



May 10, 2010

Mr. Lou Felice
Chair, Health Care Reform Solvency Impact Subgroup

Steven Ostlund
Chair, Accident & Health Working Group

National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, Missouri 64108-2662

Re: Calculation of Medical Loss Ratio Recommendations

Dear Mr. Felice, Mr. Ostlund and Subgroup members:

The National Retail Federation is the world's largest retail trade association and the voice of retail worldwide. NRF's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the United States, NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers – nearly one in every five workers.

I write on behalf of NRF to comment on the National Association of Insurance Commissioners' (NAIC) development of recommendations related to the calculation of medical loss ratios (MLR) in section 2718 of the Public Health Service Act (PHSA) as added by the Patient Protection and Affordable Care Act (PPACA). It is important to NRF that the NAIC's recommendations on MLR standards not increase retailer's coverage costs. We encourage you to adopt a definition that: aggregates the large group MLR at the national level; fully integrates important quality and affordability activities; and also excludes HIPAA-excepted benefits.

I. Aggregation of MLR at the national and market level

For purposes of reporting and calculating MLRs, the large group market MLR should be measured nationally, or at the largest geographic area covered by an insurer, and should be made at the market, rather than the product level. Large employers offer coverage across state lines that is tailored to meet the unique needs of each employer's workforce. We are concerned that a state-by-state approach would raise premiums for employers as administrative costs increase, without offering meaningful information that employers can use to judge insurer performance. Large employers frequently take an

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active role in negotiating premiums with insurers or use a request for proposal process that takes into account administrative and cost measurements.

For employers it is important to measure the MLR at the broadest level possible in order to capture the state-by-state variation in administrative costs, benefit mandates and industry-specific costs. Measuring MLR nationally will help create a level playing field across industries and states and help contain rising health insurance costs for large employers.

II. Quality and affordability

Section 2718 of PHSA permits insurers to include certain quality measures in their MLR calculation. We ask that you consider including at a minimum the following quality measures which are valuable to employers and their covered employees: wellness programs, disease management programs, fraud, waste and abuse activities, and certain health information technology tools. These quality measures provide valuable services to covered employees improving their health and the value of the care they receive. Failure to include these measures would increase costs for employers, and eliminate programs that are valuable to employees and beneficial to their health.

A. Wellness and disease management programs

Wellness programs empower employees to improve their overall health and wellness, and are a critical component of effective health care. In fact, PPACA will require first dollar coverage for certain prevention services. Wellness programs may include activities such as smoking cessation, health assessments, counseling, fitness programs and the administration of such programs. Similarly, disease management programs provide important care management for employees with chronic and acute conditions. Disease management programs may include activities such as nurse lines, care coordination, special employee communications and other similar activities. These types of wellness and disease management activities improve health outcomes, increase quality and control long-term costs. In drafting PPACA, Congress recognized the importance of wellness, prevention and disease management programs as part of an overall health care strategy. We hope that NAIC will do the same. See, e.g. PPACA secs. 1311(g)(1), 2717.

B. Health information technology

When insurers use effective health information technology tools, it reduces costs for employers, and consequently employees, and improves the employee user experience. Health IT can help avoid duplicative tests, treatments, and prescribing errors by allowing clinical information to be shared among patients and providers. Personal

health records also help employees take control of their own health and become more powerful advocates for themselves. These positive results reduce premiums and improve the quality of care. As the benefits of health IT become apparent, employers are increasingly demanding that insurers include more complex health IT solutions.

C. Fraud waste and abuse

Everyone benefits when we prevent fraud, waste and abuse, and employers rely on insurers to prevent this type of activity in their plans. This not only prevents unnecessary premium increases, but it assures that employees have access to quality care. It is important to employers, that fraud, waste and abuse detection and activities be included in the MLR definition of quality.

III. Exclude HIPAA-excepted benefits from MLR requirements

We request that the NAIC clarify that HIPAA-excepted benefits are not subject to the MLR requirements. Employers generally use HIPAA-excepted benefits as ancillary and supplementary benefits that complement and fill in the gaps around primary medical coverage. Excepted benefits are priced and purchased with the understanding that the plans are lower-cost plans with higher fixed administrative costs that will be used periodically by employees. Applying the MLR requirements to HIPAA-excepted benefits could hinder employers' ability to offer such benefits and are contrary to precedent excluding excepted benefits from most health insurer requirements. See PHSA §§ 2722, 2791.

Thank you for considering our comments and views. We recognize that the expertise of the NAIC and member commissioners will play a vital role in helping to ensure the best and most affordable path to implementation of PPACA.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Neil Trautwein", with a stylized flourish at the end.

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