



Medical Loss Ratios Talking points and background information

The process

All state insurance commissioners are voting members of the National Association of Insurance Commissioners (NAIC). The Affordable Care Act (ACA) charged the NAIC with making recommendations to Health and Human Services (HHS) about key definitions and calculations of the medical loss ratios (MLRs). While HHS must approve the NAIC definitions and methodologies for calculating MLRs, the HHS is likely to heavily rely on the NAIC's recommendations and will make few changes. Therefore, it is critical that the definition that comes out of the NAIC is as narrow and consumer friendly as possible.

NAIC policies start in workgroups – and NAIC consumer representatives worked hard to develop strong MLRs with insurance commissioners and their staff. Workgroup recommendations then go to NAIC committees – in the case of MLRs, the Health Insurance and Managed Care Committee and the Financial Condition Committee. If approved, the recommendations move to the NAIC's Executive Committee and then to a full vote by all insurance commissioners. The NAIC then makes recommendations to HHS, which HHS must certify.

The final vote by all commissioners is slated for this Thursday, October 21, 2010.

To date, many consumer concerns were voiced in the workgroups and incorporated into their recommendations, but as the policy moved forward, insurance companies are pressuring insurance commissioners to weaken standards by allowing a broader definition of clinical and quality measures. For instance, insurers are trying to include basic and necessary administration expenses such as ensuring that providers are credentialed as “quality improvement measures” under the MLR. **It is critically important that state insurance commissioners hear the concerns of consumers and advocates before the final vote.**

Talking points for your insurance commissioner

1. Keep the definition of quality activities narrow.

- The law allows the cost of certain activities that improve health care quality to be exempted from the calculation of the MLR.
- The workgroups defined quality improvement expenses narrowly and only allow health services that are **evidence-based and objectively measured to improve quality**. This can include activities such as disease management programs or programs that help avoid hospital readmissions.

- Defining these quality improvement activities too broadly will weaken the MLR requirements, making it possible for insurers to meet them without actually improving health care quality.
- Insurance companies are looking for every opportunity to shift administrative expenses into the quality improvement category of the MLR. Activities such as fraud prevention, network management, provider credentialing, and similar expenses are administrative activities every health insurer should do and should not count as quality improvement activities.

2. Denying care isn't a "clinical expense."

- Insurers claim their administrative costs for investigating or denying medical claims (called "loss adjustment expenses") are part of clinical care and should count toward the MLR requirement.
- The expenses that count toward the MLR requirement should be **real clinical care, not paperwork** and denials of care.

3. Restrict transition periods and exceptions.

- The law gives the Secretary of HHS discretion to create exceptions to the MLR law if, for instance, a state's insurance market is fragile.
- Some insurers have asked for broad exemptions from the MLRs required by the law.
- Any exceptions should be as narrow as possible, for a limited time period, and done only to preserve consumer choice in the insurance market in the short-term.
- Any exemptions or "transitions" to following the new law should be treated as a safety valve, not an opportunity to allow junk insurance.

4. Don't let the insurance industry drown out consumer voices.

- Consumer representatives in the NAIC were heard in the early NAIC workgroups and many of their recommendations were included during the initial stages of work. However, the industry is pushing to water down these policies before the final vote.
- It is critical that Insurance Commissioners continue to hear from consumers to retain critical protections

**Every Insurance Commissioner will vote on the final MLR definition.
It is critical that your commissioner hear from you immediately on this issue.**