November 13, 2012

Commissioner Kevin McCarty
President, NAIC
FL Office of Insurance Regulation
Office of Insurance Regulation
200 East Gaines Street, Room 101A
Tallahassee, FL 32399

Commissioner Sandy Praeger
Chair, NAIC Health Insurance and Managed Care (B) Committee
Kansas Insurance Department
420 S.W. 9th Street
Topeka, KS 66612

Re: Health Actuarial Task Force Discussions Regarding IRD 014-017

Dear Commissioners McCarty and Praeger,

Aetna is one of the nation’s leading diversified health care benefits companies, providing members with information and resources to help them make better informed decisions about their health care. We appreciate the opportunity to comment on the Health Actuarial Task Force discussions regarding IRD 014-17.

We are writing to express our concern with the direction in which discussions have proceeded at the Health Actuarial Task Force with respect to IRD 014-017. This concerns MLR calculations in which data from three years are averaged in order to determine whether rebates are payable for the third year. More specifically, there is disagreement over how any rebates paid for the first two of those three years should be taken into account in computing the three-year average MLR used to compute the third year’s rebate.

As we discuss in greater detail below, the proposed IRD would:
- Exacerbate market instability in 2014;
- Conflict with long-held statutory accounting rules; and
- Cause an inappropriate result for health plans.

This issue has previously been addressed by the NAIC and incorporated into federal regulation at 45 CFR 158.221(b)(2) for MLR reporting year 2013. As you know, this was the first year in which any form of three-year averaging is used in rebate calculations. Section 45 CFR 158.221(b)(2) reflects the NAIC’s belief that existing statutory accounting should guide the MLR calculations. That provision states as follows:

"The numerator of the MLR for the 2013 MLR reporting year may include any rebate paid under 45 CFR 158.240 for the 2011 MLR reporting year or the 2012 MLR reporting year."

The approach codified above is consistent with an over-arching principle to which the NAIC adhered in developing its 2010 technical recommendations to HHS on the MLR regulation. Namely, existing statutory accounting principles form the chassis on which federal MLR reporting and associated rebate
calculations are grounded. This approach should be maintained here as well, rather than creating new accounting rules solely for MLR reporting purposes.

It is important to emphasize that the NAIC Accounting Practices & Procedures Task Force previously recognized that rebates paid by insurers under the federal MLR statute are, from an accounting perspective, no different from any other form of retrospectively-rated premium adjustment. In the context of constructing an MLR from three years of data using a three-year average to determine rebates owed for the third year, the default assumption should be to treat rebates owed for the first and second years in exactly the same manner as any other retrospectively-rated premium adjustments recognized during the three-year period. This means, in light of previous NAIC decisions, we should be including the rebates in the MLR numerator. To do otherwise would represent a material and unwarranted deviation from statutory accounting principles. There should be consistency here.

The process followed by the Health Actuarial Task Force has been somewhat confusing, let alone inconsistent with the other Task Force work product. While it is clear that those who propose abandoning the 45 CFR 158.221(b)(2) approach by excluding year-one and year-two rebates from the three-year average have a preferred outcome in mind, they have yet to articulate why a deviation from statutory accounting is warranted. We believe regulators should tread lightly when considering any action that would, relative to the status quo, upwardly bias the magnitude of rebates owed by insurers in 2014 and beyond. Therefore, the Health Actuarial Task Force should not proceed with a proposal that compounds an extreme level of uncertainty health insurers face regarding the 2014 regulatory environment.

Finally, the proposed position tends to force an absurd instance in which a carrier has a post-rebate MLR that exceeds the federal threshold, even if its pre-rebate MLRs never exceeded the threshold. Let’s consider a simplified example with a fully credible pool where the federal MLR threshold is 80 percent. Assume that the carrier’s annual MLR was 71 percent in the first year and that it paid rebates of 9 percent for that year. Assume further that the carrier adjusted its pricing and achieved an annual MLR of 80 percent in both the second and third years. If the rebates from the first year are excluded from the three-year average MLR calculation, then in the third year the carrier would owe rebates of three percent given the average is 77 percent. This would imply that over the three-year period the carrier’s post-rebate MLR would have been 81 percent, which is the average of 71 plus 9, 80, and the final 80 plus 3. Note there was never a year in which the pre-rebate MLR was above 80 percent. We believe this result defies the intent of averaging and is simply illogical.

For these reasons, we urge the NAIC abandon the current direction on IRD 014-017, and instead support existing federal regulatory guidance in 45 CFR 158.221(b)(2) beyond MLR reporting year 2013.

Thank you for considering our comments. If you have any questions, please feel free to contact me.

Sincerely,

[Signature]

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Cc: Steve Ostlund
Brian Webb
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