Consumer Watchdog statement at NAIC March 28, 2011
Re: the “Access to Professional Health Advisors Act of 2011”

I’m Judy Dugan, research director for Consumer Watchdog. Consumer Watchdog is a national nonprofit and nonpartisan consumer organization. We are not associated with the NAIC. Consumer Watchdog has spent two decades monitoring insurance companies in all lines of insurance in California. Our founder, Harvey Rosenfield, authored the successful property and casualty regulation in California known as Proposition 103.

We strongly oppose the legislation known as the “Access to Professional Health Advisors Act of 2011” We urge the NAIC to thoroughly consider the consequences of and unanswered questions about this legislation, as brought to our attention by Sen. Rockefeller, the NAIC’s consumer representatives, the AMA and numerous others.

The NAIC’s professional staff and state insurance experts spent thousands of hours producing proposed regulation to limit health insurance company administrative costs, as required by the Accountable Care Act. The ACA requirement that insurers spend at least 80% to 85% of health premiums on health care took into account that broker commissions would come from the remaining administrative dollars. Yet this legislation would destroy the NAIC’s respected efforts. In decreeing that commissions paid to insurance salespeople are no longer administrative costs, the legislation would eliminate any need for insurance companies to become more efficient. Premiums would rise and rebates called for in the law would not be paid.

Where is the evidence of need for this legislation? Brokers’ percentage commissions of up to 20%, even 25%, presumably rose in tandem with premiums as they more than doubled over the last decade. In addition, brokers as well as insurers are poised to gain millions of new customers under the ACA. The law seeks greater efficiency from all parts of the industry in return. Yet brokers ask to be exempted from that effort.

Insurers will also be free of any need to tighten their administrative spending. In states that receive a waiver from the medical ratio requirements, insurers will double their freedom to spend more on overhead and raise premiums..

Investment analysts predict that health insurers will pay up to $1.5 billion in rebates to policyholders this year or reduce premiums to avoid paying them. Under this legislation, rebates would decline markedly or disappear, and premiums would rise.

For instance, under the law today, a policy that spent 75% of premium on medical care would pay a 5% rebate to an individual policyholder, a signal to both insurer and policyholder that the company needs to be more efficient in managing overhead.

If broker commission costs of 10% were deducted upfront from the premium, the insurer's medical ratio would magically rise to 83%. The consumer would get no rebate and his premium would almost certainly rise. Maybe the actual numbers would be different, but the benefit to brokers and insurers has to come from consumer pockets. Where is the assessment of such costs, including a threat to the viability of health reform? What will each state pay extra?

There are also no answers to questions about brokers' independence. Insurance companies use commission payments to exert influence. In one example of a broker commission agreement, for 2010 Kaiser plans in Georgia, the agreement offers its highest annual commissions in the small-business market to brokers who bring them the healthiest customers. Brokers get a 7% yearly commission for employee groups with the lowest "health risk," and only 4.4% for older workers or those in riskier jobs. That 37% difference in compensation is *meant* to undermine the broker's independence. When the state Exchanges in are place, wouldn't these pay schemes subtly keep the best prospects for the private market and push higher-risk groups into the publicly supported Exchanges?

Insurance companies also pay percentage or dollar bonuses to brokers who bring them more policyholders. Clients are in the dark

about these incentives. Why should they be preserved and encouraged?

As the American Medical Association noted in its comments to NAIC, nearly half of policyholders don't even meet their ever-higher deductibles in any given year and thus have no claims issues needing assistance or advice from the broker.

The legislation carries its own perverse incentives. Commissions for single-company agents and payment to in-house salespersons would remain an undisputed administrative cost. Insurance companies would profit by ridding themselves of in-house sales staff and branded agents, doing all their business through brokers to further reduce administrative costs. The result would be even greater premium increases.

The brokers and their trade groups want to change the law before its real-world effect of the medical loss ratio is even measured. The NAIC should not be rushed to joining them.

Consumer Watchdog asks that commissioners who have questions and doubts be thoroughly heard, with time to get answers for a more considered decision. We know far too little about the consequences of this legislation, although the one certainty is that consumers, taxpayers and health reform itself will pay a high price.