



American Cancer Society ☞ Children's Defense Fund/New York ☞ Community Service Society of New York ☞
Make The Road New York ☞ Metro New York Health Care for All Campaign
New Yorkers for Accessible Health Coverage ☞ New York Immigration Coalition
Public Policy and Education Fund of New York/Citizen Action of New York ☞ Raising Women's Voices

January 31, 2011

Secretary Kathleen Sebelius
Office of Consumer Information and Insurance Oversight,
Department of Health and Human Services,
Room 445-G,
Hubert H. Humphrey Building,
200 Independence Avenue, SW.
Washington, DC 20201

Re: OCHIO-9998-IFC

Dear Secretary Sebelius:

Health Care for All New York (HCFANY) writes to comment on the interim final regulation implementing medical loss ratio (MLR) requirements for health insurance issuers under section § 2718 of the Public Health Service Act, as added by § 10101 of the Patient Protection and Affordable Care Act (Affordable Care Act). HCFANY is a statewide coalition of more than 100 organizations which seek to achieve affordable, quality health care for all New Yorkers.

Overall, we commend the Department for adopting the recommendations put forth by the National Association of Insurance Commissioners (NAIC). In particular, we are pleased that these recommendations were adopted without any major alterations.

In areas not covered by the NAIC, we generally support the HHS interim final regulations. Particularly, we applaud provisions that increase the level of transparency and accountability in MLR adjustments, rebates, and allocation of administrative costs. However, we are concerned with other provisions and would urge you to reconsider them: the regulation regarding the definition of federal taxes and the special rule for "mini-med" plans. In addition, we urge you to be vigilant in enforcing the requirements of the medical loss ratio.

I. HCFANY Supports Provisions That Increase Transparency & Accountability

We applaud the requirements established by § 158.320 – § 158.322 of the rule concerning states that request interim adjustments to the minimum medical loss ratio. States are required to



support requests with evidence that implementation of the statute as written would result in destabilization of the market and complete the process established by § 158.340 to § 158.345 for evaluating those requests. This process includes public disclosure of a state's adjustment request on the HHS website and provides an opportunity for public response and potentially for a public hearing on the request. We particularly laud the criteria established by § 158.330 for evaluating state adjustment requests that takes into consideration the effect that granting an adjustment is likely to have on consumers. However, we remain very concerned that states may use the adjustment process to allow insurers to continue to operate with low medical loss ratios and we will continue to observe closely the performance of HHS in implementing and enforcing this rule.

HCFANY also supports the provisions of § 158.242, which provide insurers, employers and enrollees with a fair and reasonable approach for allocating rebates on a pro rata basis to the person or entity that paid the premium on behalf of the enrollees. This section includes an important provision that allows the issuer to meet its rebate obligation by entering into an agreement with the group policy holder to distribute the rebate, while retaining the insurer's liability for ensuring that the rebates are paid to enrollees. Similarly, we appreciate the provisions of § 158.140(b)(3)(ii) that will block insurers from simply transferring their administrative costs to third party vendors.

II. Areas of Concern

Definition of Federal Taxes

We urge you to reconsider the broad definition of federal taxes under § 158.161, which goes far beyond the limited definition intended by the drafters of the ACA, as they made clear in their letter to the Secretary of August 10, 2010.¹

Special Provisions for Mini-Med Plans

The special provision made by § 158.221(b)(3) for mini-med plans is not supported with any evidence and we do not feel that it is warranted. Although it may make sense to allow limited benefit plans to continue in operation, as opposed to leaving enrollees without coverage, these plans should be required to operate as efficiently as full-coverage plans and should not be excused from compliance with the medical loss ratio requirements of the ACA. Enrollees of mini-med plans should be fully informed of any special allowances given to those plans.

Classifying Expenses

We are also concerned that § 158.170 gives insurers far too much leeway in classifying expenses, and we urge you to review expense allocations carefully to make sure that this discretion is used appropriately.

¹ Baucus M, Levin S, Harkin T, Waxman HA, Dodd CJ, Miller G. Letter to Kathleen Sebelius. August 10, 2010. (http://www.politico.com/static/PPM170_100811_taxes.html.)



Strong Enforcement of the Medical Loss Ratio

Lastly, we urge you to be vigilant in enforcing the requirements of the medical loss ratio. In addition to our concern that some states may use the adjustment process to allow insurers to continue to operate with low medical loss ratios, we anticipate that there will be of varying degrees of compliance from insurers themselves. Some insurers have already stated an intention to collect commissions for brokers and agents from enrollees and pay the commissions directly to the agents and brokers without counting them as premium revenue or administrative expenses. We find this to be clearly contrary to the intent of Congress that commissions be counted as premiums and treated as administrative expenses, and is in violation of the expansive definition of premium revenue found in § 158.130 and to the definition of non-claims costs found in § 158.160.

In addition, while we believe that the definition of quality improvement expenses is on the whole consistent with congressional intent, we urge HHS to remain vigilant in overseeing its enforcement as insurers may seek to classify administrative costs as quality improvement expenses.

Thank you for considering our comments. If you have any questions, please contact Elisabeth Benjamin at ebenjamin@cssny.org or at (212)614-5461 or Arianne Slagle at aslagle@cssny.org or (212) 614-5541.

Sincerely,

Elisabeth Benjamin, MSPH, JD
Vice President of Health Initiatives
Community Service Society of New York