March 21, 2011

The Honorable Kevin McCarty, Chairman, and
Members of the Professional Health Insurance Advisors (EX) Task Force
National Association of Insurance Commissioners

Comment on "Access to Professional Health Advisors Act of 2011"

Consumer Watchdog, a national nonprofit and nonpartisan consumer advocacy organization, strongly opposes the legislation, known as the "Access to Professional Health Advisors Act of 2011," put forward by the National Association of Health Underwriters and other representatives of health insurance brokers and independent agents. The legislation would raise health insurance premiums, distort markets and demolish health reform's limits on insurance company administrative costs. We particularly oppose the intent of the National Association of Insurance Commissioners to sponsor the legislation on behalf of a single interest, to the detriment of consumers. By doing so, the NAIC veers far from its previously respected role in writing a regulatory framework for the Affordable Care Act.

The NAIC has requested comment on the likely fiscal and consumer effects of the legislation, yet we lack sufficient public information to accurately assess the legislation.

We do know that investment analysts, for instance at UBS, Citigroup and Bank of America predict that major health insurers will pay $1 billion or more in MLR rebates to consumers this year, or reduce premiums to avoid paying a rebate. This is just as the ACA intended. It is logical to surmise that if the brokers' proposal becomes law, at least hundreds of millions of dollars that would otherwise return to consumers as rebates or reduced premiums would go instead to producers and insurers.

Premiums would likely rise by several percentage points and incentives for insurers to become more efficient would disappear. (Attachment 1 below shows the effect of hypothetical 10% yearly broker commissions in the individual market if commissions were deducted from premium before calculation of the medical loss ratio.)

A 2010 producer agreement issued by Kaiser for the state of Georgia (Attachment 2, below), obtained by Consumer Watchdog, promises 11% commissions for both initial sales and yearly renewals in the individual market. If an HMO is offering this level of commission, logic would dictate that conventional insurers offer higher commissions.

Yet the only certainty in this discussion is that the legislation is a pig in a poke.

No detailed and independently verifiable data exists on the amount of broker commissions—not nationally, not by state, not over time and certainly not by insurer and policy type in each state. The NAIC's professional staff was diligent in its fact-based analysis and development of initial

regulations for the ACA. No such diligence is evident in this hasty embrace of special-interest legislation.

Beyond the mere amount of commissions, we do not know the extent or amount of incentive payments that insurers use to push sales toward a particular insurer and compromise the independence of brokers. We do not know the extent of tiered payments, as seen in the attached Kaiser example, that offer substantially higher percentage commissions for delivering only the healthiest applicants to certain insurers. Such pressures and enticements that compromise independence should be public and debated before this proposal moves forward.

The proposed legislation would also abolish federal oversight of insurers' demands for waivers from medical loss ratio rules. Without any national standard, state commissioners would face pressure to grant waivers to insurers without proof of need or market disruption. The legislation would extend such waivers to the small business market, where ACA subsidies are already encouraging more coverage. Premiums would rise, undercutting the subsidies. Consumers and workers would be the losers.

The insurance sales industry's need for help is also unverified. Brokers' percentage commissions presumably matched the doubling and more of premiums over the last decade. If insurers are scaling back broker commissions now, the reduction may be simply an overdue market correction. What is the degree of actual loss, given the producers' previous gains?

When a health insurance company or its sole agent sells a policy directly to an individual, the cost of sale and renewal is unquestionably administrative. This legislation provides incentive for insurers to move sales to brokers, as a way to keep more premium dollars for administration and profit. The additional cost would pass to consumers as higher premiums--and to taxpayers as part of low-income subsidies for premiums.

Yet as health insurance Exchanges are established, offering greater simplicity and comparability, the assistance that brokers provide may diminish further. It is not the responsibility of the NAIC to shield brokers from such consumer-friendly market changes.

The members of the NAIC, if they go forward with this legislation, will turn their backs on their explicit mission to protect and serve consumers as well as markets. More individuals and small businesses will be priced out of insurance altogether. Such activism on behalf of the industry will strengthen the impression that the NAIC is unduly influenced by the insurance and allied industries, with commissioners frequently coming to appointed office from the industry and facing prospects for a better-paying industry job, or industry political contributions, after leaving office.

The NAIC elevated its reputation with its professional work on ACA-related regulations. This legislation goes very far in the opposite direction. We urge that this committee, and the membership of the NAIC, reject any role in the brokers' legislation.

Attachment 1

Commission deduction, example of effect on MLR

Here are before and after examples from a hypothetical individual/family policy. They are based on a single customer, for clarity.

Before: 75% MLR

Customer premium, including 10% commission: $10,000 a year

Insurer medical care spending: $7,500

Medical spending / premium equals MLR: **75%**

5% rebate owed: $500

After: 83% MLR

Customer premium, 10% commission costs deducted: $9,000

Insurer medical care spending: $7,500

Medical spending / premium equals MLR: **83%**

no rebate owed, premium increase expected

Shareholders' interest in this case is to get the MLR down to no more than the required 80%. This is most easily accomplished with a corresponding premium increase, passed through as additional profit. Nonprofits would pass through the increase as higher compensation to for-profit doctor groups or to surplus.

Attachment 2. Kaiser producer commissions. See full agreement at http://www.consumerwatchdog.org/resources/kaiserproducerservicesagreement2010.pdf`

EXHIBIT C

Kaiser Foundation Health Plan of Georgia, Inc.

2010 Producer Commission Schedule

Commission Schedule	**2010 New Sales & Renewal Business Commission Percentages**
Individuals (Personal Plans)	11%
Groups (2-50 ees)	
A, B, & C Health Risk Level	7%
D thru H Health Risk Level	5.5%
I, J, and K Health Risk Level	4.4%
Groups (51-100 ees)	5%
Groups (101-249 ees)	5%
Groups (250+ ees)	Negotiable

For groups 2 – 50, the amount of Producer commission payment may change if there is a change in the risk level of the group. For purposes of this Agreement, the commission payment is calculated by multiplying the monthly premium received by the appropriate commission percentage.