E. BENJAMIN NELSON
NEBRASKA

720 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224–6551
FAX: (202) 228–0012
www.bennelson.senate.gov

United States Senate

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COPY

The Honorable Kathleen Sebelius, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201-0007

Dear Madam Secretary:

I am writing to express my concerns regarding the implementation of the Affordable Care Act's (ACA) Medical Loss Ratio (MLR) requirements and their impact on licensed independent health insurance agents and the individuals and small businesses who depend on such agents. As you know, the MLR regulations require that agent compensation be included as an administrative expense. I believe these regulations are having an unintentional, adverse impact on the licensed independent health insurance agent community. Therefore, I urge the U.S. Department of Health and Human Services (HHS) to take immediate steps through the guidance process to mitigate these effects.

As you are aware, the ACA requires health insurers to meet MLR targets, stipulating that 80 percent of insurance premium dollars be spent on direct care for patients and quality improvement measures in the individual and small group markets and 85 percent in the large group market; the remainder may be spent on administrative costs, marketing and other expenses. I do believe the MLR requirements are an important provision designed to ensure that insurance plans provide value and transparency for consumers. A recent Government Accountability Office (GAO) report, for example, shows that three insurance companies from among those surveyed will decrease premiums or increase rates by a smaller amount than they would have without the MLR.

However, during development of the regulations implementing these MLR requirements, HHS officials made the decision to include agent compensation as an administrative expense. The result, as evidenced in data collected by the National Association of Insurance Commissioners (NAIC), is that insurance agents from across the country have seen their compensation reduced, in many cases significantly. According to the same GAO report, "[a]lmost all of the insurers [GAO] interviewed were reducing brokers' commissions."

Further, the U.S. Department of Labor estimates that there are approximately 400,000 insurance agents in the United States in the active business of health insurance sales and consumer representation. Steep reductions in agent commissions will invariably lead to agents exiting the health insurance business. As a result, the economic harm this regulation is causing for agents may very well have negative consequences regarding jobs and health insurance access for consumers and small businesses as well.

Independent insurance agents are small business owners providing valuable guidance and support to their customers at the point of sale and throughout the life of the policy. The impact of the MLR regulation, and the possible loss of licensed independent insurance agents and their staff which could result, will almost certainly be a decreased ability of consumers and small businesses to navigate the complex health insurance marketplace and to find insurance plans which fit their needs. And the role of licensed independent health insurance agents will only prove to be more critical after 2014. Starting that year, agents will play an active and important role in enforcing the individual responsibility provision of the ACA by encouraging millions of previously uninsured individuals to purchase health insurance and understand their policy options. At the same time, millions of small and large employers will seek guidance from agents to answer questions about their health insurance responsibilities and available options.

In addition, the NAIC, which was empowered under the ACA (Section 10101) to establish the MLR definition, subsequently developed an ad hoc committee to consider the impact of the MLR on agents. On June 30, 2011, the NAIC's Professional Health Insurance Advisors Task Force voted almost unanimously to support a proposal removing agent compensation from the MLR calculation. Given the NAIC's history with the creation of the MLR definition, I believe the recommendations of its task force should be strongly considered.

While the Interim Final Rule (IFR) that HHS issued in conjunction with the MLR regulation did allow for "the impact of the MLR standard on agents and brokers [to] be a factor in considering whether particular individual markets would be destabilized," when granting state-by-state adjustments to the MLR regulation, I do not believe that HHS has gone far enough in pursuing solutions to this problem. Indeed, since the IFR was issued, the work of the NAIC has done much to reveal the depth and scope of the MLR's impact on licensed independent health insurance agents and brokers. HHS should draw upon this research brought forward by the task force as it considers further guidance on this issue.

I do understand there is some belief that the statutory language in the ACA makes it difficult for HHS to amend this regulation; however, I must urge your agency to fully explore every avenue available to provide regulatory relief. If it is determined that HHS cannot act to provide regulatory relief, I look forward to working with you to develop an appropriate legislative solution.

Thank you for your consideration in this matter. If you have questions regarding my concerns or wish to discuss this matter further, please contact me directly or have your staff contact Charles Ellsworth of my staff at (202) 224-6551.

Sincerely,

E. Benjamin Nelson

E. Benjamin Nelson
United States Senator

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