To: Steven Ostlund, Chair, PPACA Actuarial Subgroup of AHWG

Fr: Timothy Jost, Wendell Potter, Georgia Maheras, Stephen Finan, Brendan Bridgeland, Stacey Pogue, Lynn Quincy

Re: Transitional Issues

Da: June 2, 2010

Dear Mr. Ostlund,

We are writing to you as consumer representatives who have been actively engaged with MLR issues to express our concern about the possibility of reductions in the medical loss ratios imposed by section 2718 to address transition issues in the nongroup insurance market. We understand that the PPACA permits HHS to adjust the 80 percent MLR target ratio if HHS determines that the application of that ratio would destabilize the nongroup market in a particular state. We understand that insurers and American Academy of Actuaries (AAA) have raised the possibility that an immediate transition to the 80 percent ratio in some states could lead to destabilization of the market. We also understand that insurers have requested the NAIC to recommend that HHS grant some form of interim relief to avoid this possibility. Finally, we understand that insurers have requested that the NAIC signal its intentions on this issue immediately so that insurers can decide whether or not to exit the nongroup market in certain states in time to give the required 180 day notice prior to the beginning of 2011.

The NAIC finds itself in a difficult position facing essentially a threat from the industry. A mass exit of insurers from the nongroup market would, of course, not be in the interest of consumers. On the other hand, Congress adopted the 80 percent minimum loss ratio in the evidence-based belief that it was reasonable to expect insurers to spend 80 percent of their premium revenues on actual medical care or on activities that promote quality of care. A report the Congressional Research Service released in 2009 found that virtually all major insurers had MLRs well above this ratio. The MLR formula found in the statute is more generous than the MLR ratios used in the past in terms of what it counts and does not count, and should be attainable by a properly-run insurer.

We attach comments from Birny Birnbaum questioning the claims made by the AAA in its May 14 statement supporting reduction of the MLRs on a transitional basis. Mr. Birnbaum is the Executive Director of the Center for Economic Justice. Before his work for CEJ, Birnbaum was the Associate Commissioner for Policy and Research and Chief Economist at the Texas Department of Insurance and Chief Economist at the Office of Public Insurance Counsel. In those capacities, he provided expert testimony in numerous proceedings regarding insurance rates and availability. We believe that Mr. Birnbaum's statement raises serious questions as to the validity of the AAA contentions, and we urge the subgroup to consider it very carefully.

We also ask the subgroup to:

1) Urge HHS to take a state-by-state approach, as required by the statute, to determining whether the full 80% medical loss ratio requirement would destabilize the individual market in a particular state rather than coming up with a formula to be applied nationwide;

2) Urge HHS to make its determination in light of the specific issues raised by the industry and by the AAA, such as agent commissions already paid or under contract or guaranteed-renewable lifetime contracts with level premiums, and to allow reductions in the MLR only where and for so long as reductions are justified by these factors. We are not arguing that reductions should be granted on a company by company basis, but rather that reductions should be granted as minimally necessary to address actual industry-wide concerns.

3) Recognize transitional reductions in MLRs as an alternative to recognizing contract reserves. Although contract reserves are specifically recognized in the 2718(a) reporting formula, they are not recognized as such in the 2718(b) rebate formula. We believe that recognizing contract reserves as part of the MLR rebate formula will raise difficult issues of tracking and accounting for reserves. For example, if an insurer adds contract reserves to its claims paid in a particular year to meet the 80 percent threshold, how can the consumer be assured that it will receive the value of those reserves in a future year? If the consumer does not renew at the end of the plan year, does the consumer get a rebate for the value of the reserves? While the concept of reserves makes sense for traditional insurance regulation, it is difficult to square with the MLR rebate formula and process. The AAA recommended contract reserves as one approach to dealing with transitional issues. If transitional issues are dealt with through a temporary reduction of the MLR for a particular state, accounting for contract reserves in the MLR formula should be unnecessary and redundant.

We recognize, again, that the MLR rebate process is a significant change from current practice and may cause some difficulties for some insurers in some markets. It would be a mistake, however, to believe that the instability that some states have experienced when major changes have been imposed on the nongroup market, such as guaranteed issue and community rating, will necessarily result from the institution of MLR requirements.

We believe that the MLR requirements of 2718 will provide a real benefit for consumers, and urge you to move forward with implementing the statute as written.