To: Steve Wiest, Chair of the Health Reform Exam (E) Technical Group

From: NAIC Examination Unit Staff

Date: December 18, 2013

RE: MLR Audit/Examination Survey Results

The Health Reform Exam (E) Technical Group recently distributed to all state insurance departments a survey regarding the recently adopted Medical Loss Ratio (MLR) Audit/Examination Procedures, Instructions and Report Language. The procedures are voluntary for states and are designed to help determine compliance with the MLR requirements mandated by the federal Affordable Care Act. The responsibility to enforce these requirements lies with the federal government; however, the law is designed to allow the U.S. Department of Health and Human Services (HHS) to accept work performed by state insurance regulators when certain criteria are met. This can be accomplished through performance of the aforementioned adopted procedures.

The purpose of the survey was to assist the Technical Group in gathering information about MLR audits to be conducted by state regulators, and the usage of the adopted procedures (the procedures were adopted subsequent to the date of the survey). Responses were received from 36 different jurisdictions. This memo summarizes the responses received to each of the six survey questions.

1. Will your state be conducting MLR audits/examinations that could be accepted by HHS to satisfy the federal audit requirement?

As indicated in the table above, 22 of the responding states indicated they will, or likely will conduct MLR audits/examinations. Four indicated it is unlikely and 10 indicated they will not conduct MLR audits/examinations.
2. How would you expect the audit to be conducted?

The large majority of states planning to perform MLR audits intend to do so in conjunction with the financial examination. Five intend to perform a stand-alone exam and two are still undecided.

3. Would the MLR audit be coordinated with other states (similar to current processes for financial exams)?

The large majority of states responded they are planning to perform MLR audits intend to coordinate their efforts with other states on a group exam when appropriate. For those indicating they do not plan to coordinate, two out of the three also indicated they plan to perform a stand-alone exam.

4. For which issuers does the state plan to perform MLR audits?

For those states that responded they are planning to perform MLR audits or are likely to perform MLR audits, seven responded that they plan to audit all health issuers domiciled in their state, four indicated they would perform MLR audits on select issuers and 11 indicated they were undecided. Of those responding that select issuers would be audited, several commented that the preference of the issuer may play a role in their determination to perform the procedures. Most respondents indicating in question #1 that they were “Undecided but Likely” to perform the procedures also indicated they were undecided about what issuers the audits would cover.
5. Do you plan to follow the process proposed by the Health Reform Exam (E) Technical Group in conducting your audits?

For those states that responded they are planning to perform MLR audits or are likely to perform MLR audits, 17 responded that they plan to follow the process adopted by the Health Reform Exam (E) Technical Group. Five responded that they are undecided. Those that are undecided also fell into the category of “Undecided but Likely” on question #1.

6. If deemed necessary for further follow-up by HHS, is your state willing to share workpapers used to complete the proposed MLR procedures with HHS?

The large majority of states responded that they would be willing to share their workpapers with HHS, if HHS is able to keep them confidential.

HHS will likely accept the findings/report without review of the supporting workpapers. However, workpapers may be requested by HHS to address questions, identified issues, or the possibility of penalties assessed by HHS. Confidentiality of these workpapers will be determined based on agreements completed between HHS and the individual state.