Office of Consumer Information and Insurance Oversight

Department of Health and Human Services

Hubert H. Humphrey Building

200 Independence Avenue, SW

Washington, D.C. 20201

**Re: OCIIO–9998–IFC: Health Insurance Issuers Implementing Medical Loss Ratio (MLR) Requirements under the Patient Protection and Affordable Care Act; Interim Final Rule**

We are writing to you on behalf of the millions of consumers whom our organizations represent to comment on the interim final rule published by the Department of Health and Human Services (HHS) to implement the minimum medical loss ratio requirements of section 2718 of the Public Health Services Act added by section 10101 of the Affordable Care Act.

First, we commend HHS for adopting by-and-large unchanged the recommendations of the National Association of Insurance Commissioners (NAIC). The NAIC, acting under the authority delegated to it by Congress, drafted the medical loss ratio regulation through an open and participatory process that fully included consumer advocates, insurers, producers, and other interested parties. The NAIC integrated the recommendations of the insurance industry, consumer representatives, and other industry stakeholders in a balanced effort to implement the intent of Congress in adopting section 2718, which was to reduce the administrative costs and increase the efficiency of insurers. In particular, the NAIC carefully crafted the definition of “activities to improve health care quality,” to achieve a reasonable balance in assuring that health plans offer evidence-based and objectively measureable quality improvement programs while not creating unintended disincentives for insurers to reduce their investment in quality improvement activities. We applaud HHS’ adoption of this language without material changes.

In areas not addressed by the NAIC, we largely support the HHS interim final rule. In particular, we support the requirements established by sections 158.320 – 158.322 of the rule concerning states that request interim adjustments to the minimum medical loss ratio. The states must support their requests with evidence that implementation of the statute as adopted by Congress would result in destabilization of the nongroup market. HHS must then carry out the process established by sections 158.340 to 158.345 for evaluating state requests. This process includes public disclosure of a state’s adjustment request on the HHS website and provides an opportunity for public response and potentially for a public hearing on the request. We particularly applaud the criteria established by section 158.330 for evaluating state adjustment requests which consider the effect that granting an adjustment is likely to have on consumers. We urge you to hold public hearings on state adjustment requests whenever a hearing is requested by several consumers.

We are pleased that the reporting requirements of section 158.110 and following do not permit insurers to shield reported information from the public by claiming confidentiality. We understand that under section 2718 all information reported by insurers will be available to the public on HHS’s internet website. We also support the provisions of section 158.242, which provide insurers, employers and enrollees with a fair and reasonable approach for allocating rebates on a pro rata basis to the person or entity that paid the premium on behalf of the enrollees. This section includes an important provision allowing the issuer to meet its rebate obligation by entering into an agreement with the group policy holder to distribute the rebate, while retaining the insurer’s liability for ensuring that the rebates are paid to enrollees. We also strongly support the provisions of § 158.140(b)(3)(ii) that will block insurers from simply transferring their administrative costs to third party vendors.

We are, on the other hand, disappointed in other provisions of the rule and would urge you to reconsider them. The special provision that section 158.221(b)(3) makes for mini-med plans is unsupported by any evidence and is unwarranted. Indeed, there is little in the public record or NAIC proceedings to indicate that this provision was even requested. Although it may make sense to allow limited benefit plans to continue in operation at this point rather than to leave their enrollees without any coverage, these plans should be required to operate as efficiently as full coverage plans and should not be excused from compliance with the medical loss ratio requirements of the ACA. Enrollees of mini-med plans should be fully informed of any special allowance given those plans by the loss ratio rules.

We also urge you to reconsider the broad definition of federal taxes under section 158.161, which goes far beyond the limited definition intended by the drafters of the ACA, as they made clear in their letter to the Secretary of August 10, 2010. <http://www.politico.com/static/PPM170_100811_taxes.html> We further urge you not to allow insurers to claim money that they pay out in response to litigation as claims expenses.

We are concerned that the latitude that section 158.170 gives insurers for classifying expenses is unduly broad, and we would urge you to require a single, consistent, approach to classifying expenditures to deter insurers from manipulating their classification of expenses to increase their medical loss ratio. In the interim, we urge you to review expense allocations carefully to make sure that this discretion is used appropriately.

It is not only important that the rule be improved, it is also vital that it be vigilantly enforced. Some insurers have already stated that they intend to collect commissions from enrollees on behalf of brokers and agents but to not count the amounts collected as premium revenue or administrative expenses. This is clearly contrary to the intent of Congress that commissions be counted as premiums and treated as administrative expenses, and is in violation of the expansive definition of premium revenue found in section 158.130 and to the definition of non-claims costs found in section 158.160.

In addition, while we believe that the proposed rule’s definition of quality improvement expenses is on the whole consistent with congressional intent, we urge HHS to remain vigilant in overseeing its enforcement as insurers may seek to classify administrative costs as quality improvement expenses. We are particularly concerned that insurers not take advantage of section 158.150(c)(13) to claim as quality improvement prospective utilization review activities that should properly be classified as cost control.

Finally, we are very concerned that states may use the adjustment process to allow insurers to continue to operate with low medical loss ratios. We look forward to working with HHS to assure that this rule is implemented and enforced to protect American health insurance consumers, as Congress intended.

If you have any questions regarding these comments, please contact Timothy Jost at jostt@wlu.edu.

Sincerely,

American Heart Association

National Partnership for Women and Families

National Women’s Law Center

Consumers Union

Families USA

National Health Law Program

American Cancer Society Cancer Action Network

National Latina Institute for Reproductive Health

Brain Injury Association of America

Center for Public Policy Priorities

Bazelon Center for Mental Health Care

United Spinal Association

National Spinal Cord Injury Association

Center for Insurance Research

Colorado Consumer Health Initiative

Health Care for All (Massachusetts)

Community Catalyst

U.S. PIRG

Texas Public Interest Research Group (TexPIRG)

HealthcareforArtists.org (Massachusetts)

Artists Health Care Working Group (Massachusetts)

American Association of People with Disabilities

National Association of County Behavioral Health and Developmental Disabilities Directors

National Council for Community Behavioral Healthcare

**American Network of Community Options and Resources**

**The ARC of the United States**

**United Cerebral Palsy**

NAIC Consumer Representatives

Timothy Jost

Kim Calder

Barbara Rea

Brendan Bridgeland

Barbara Yondorf

Georgia Maheras

Elizabeth Abbott

Bonnie Burns

Stephen Finan

Karroll Kitt

Stacey Pogue

Susan Connors

Stephanie Mohl