December 23, 2003

Katheryne Rickford, Esq.
Health Insurance Policy Advisor
DC Department of Insurance and Securities Regulation
810 First Street, NE, Suite 701
Washington, DC 20002

Re: Prepaid Limited Health Services Organization Act of 2003

Dear Ms. Rickford:

NADP is submitting comments to express concerns regarding the following legislation: Prepaid Limited Health Services Organization Act of 2003 (“the Act”). NADP represents member companies offering all lines of dental benefits including dental HMOs, dental PPOs, dental indemnity and dental discount plans. Our members include major commercial carriers as well as regional and single state companies. NADP members provide more than 70% of all network-based dental benefits and one third of all dental indemnity benefits in the U.S. This adds up to roughly 60% of the total dental benefits market. In fact, this means that NADP members provide dental benefits to approximately 95 million of the 161 million Americans with dental benefits. There is no other trade association, health or dental, that can claim this breadth of representation of the dental benefits industry on the national level. In the District of Columbia, NADP represents 19 plans that provide coverage to the over 390,000 DC residents with some form of dental benefits.

NADP opposes the Act as currently written because we believe it will harm consumers in the District of Columbia. If this bill becomes law, our concern is that companies offering these low cost, capitated plans may withdraw from the District determining that the new regulations make the cost of doing business too high. This would have a negative impact on the city and will raise the dental costs of many current subscribers who enjoy low-cost, capitated, prepaid dental plans.

If the Act is enacted, our recommendation would be to grandfather any existing business (subscriber contracts) in effect prior to the effective date of this legislation, so that DC citizens already enjoying the benefits of these plans will not have to pay more or go without comprehensive capitated dental benefits. In the comments below, we have outlined not only our concerns regarding the proposed legislation and its potential harmful impact upon the current dental services DC residents receive, but provide suggestion to minimize any negative impact. We have also asked the Department to clarify certain sections that we believe are unclear.
1. **Section 2 - Definitions**
   
   a. NADP requests clarification of subsections (5)(a) and (b). These subsections state that an entity that provides any limited health services on a prepayment or otherwise and who has a Certificate of Authority (COA) from the District; or an entity meeting the requirements of §3 is **not** considered a PLHSO.
   
   b. In subsection (5), the definition of "PLHSO," the last sentence states that a PLHSO does not include (a), (b) or (c). In (c) there is a reference to an entity described in (1) and (2) of this definition. Are the numbers referenced correctly? Number (1) corresponds to the definition for Commissioner and number (2) corresponds to the definition for Enrollee.

2. **Section 3 (a) & (b) - Filing Requirements for Authorized Entities**
   
   a. NADP requests clarification that a DC authorized Life & Health insurer (indemnity) will be permitted to offer prepaid products. Specifically, is a Life and Health Insurer getting an endorsement to its current COA to offer prepaid products? Or, is the Life and Health Insurer getting a COA designating it as a PLHSO?
   
   b. While Section 3(a) offers a limited exemption to licensed insurers who offer Prepaid Limited Health Services (PLHS), Section 4 suggests that licensed insurers are still required to submit a rather lengthy list of items for approval and, presumably, a Certificate of Authority from the District. We recommend that the District consider what Florida did when regulating Prepaid Limited Health Services Organizations (PLHSOs) and provide a bona-fide exemption for authorized health insurers and DHMOs. In Florida, health insurers are not required to obtain additional authority from the Department of Insurance in order to offer PLHSO-type products and they are not required to apply for Certificates of Authority. **FL Ins Code 636.007 states:**

   A person, corporation, partnership, or other entity may not operate a prepaid limited health service organization in this state without obtaining and maintaining a certificate of authority from the office pursuant to this act. A political subdivision of this state which is operating an emergency medical services system and offers a prepaid ambulance service plan as a part of its emergency medical services system shall be exempt from the provisions of this act and all other provisions of the insurance code. An insurer, while authorized to transact health insurance in this state, or a health maintenance organization possessing a valid certificate of authority in this state, may also provide services under this act without additional qualification or authority, but shall be otherwise subject to the applicable provisions of this act.

   “the representative and recognized resource of the dental benefits industry”
c. Are subsections (a) and (b) applying to any entity offering prepaid products? If subsection (b) applies to any entity offering prepaid products, we believe there is a significant problem for compliance with the stated time frame. Considering the current business practices of prepaid dental plans, there are at least two scenarios where plans will be unable to comply with this section of the legislation. In the first scenario, plans providing prepaid services in the District are underwriting that business to one of their DHMO entities licensed in another state. Under the Act, they will be required to get a District COA for that entity. This change will require plans to develop new forms and provider contracts. In the second scenario, some plans may transition their DC prepaid business that is currently underwritten by a DHMO entity outside of DC to its DC authorized Life & Health insurer. This would be less costly than obtaining a COA for the DHMO entity outside of DC. In this type of situation, existing business would have to be converted to the DC Life & Health insurer. Under either scenario, the 120 day time frame mandated in this section is not sufficient. First, some group contracts are multiple year contracts (i.e. renewals every 2 years). Second, conversions, depending upon group contract requirements, state requirements and notice of renewal/termination requirements, could take up to 18 months. In light of these challenges, we suggest the Department stagger its compliance time frame. For example, upon approval or denial of the application by the Commissioner for all new contracts as of (6 months after effective date of legislation) and for all renewed contracts upon renewal on or after (6 months after effective date legislation).

3. Section 8 – Evidence of Coverage

NADP proposes that the Department allow plans to provide the evidence of coverage (EOC) to the group sponsor/administrator. After receiving the EOC, the group could then disseminate the EOC to each subscriber. The method we proposed is supported by other states and is more efficient and less costly.

4. Section 10 – Nonduplication of Coverage

NADP has the following questions for the Department regarding this section:

a. Is the Department permitting PLHSOs to exclude services that are normally covered by a comprehensive medical plan (i.e., oral surgery services such as TMJ or surgical extraction of third molars)?; and/or
b. Is the Department permitting services normally covered by a dental only plan (i.e., restorative dental treatments such as fillings) to be excluded from comprehensive medical coverage?

5. Section 11 - Complaints System

Subjecting PLHSOs to the Health Benefits Plan Members Bill of Rights Act seems onerous for the limited benefit involved. NADP reviewed the definitions of the Health Benefits Plan and while dental is not specifically excluded, it doesn't appear to be included either, based on the requirements and terminology. As an alternative to compliance with the complaint system under the Health Benefits Plan Members Bill of Rights Act, we propose that PLHSOs be only required to provide a complaint and appeals program reviewed by the Director prior to implementation. Moreover, we are seeking an exemption for stand-alone dental plans from the external appeals process. Since covered services under a dental plan are less expensive compared to medical and in light of the fact that annual dental program maximums range around $1,000 to $1,500 per year, it is not cost effective for a plan to go through the appeals process.

6. Section 15 – Protection against insolvency; deposit

NADP opposes this section because it negatively impacts small PLHSOs who do not meet the five million dollar exemption. We believe mandating that PLHSOs maintain the cash reserve requirements found in §15(a)(1)(B) and §15(a)(2) is excessive. These cash reserve levels may be appropriate for health plans, but dental plans are not exposed to the same level of risk. We propose that the cash reserve requirements found in §15(a)(1)(B) would be more than sufficient to alleviate any concerns about uncovered expenses.

7. Section 17 – Principal office, books, records, and files of the PLHSO

NADP has the following questions for the Department regarding this section:

a. Is this section requiring all PLHSOs be domiciled in DC?; or

b. Is it stating that if the PLHSO is a domestic entity, it must comply with these records requirements?

We are concerned that if the Department mandates the former, then the additional cost burdens will cause many stand-alone dental plans to cease operations in the District.
8. **Section 21 - Assessments**

NADP suggests adding the following language after the term “direct gross receipts” in subsection (a) (1): "attributable to the prepaid limited health service organization." We believe this will clarify that the assessment will be based only upon the direct gross receipts of the prepaid limited health service organization contracts. This makes a big difference for an entity that is providing both indemnity and prepaid services under the same entity (the DC Life & Health insurer).

**CONCLUSION**

Thank you again for the opportunity to express our concerns about this proposed legislation. PLHSOs provide valuable low-cost dental coverage to many of your citizens – senior citizens in particular. NADP is afraid that this legislation may have the unintended consequences of limiting District citizens’ access to affordable, low-cost dental services. NADP looks forward to working with the Department in an effort to maximize dental coverage for the citizens of the District of Columbia.

Respectfully,

Melvin L. (Skip) Braziel, Jr.
Director of Government Relations