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July 22, 2011

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

As Chair of the U.S. Senate Committee on Small Business and Entrepreneurship, I supported the Patient Protection and Affordable Care Act (ACA). In my view, the ACA will ultimately lower costs and increase choices and stability for America's small businesses, and make access to health care easier and more affordable. However, in moving towards implementation, there are improvements we should consider. In particular, a certain provision regarding ACA's Medical Loss Ratio (MLR) requirements is unintentionally harming an important sector of the small business community – health insurance agents and brokers – and may also harm other small businesses that rely on their services. I believe this issue can be adequately addressed to ensure that health insurance agents are able to continue to play an important role in helping other small businesses and individuals navigate the market for health insurance.

As you know, the ACA requires health insurers to meet MLR targets that stipulate that 80 to 85 percent of insurance premium dollars be spent on direct care for patients and quality improvement measures; the remainder may be spent on administrative costs, marketing, profit, and other expenses. This important provision of the ACA was designed to ensure that insurance plans provide value for consumers and to prevent insurance companies from arbitrarily increasing premiums to increase profits.

In connection with the new MLR requirements, ACA directed the National Association of Insurance Commissioners (NAIC) to provide guidance in developing the regulations for the MLR. In October 2010 the NAIC submitted its recommendations to the Department of Health and Human Services (HHS) with the advice that consumer access to agents and brokers be considered by regulators when determining the application of the MLR and whether it is creating market disruption.

Unfortunately, the regulations that HHS has issued are negatively impacting the livelihoods of insurance agents, who are small business owners that provide valuable guidance and support to insurance consumers at the point of sale and throughout the life of the policy. Specifically, the regulations include agent compensation as an administrative expense in the calculation of the MLR. This provision has had the effect of reducing agent compensation, in

some cases significantly, and is threatening to put many out of business at a time when the need for agent services in the years to come is likely to be great. The impact of this action could be a decreased ability of consumers and small businesses in certain areas to navigate the health insurance marketplace to find the insurance plan that fits their needs. The role that health insurance agents play will be particularly important in 2014, when millions of previously uninsured individuals enter the insurance market and the employer responsibility provision of the ACA is implemented.

I firmly believe that agent compensation should not be included in the MLR calculation. Recognizing that the statutory language of the ACA may make it difficult for HHS to amend its regulations, I ask for any information that you may provide now on this matter and look forward to hearing from you about the final decision. I further urge you to delay the inclusion of agent compensation in the calculation of the MLR until HHS determines its authority to act. In the event that administrative action is not possible, I look forward to working with you to develop an appropriate legislative solution.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary L. Landrieu". The signature is written in a cursive, flowing style.

Mary L. Landrieu
United States Senator