



COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

OFFICE OF OVERSIGHT AND INVESTIGATIONS
MAJORITY STAFF

**CONSUMER HEALTH INSURANCE
SAVINGS UNDER THE MEDICAL
LOSS RATIO LAW**

**Staff Report for Chairman Rockefeller
May 24, 2011**

Executive Summary

The minimum medical loss ratio (MLR) provision included in the 2010 health care reform law requires health insurance companies to disclose detailed information about how they use their customers' health insurance premium dollars. Over the past several months, health insurance companies have been filing this financial information for the first time with the National Association of Insurance Commissioners (NAIC). A preliminary analysis of these data performed by an NAIC working group has found that if the MLR law's rebate provisions had been in effect in 2010, American consumers in all 50 states would have received rebates totaling almost \$2 billion from their health insurance companies. The NAIC analysis also shows that these consumer rebates would have been reduced by more than \$1.1 billion (or more than 60%) if agent and broker commissions were excluded from the MLR calculation.

I. Background on Medical Loss Ratio (MLR) Calculations

One of the important new consumer protections enacted in the 2010 health care reform law is the "medical loss ratio" (MLR) provision, which encourages health insurance companies to spend a larger portion of their customers' premium dollars on medical care. In the individual and small group commercial health insurance markets, the MLR law requires insurers to spend 80% of their customers' premium dollars on providing health care services or improving the quality of those services. In the large group health insurance market, the law's minimum medical loss ratio target is 85%.¹

Insurers that do not meet these health care spending levels must pay pro rata rebates to their customers; the greater the amount the health insurance company falls below the 80% and 85% targets, the larger rebate it pays its policyholders. These rebate requirements became effective on January 1, 2011.

In order to determine whether health insurance companies are meeting the 80% and 85% targets, the MLR law required the National Association of Insurance Commissioners (NAIC) to develop uniform definitions of the key elements of the MLR calculation - the premiums that are used as the denominator of the MLR calculation, and the claims and quality-improving expenses that are its numerator. These definitions would be used not only to calculate whether health insurance companies were meeting the MLR targets; they would also be used to calculate the rebates insurers owed to their customers if they failed to meet the targets.

Between May and October, 2010, the NAIC conducted a thorough review and discussion of the federal MLR law and the business practices of health insurance companies. The end products of this process were a set of standard definitions² and a new 2010 Supplemental Health

¹ Section 2718 of Title XXVII, Part A of the Public Health Service Act, as added by Sec. 10101(a) of Title X of the Patient Protection and Affordable Care Act, Pub. L. 111-148 (2010).

² National Association of Insurance Commissioners, *Regulation for Uniform Definitions and Standardized Methodologies for Calculation of the Medical Loss Ratio for Plan Years 2011, 2012, and 2013 Per Section 2718(b) of the Public Health Service Act* (approved on Oct. 21, 2010) (online at http://www.naic.org/documents/committees_ex_mlr_reg_asadopted.pdf). The Department of Health and

Care Exhibit (SHCE) form.³ The SHCE form (also known as a “blank”) required health insurance companies to provide the financial information necessary to calculate MLRs under the new definitions. Some of the information required in this blank, such as insurers’ commission payments to agents and brokers and quality-of-care expenditures, had never before been publicly reported. Insurers were required to complete and submit their 2010 SHCE forms by April 1, 2011.

II. New Data on MLR Law Consumer Savings

On May 19, 2011, an NAIC working group publicly released MLR and payable rebate estimates based on the financial data health insurance companies submitted in their 2010 SHCE forms.⁴ These estimates represent the first reliable, comprehensive information about how many health insurance companies are meeting the MLR law’s 80% and 85% targets. They also provide important new information about the dollar value of the rebates consumers can expect to receive in 2011, when the MLR law’s rebate provisions became effective.

Table 1 – NAIC Estimates of Rebates Paid to Consumers if the Current MLR Law Had Been in Effect in 2010

Market	Premiums Paid (\$ millions)	Estimated Consumer Rebate (\$ millions)
Individual	\$25,311	\$978
Small Group	\$70,255	\$447
Large Group	\$154,959	\$526
Total	\$250,525	\$1,951

As Table I shows, NAIC estimates that if the MLR law’s rebate provisions had been in effect in 2010, American consumers would have saved almost \$2 billion. About half of the total value of these rebates would have gone to consumers who have purchased health insurance in the individual market. NAIC estimates that almost 53% of the consumers in the individual market would have received an MLR rebate in 2010 because their insurance companies were using less than 80% of their health care dollars to provide care or improve the quality of their care.⁵

Human Services adopted and certified this regulation in full in its interim final regulation implementing the MLR law. 75 Fed.Reg. 230, 74864, at 74865 (Dec. 1, 2010).

³ National Association of Insurance Commissioners, *2010 Supplemental Health Care Exhibit* (online at http://www.naic.org/documents/index_health_reform_mlr_blanks_proposal.pdf)

⁴ National Association of Insurance Commissioners, *Draft Report of the Health Care Reform Actuarial (B) Working Group to the Health Insurance and Managed Care (B) Committee on Referral from the Professional Health Insurance Advisors (EX) Task Force Regarding Producer Compensation in the PPACA Medical Loss Ratio Calculation* (May 19, 2011) (online at http://www.naic.org/documents/committees_b_ha_tf_110519_report_phia.pdf). All data presented in this report and attached exhibits come from a spreadsheet titled “Exhibit E” that accompanies the NAIC report cited above. This spreadsheet can be accessed online through http://www.naic.org/committees_b_ha_tf.htm.

⁵ *Id.*, at 4.

Attached to this report as Exhibit 2 is a state-by-state estimate of the rebates consumers would have received in 2010 under the MLR law. Consumers in two states (Florida and Texas) would have each received more than \$200 million in MLR rebates.

The MLR law's rebate provisions will help consumers save money on their health insurance in two ways. Millions of consumers will receive rebates, while millions more will benefit from health insurance companies' efforts to eliminate or reduce their MLR rebate liability through premium reductions.⁶ Credit Suisse health care analyst Charles Boorady recently reported that health insurance companies were cutting policy renewal prices "in markets where a rebate would otherwise be paid to meet new minimum loss ratio requirements."⁷ Aetna, for example, recently announced that it was decreasing premiums by an average of 10% for more than 15,000 of its Connecticut customers in order to reduce its 2011 rebate payments. These rate reductions will translate into annual savings of as much as \$3,519 for some of Aetna's customers.⁸

III. The Effect of Proposals to Remove Agent and Broker Commissions from the MLR

Organizations representing health insurance agents and brokers have been heavily lobbying Congress and state insurance regulators to remove agent and broker commissions from the MLR calculation. NAIC's new analysis of the 2010 SHCE form data includes an assessment of how this change would affect the size of consumer rebates.

Under the current MLR law, as well as long-observed accounting rules in the health insurance industry, any payment a health insurance company makes to an independent agent or broker involved in the sale of a policy is counted as a non-claim, administrative expense. Any portion of a consumer's premium payment that goes to pay agent and broker commissions is therefore included in the denominator of the MLR equation, but not the numerator. In order to meet the MLR law's 80% and 85% targets, health insurance companies have been examining their commission schedules and, in some cases, lowering or re-structuring the fees they pay agents and brokers.⁹

In response to the downward pressure the MLR law appears to be exerting on the commissions that some health insurance companies pay agents and brokers, their advocacy groups have proposed amending the health care reform law to exclude commissions from the MLR calculation. Agents and brokers' supporters in the House of Representatives have

⁶ See e.g., Letter from Chairman Rockefeller to Commissioner Susan Voss, President, National Association of Insurance Commissioners (Mar. 15, 2011) (online at http://commerce.senate.gov/public/?a=Files.Serve&File_id=3ffd53dc-969f-4d0b-a4a8-d6dc638c346d).

⁷ *Analyst: MLR Rules Are Lowering Some Health Rates*, National Underwriter (May 13, 2011) (online at <http://www.lifeandhealthinsurancenews.com/News/2011/5/Pages/Analyst-MLR-Rules-Are-Lowering-Some-Health-Rates.aspx>).

⁸ *Aetna Seeking 10 Percent Price Decrease as Medical Spending Falls*, Hartford Courant InsuranceCapital Blog (May 11, 2011) (online at http://blogs.courant.com/connecticut_insurance/2011/05/aetna-seeking-10-percent-price.html).

⁹ Chairman Rockefeller March 15, 2011, letter to Commissioner Voss, *supra*, note 6.

introduced a bill (H.R. 1206) that removes “remuneration paid for licensed independent insurance producers” from the MLR calculation. As Chairman Rockefeller explained in a letter he wrote to the NAIC in March 2011, however, excluding commissions from the MLR calculation would artificially inflate MLRs and reduce the value of the rebates that health insurance companies would be required to pay their customers.¹⁰

Table 2 – NAIC Estimates of Rebates Paid to Consumers if Agent and Broker Commissions Had Not Been Included in the MLR Calculation in 2010

Market	Estimated Consumer Rebate Under Current MLR Law (\$ millions)	Estimated Consumer Rebate When Commissions are Excluded from MLR Calculation (\$ millions)
Individual	\$978	\$401
Small Group	\$447	\$146
Large Group	\$526	\$215
Total	\$1,951	\$762

Because health insurance companies were required to report their agent and broker commission payments on the NAIC 2010 SHCE form, the NAIC working group was able to calculate the financial impact of the policy change proposed in H.R. 1206. As Table 2 shows, if agent and broker commissions had been removed from the MLR calculation in 2010, consumers’ rebates would have been reduced by more than 60%, from \$1.95 billion under the current MLR law to \$762 million. In other words, H.R. 1206 would have allowed health insurance companies and agents and brokers to retain \$1.2 billion that the current MLR law required them to return to consumers in the form of rebates or lower premiums. Exhibits 1 and 2 attached to this report provide a state-by-state breakdown of the rebates consumers would have lost if H.R. 1206 had been in effect in 2010.

¹⁰ *Id.*