

Investors will expect the insurers to keep their MLRs as close to the 80% and 85% minimums as possible. Insurers that are loath to cut profit, executive salaries or general administration will simply have more and easier targets.

HHS will be the last line of defense in depriving insurers of vaguely defined ways to boost their MLR without actually improving their ratio of medical care to administrative costs and profit. We ask that you determine in detail how insurers suppressed medical cost ratios in recent quarters. We also ask you to prevent insurers from gaming new regulations to satisfy Wall Street without any of the administrative efficiency purportedly demanded by the new health reform law.

Health insurers are no more beloved by their customers than credit card companies, and have similar lobbying power. In this case, however, you have the ability to curb their gaming of the new law.

Sincerely,

Judy Dugan for Consumer Watchdog

Wendell Potter (signature on file) for the Center for Media and Democracy