



January 7, 2010

The Honorable Nancy Pelosi  
The United States House of Representatives  
Washington, DC 20515

The Honorable Harry Reid  
The United States Senate  
Washington, DC 20510

Dear Madame Speaker and Mr. Leader,

The professionally licensed and trained agent and broker community supports enacting health care reform to extend insurance coverage to all Americans, reduce costs and improve quality. Our collective 500,000 members are committed to ensuring that health reform is a lasting and sustainable achievement that will improve the wellbeing of the country and our economy.

As Congress begins the process of combining the House and Senate-passed comprehensive health reform bills into one piece of legislation, our members believe it important that the role of individual states be preserved and strengthened relative to health reform implementation. With a country this large and diverse, it is critical that each state be able to continue its role in protecting consumers and have the flexibility to address the unique needs of its own population. The conference report should build on existing state abilities to assess, regulate and improve their own unique health insurance markets, thereby minimizing the need for new and potentially duplicative federal resources and administrative costs in this area.

We welcome the opportunity to offer the following issues and concerns, which we believe are paramount to successful implementation of any national health reform legislation.

### **Minimum Medical Loss Ratio Requirements**

Both the House and the Senate-passed legislation establish minimum medical loss ratio (MLR) requirements for insurers. The House legislation sets the MLR rate at least 85% across markets (and gives the HHS Secretary authority to set higher), and the Senate-passed measure sets the MLR rates at a minimum of 85% for large group plans and 80% for individual and small group plans. This means that at least these percentages of health insurance premiums must be spent on payment for the cost of medical care. While we agree with the goal of providing consumers with more value for health care dollars spent, the 80-85% minimum loss ratios required for the individual and group markets in these bills exceed any similar state-level requirements. Unfortunately, many essential services that actually serve to lower the cost of medical care would not be included in these percentages. Especially during any transition period prior to 2014, insurers will have all of the same expenses they have today, plus those associated with preparation for transition to the new systems outlined in the legislation. *If it is absolutely necessary to have a loss ratio requirement, we strongly urge Congress to allow the states to lower the requirement to 75%, at least in the individual market to allow an adequate transition period, which is the rate used by many states.*

In addition to our concerns about the minimum loss ratio percentage levels, we also want to ensure that there is an adequate state role preserved in crafting the definition of any MLR and also in determining if the MLR level is adversely impacting the functionality of each state's specific insurance markets. Many states already regulate loss ratios by insurers, and have developed workable definitions of what constitutes an effective ratio. Many states look beyond mere medical care costs and consider many other important insurer cost containment practices including claims adjudication, fraud prevention and other services that impact future premium increases because they reduce overall operational costs. We should build upon this level of expertise. *The Senate-passed legislation, H.R. 3590, requires the National Association of Insurance Commissioners to develop uniform definitions regarding the MLR and how the consumer rebate is calculated by December 31, 2010, and we strongly encourage Congress to preserve this language in any final legislation.*

H.R. 3590 also allows for a process for the Secretary of Health and Human Services (HHS) to make adjustments to the percentage if it proves to be destabilizing to a state's individual or small group markets, and gives the HHS Secretary regulatory authority over the MLR process. We feel this authority should be granted instead to each state's insurance commissioner, who, as the primary regulator, will have a much more immediate grasp of the intricacies of each state's insurance market, whether or not the uniform MLR is actually destabilizing, and the best means of adjusting it to meet the specific needs of the state's market and insurance consumers. *State-level uniformity in this area could be ensured by requiring the development of model laws and regulations on the topic by the NAIC, much like the legislation already requires them to craft definitions for states to use in this area.*

### **Structure of the Exchanges**

Each state should have the ability to design and maintain its own exchange to accommodate the varying needs of its own population, as is allowed in the Senate-passed legislation, H.R. 3590. And in creating these state-based exchanges, it is crucial that Congress preserve state-based flexibility and utilize existing state-based regulatory authority through the nation's governors and insurance commissioners. The federal regulatory functions of any exchanges should be focused on areas needed to facilitate the purchase of insurance by individuals and small employers. The conference report should not require the states to create any new and unnecessary bureaucratic structures to complete functions that are already being handled ably by existing state authorities (like state departments of insurance), nor should the HHS Secretary be asked to duplicate the role of existing state insurance commissioners. This would simply create costly and confusing layers of dual regulation that will be unnecessarily complex for consumers and costly for states to administer.

We strongly encourage the members of the conference committee to follow the exchange regulatory language passed by the Senate Finance Committee earlier this year. The Finance committee bill utilized the existing state regulatory structure very effectively, but also provided for a degree of state-by-state uniformity by requiring the creation and use of state-level model laws and regulations, to be developed by the NAIC. In addition, states should be permitted to seek waivers for implementing their exchanges, beginning in 2014, as is allowed by H.R. 3590, as amended.

### **Role of Health Insurance Agents, Brokers and Consultants**

We appreciate the provisions in both the Senate and House-passed measures that specifically ensure the continued role of licensed health insurance agents, brokers and consultants, and ensure continued oversight of our industry by the state departments of insurance. However, we believe these provisions should be expanded and clarified to ensure that all policies, regardless of the place of purchase—including plans offered through insurance exchanges and any new plans that may be created by this legislation (such as co-op and/or multistate plans)—be available for purchase through an agent or broker. We also believe that all

policies regardless of place of purchase should qualify for subsidy if the purchasing individual/family is eligible. We believe that our nation's agent and broker community can play a constructive and effective role in signing up currently uninsured Americans who would be eligible for purchasing assistance under this legislation.

In addition, we have very serious concerns with provisions in the House-passed legislation that grant authority to the national exchange's commissioner, in consultation with the Small Business Administration, to provide a host of services to small employers. Although we believe the Small Business Administration to be a valuable agency, it is already overworked, underfunded and struggling to fulfill key priorities in relation to its current duties and obligations. It is both costly and unnecessary to require a federal agency with no expertise in health insurance to duplicate services and regulatory authority that are already being provided at the state-level by both state-licensed health insurance agents and brokers and state insurance commissioners. As such we recommend against the inclusion of these provisions in any final bill.

Sincerely,

*The Council of Insurance Agents and Brokers*  
*The Independent Insurance Agents of America*  
*The National Association of Health Underwriters*  
*The National Association of Insurance and Financial Advisors*

Cc: Members of the United States House of Representatives  
Members of the United States Senate