May 5, 2011

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Submitted Via Electronic Mail:
MLRAdjustments@hhs.gov

Dear Secretary Sebelius:

On behalf of Nevada consumers, the organizations listed below submit these comments to oppose the application of the Nevada Department of Business and Industry, Division of Insurance ("the Division") for an adjustment to the 80 percent minimum medical loss ratio in the non-group market required under the Affordable Care Act (ACA). Nevada seeks to reduce the minimum medical loss ratio to 72 percent for calendar year 2011 and has reserved its right to make additional requests for adjustments in the future.

The medical loss ratio (MLR) gives consumers a straightforward calculation of how their premium dollars are spent and sets a minimum level of spending on medical benefits and quality improvement at 80 percent in the individual and small group markets. Congress, with the support of the Congressional Budget Office, concluded that efficient insurers could achieve an 80 percent minimum MLR in the non-group market.

Adjustments to the MLR may be granted only if the state demonstrates that there is a "reasonable likelihood" that application of the requirement "may destabilize the individual market in the state." (45 CFR § 158.301) Based on the significant amount of data gathered by the U.S. Department of Health and Human Services (HHS), we believe Nevada has failed to make its case for an adjustment. In fact, the information the state provided indicates that Nevada faces little threat of a destabilized individual market. Given this, an adjustment that undercuts the MLR is unwarranted.

Rather than represent a compromise necessary to transition the market toward full compliance with the 80 percent MLR, the proposal to lower the MLR to 72 percent simply locks in the current informal rate of 65 percent, adjusted for credibility, quality improvement expenses and taxes, as allowed under the federal formula.

We have reviewed Nevada's application using four of five HHS criteria for determining if an adjustment is needed. Nevada has not argued that Criterion 5, relating to the impact of premiums and cost sharing provided by the remaining insurers, supports its application.

1. The number of issuers reasonably likely to exit Nevada and the resulting impact on competition in the state.

Nevada has failed to show that any carrier will leave the state if the MLR is not adjusted. No carrier in the state has provided a notice of exit. Based on data submitted by Nevada about its 28 carriers, only three (all subsidiaries of the same parent company) covering a total of 419 enrollees, have temporarily suspended marketing. The Division says this indicates "the possibility that they may be considering leaving the state." (Division Letter, 3/21/11, p. 2, Response 3). The Division has provided no information about these carriers' products, benefits, cost-sharing, current MLRs, or company financial solvency to enable a better assessment of whether these carriers are likely to withdraw or the consequences if they did withdraw.

While the state asserts that an MLR adjustment may factor into the carriers' ultimate decision to withdraw, their withdrawal cannot be the result of the minimum MLR. (Division Letter, 2/10/11, p.3). Since the issuers' MLRs would be considered non-credible due to their size, the carriers would be considered to meet the standard regardless of their actual MLR, and would not owe rebates; therefore, a one-year adjustment is irrelevant to their decisions to withdraw from the market.

Further, the Division states that "it is unknown, at this time, whether any of the other carriers offering individual health benefit plans in Nevada will choose to exit the market if the statutorily-required MLR standard is not adjusted." (Division Letter, 2/10/11, p.3). Thus, Nevada has not received any indication from any individual market carrier that it is considering exiting the market. Even if the three small carriers that have temporarily suspended marketing were to ultimately withdraw, the impact on competition would be trivial, as Nevada would still have 25 carriers serving the individual market.

Also, given the time line described in the Division's February 10 letter, it is no longer possible for insurance companies to non-renew coverage during 2011. Companies have to give the Commissioner at least 2 months notice, and then after that give policyholders at least 6 months notice, for a total of 8 months notice. The earliest a carrier can non-renew business is January 2012, making the requested 2011 adjustment moot.

Of the 28 insurers in Nevada writing health insurance, 18 would not be subject to the MLR at all in 2011 because of the small number of enrollees. (Division Letter, 4/15/11, Attachment 1). The Division asserts, "A one-year deferral of the 80 percent standard will allow these small companies to adjust their business models to allow them to effectively compete in this new and dynamic environment and encourage a continued competitive market in Nevada." But since they are considered to meet the 80 percent standard due to non-credibility, why is a diluted MLR requirement necessary to allow carriers to "adjust their business models?" Nevada has not provided an explanation of this, as is required under 45 CFR § 158.322(b).

The implication of the statement may be that if larger carriers lower premiums to reach an 80-percent MLR, and these 18 carriers do not lower rates to meet a similar standard, the small companies with low enrollment may lose policyholders. Without comprehensive information from the Division about these carriers' products, benefits, and cost-sharing, this is an impossible logical leap. That scenario also contradicts the position of the Division that if these three companies left the market, policyholders would not be able to find other coverage. Indeed, if these three very small companies leave the market because policyholders obtain less expensive

coverage from another insurance company, that would be the sort of favorable outcome for consumers that should be encouraged, not blocked through an MLR adjustment.

Nevada reports that five of its 10 carriers that will be subject to the MLR (those insuring at least 1,000 lives) failed to meet the 80-percent MLR standard based on 2009 data, adding that "since the five issuers are large, solvent, national carriers, the Division does not have concerns about their ability to provide rebates." (Division Letter, 3/21/11, p.3, Response 4). Additionally, it is worth noting that at least two carriers that anticipate paying rebates have been able to trim administrative expenses and re-file their rates in order to meet the new target. The ability to pay rebates owed and the willingness of carriers to move toward compliance undermine the need for an adjustment.

Furthermore, after applying the federal formula for calculating the MLR, including the credibility adjustments received by every carrier, the actual target MLR for the overall individual market in Nevada is 74 percent. The carriers are now at about 70 percent for the market as a whole. (Transcript of Commissioner's Advisory Meeting, p.11) There is no reason why Nevada carriers should not be pushed to make up a four-percent differential this year.

Nevada also supports its "expectation of carrier withdrawal" by pointing to carriers' decisions to stop selling child-only policies as a result of the ACA's prohibition on excluding or restricting coverage for children under age 19 with pre-existing conditions. But the Division provides no information explaining why withdrawals from the child-only market due to an under-19 guarantee-issue rule would raise an expectation that the MLR rule would destabilize the individual market. There are different dynamics at play in these markets.

2. The number of individual market enrollees covered by issuers that are reasonably likely to exit the state.

No carrier in the state has provided a notice of exit. Based on data submitted by Nevada about its 28 carriers, only three (all subsidiaries of the same parent company) covering a total of 419 enrollees, have temporarily suspended marketing. The Division says that indicates "the possibility that they may be considering leaving the state." (Division Letter, 3/21/11, p.2, Response 3).

3. Whether absent an adjustment to the 80 percent MLR standard, consumers may be unable to access agents and brokers.

There is no evidence of loss of access to agents and brokers. The Division states that "it is anticipated that agents and brokers will be forced to significantly reduce staff in order for the insurers to meet" the MLR, but it offers no facts to support such an expectation. (Division Letter, 2/10/11, p.4). In response to a request for further information, Nevada reported that Health Plan of Nevada and Sierra Health and Life Insurance Company reduced commissions on new and renewal business from 15 and 10 percent to 8 to 5 percent, effective January 1, 2011. (Division Letter, 3/21/11, p.4, Response 7). No evidence was presented to show that these commissions led to staff reductions. These reductions bring commissions in line with commissions paid in other

states and are not unreasonable per se, nor do they necessarily contribute to market destabilization.

4. The alternative coverage options within the state available to individual market enrollees in the event an issuer exits the market.

The competitive individual market provides a number of choices to enrollees whose carriers withdraw. With respect to the three carriers that have suspended marketing, the Division did not supply the information necessary to evaluate whether products of comparable benefits and cost sharing are available if these carriers actually withdraw. Regardless of the availability of comparable products, Nevada's underwriting rules may restrict the ability of those with pre-existing conditions to obtain coverage from other carriers. Still, the Division has the power to work with other carriers to get them to agree to assume an exiting carrier's book of business and should use all of its powers to integrate enrollees back into the market. (Division Letter, 3/21/11, p.2, Response 2).

Effect of an Adjustment on Consumer Value

Ultimately, the goal of the MLR is to improve the value of health insurance by ensuring that at least 80 percent of premium dollars are spent on actual medical care. This puts reasonable limits on administrative costs, including marketing, profits and CEO salaries, and encourages efficiency from insurers. Consumers will realize greater value from the MLR when carriers with lower-value plans decide to decrease premiums to achieve the minimum MLR or pay rebates to consumers when less than 80 percent of premium dollars are spent on medical care. Granting an adjustment removes the incentive for low-value plans to improve.

The Division didn't offer any evidence about the ways in which premiums would be affected with and without an adjustment, but they did offer rebate estimates. According to the Division, without an adjustment, Nevada policyholders will receive rebates of $11 million. (Division Letter, 4/15/11, Attachment 2). If HHS permits the adjustment to 72 percent, consumers stand to lose $7.2 million in 2011 rebates. But lowering the bar on the MLR doesn't just wash away millions of dollars of consumer rebates from low-value plans; it also gives the five insurers with MLRs above that amount tacit permission to lower their MLRs, to the detriment of consumers.

Based on the Division's initial request, the anticipated rebates would appear to be reasonable without an adjustment. In its initial request, the Division estimated consumer rebates of $23 million at an 80 percent MLR and $11 million at a 72 percent MLR, based on confidential information. (Division Letter, 2/10/11, p.2). With the recalculation of the estimated rebates based on annual statements filed with the Division, the rebate *without an adjustment* is now estimated at $11 million. If the Division believed an $11 million consumer rebate to be reasonable in February, it seems that the Division should believe a rebate of the same amount to be reasonable today.

We share the Division's conviction that it is important to maintain a robust, competitive insurance market. It is equally important that consumers get good value for their premium dollars and not see the law undercut by adjustments. Nevada has a competitive individual-group market, and data indicate that the new MLR standard can be achieved without market destabilization and

with minimal disruption to enrollees. No carrier has provided notice of exit, and the state has failed to show that any carriers are reasonably likely to withdraw. The state has shown that of Nevada's 28 carriers, no more than three carriers (all owned by the same parent company) serving 419 individual-market members have suspended marketing. If HHS characterizes this as market destabilization and grants an adjustment, it does a disservice to Nevadans and opens the door to similarly unmerited adjustment requests from other states. While we appreciate that the state is asking for only a one-year adjustment, we are concerned that the adjustment could be renewed in subsequent years and that carriers could continue business-as-usual without making the efficiency improvements required in the law.

We urge you to deny the Division's request.

Sincerely,

Progressive Leadership Alliance of Nevada
ProgressNow Nevada
Nevada Alliance for Retired Americans
NAACP, Reno-Sparks #1112
D. Taylor, Secretary-Treasurer, Culinary Workers Local 226
The Nevada Youth Coalition
Planned Parenthood Mar Monte
Community Chest, Inc. of Nevada
Nevada Lawyers for Progressive Policy
Human Services Network
Taking Responsibility and Education in New Directions
Health Care for America Now