To: Steven Ostlund, NAIC Medical Loss Ratio Subgroup

Fr: NAIC Consumer Representatives: Timothy Jost, Sarah Lueck, Andrea Routh, Barbara Yondorf, Lynn Quincy, Adam Linker, Elizabeth Abbott, Joe Ditre, Carrie Fitzgerald, Kathleen Gmeiner

Re: Proposed IRD’s

Date: 12/11/12

We are writing as NAIC consumer representatives to comment on the IRDs that the MLR Subgroup will consider in its December 12 meeting.

With respect to IRD14-001, -002, and -003, we agree that Public Health Services Act section 2718 requires that risk adjustment, reinsurance, and risk corridor payments and receipts be accounted for in the medical loss ratio calculation. We agree that this requirement may frustrate the policies that each of these programs is meant to serve, but that this may be unavoidable. These receipts should be accounted for, however, as adjustments to the denominator (premiums), not to the numerator (claims) as the proposed rule requires. Treating them as adjustments to claims tends to further counteract the purpose of these programs. We urge the subgroup to communicate this to HHS.

With respect to IRD14-004, -005, and -006, we support the Subgroup in recommending that medical loss ratio calculations be based on accruals as of March 31 rather than on actual payments and receipts from premium stabilization programs. The current HHS proposal to delay medical loss ratio rebates until September 30 of the year following the year in which premiums are paid is unnecessary and forces consumers to make what is an essentially interest-free loan to insurance companies for up to 21 months from the time when their initial premium payment is made. Even if actual risk adjustment and reinsurance payments and receipts are not calculated until June 30, it should not take three extra months for medical loss ratio rebates to be paid. We also urge the subgroup to consider further how insurers should account for accruals to ensure uniformity and fairness to consumers.

With respect to IRD14-017, we continue to believe that carriers should not be able to claim prior year rebates in the numerator for calculating their medical loss ratios once three-year averaging is in place in 2015. We thus support the resolution proposed for IRD014-017. As we have noted on prior calls, including the prior year’s rebate would effectively allow carriers to double-count their rebates and would, in many instances, allow carriers to maintain a medical loss ratio below 80/85 percent without having to pay rebates. We realize that the current HHS MLR rule allows carriers to claim a prior year’s rebate payment in the numerator, but that is because the full rebate is currently paid in the prior year, not just one third of the rebate. This situation changes in 2014. The issue raised by IRD014-17 is also not settled by statutory accounting rules, contrary to the assertion made by Aetna in their letter to Commissioners McCarty and Praeger. As we
discussed in an earlier comment (attached), SAP 66 only addresses the question of accounting for MLR rebates for financial reporting purposes, not for the quite different question of how they should be accounted for in the MLR formula. This issue has been discussed by the subgroup for months, and all parties, including Aetna, have had ample opportunity to make their arguments. We urge the Subgroup to retain the current resolution of IRD14-017 and not allow carriers to double-count rebates.

Finally, we take strong exception to the attempt by Aetna in its letter of November 13 to abort the NAIC committee process and to appeal directly to the Chair of the B Committee and the President of the NAIC to take the decision as to how to handle prior year rebates in the MLR formula beginning in 2015 away from this Subgroup. The issues Aetna raises in their letter have been debated at length in the MLR Subgroup. Aetna’s letter attempts to portray the Subgroup process as ignoring statutory accounting, prior resolutions of issues, and the current MLR rule, none of which is true. We urge this group to continue its current process to resolve this important issue, considering the perspectives of all participants.

c. Commissioner Kevin McCarty, Commissioner Sandy Praeger