The Center for Economic Justice offers a brief comment on the AHIP ACLI May 6, 2015 proposal regarding confidential treatment of Assumption Template information. CEJ vehemently opposes this proposal which is based on faulty assumptions and seek adoption of procedures designed to circumvent a state's public information law. AHIP ACLI state:

This is our concern. The Guidance Manual cannot be used to require a company to provide information that is not clearly articulated in regulations. To assert that the Assumptions Template information would be required is inconsistent with the fact that many states have reviewed and approved rate filings and rate increase filings for many years without the template information.

The premise in the argument is incorrect. The Guidance Manual is not used to require a company to provide information not otherwise authorized by the regulator to request. A regulator has the authority to request nearly any information necessary to ensure that filed rates meet statutory requirements. The purpose of the Guidance Manual is to promote greater consistency and uniformity of review and data requests across states through the use of a common data template. The fact that states have approved filings in the past without the specific information in the template is irrelevant and nonsensical. As products and ratemaking develop over time, so do the data required for review. As regulators have learned about the faulty assumptions LTC insurers have used and the tragic impact of massive rate increases on LTC policyholders, it would be astonishing for regulators to not have identified additional data needs for review of LTC filings than in the past.

AHIP ACLI then states: We believe that the Guidance Manual must address the situation where a company is unwilling to provide a specific state with all the information requested in the Assumptions Template.

If the state determines that certain information is relevant and necessary for review and approval of the rate filing, then the insurer is obligated to provide that information and the information then becomes subject to the state's public information law. If the data qualify for trade secret or other exemptions from public disclosure, then the data will not be released to the public. An insurer always has the option of appealing a disapproval of a rate filing and can make the case to a court that the data requested by the regulator was not relevant or necessary. But, the proposal to give insurers the opportunity to determine what is or is not public information in a state -- as opposed to claiming trade secret or another specific exemption from public disclosure -- and to memorialize methods for a regulator to evade statutory requirements for an insurer's rate filing and to circumvent state public information laws is misguided, at best. State laws which require certain information in rate filings or allow regulators to request certain information in rate filings reflects legislative intent to ensure information is provided with regulators to enable the regulator to carry out his/her responsibilities. The purpose of public information laws is allow the public to hold government accountable. If a regulator approves a LTC rate increase, the public has the right to understand the basis for the approval and access to information contained in the rate filing which is not exempt from public disclosure. It is inappropriate for an insurer or a regulator to substitute their beliefs about public information over the requirements
of state public information law. In addition to the core problem of the ACLI AHIP proposals providing methods of evading public information laws, the first two ACLI "methods" ensure that regulatory action is not accountable to the public because the regulator has no record of the information used in the regulator's determination.

In conclusion, the language provided by NAIC Legal staff is both accurate and appropriate information to include in a Guidance Manual.

Sincerely,

Birny Birnbaum
Center for Economic Justice