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 our consumer constituents in North Dakota, the organizations listed below submit these comments to oppose the application of the North Dakota Insurance Commissioner for an adjustment to the 80% minimum medical loss ratio in the non-group market required under section 2718 of the Public Health Services Act. North Dakota seeks to reduce the minimum medical loss ratio to 65% for calendar year 2011, 70% for 2012, and 75% for 2011.

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 an 80 percent minimum MLR in the non-group market was attainable by efficiently operated insurers.

Adjustments to the MLR may be granted only if “the Secretary determines that the application of such 80% may destabilize the individual market” in a state. PHSA ' 2718(b)(1)(A)(ii). HHS regulations implementing this provision of the law provide that the Secretary may adjust the MLR standard in a state only “if there is a reasonable likelihood that application of the requirement will do so.” 42 C.F.R. ' 158.301.

North Dakota has failed to make the case that its individual insurance market will be destabilized if HHS fails to grant the adjustment it requests. Although North Dakota has been scrupulously forthcoming with data to support its request for an adjustment, the data it has supplied simply do not make the case that an adjustment is necessary under the standards set out in the HHS medical loss ratio interim final regulations.

Indeed, it appears that North Dakota’s request is based largely on the fact that four of the six insurers that responded to a survey sent out by the Insurance Department, as well as an organization of North Dakota brokers and agents, supported an MLR adjustment request. It is clear that these entities have a vested interest in maintaining a lower MLR with correspondingly higher premiums.

If the North Dakota Insurance Department (NDID) had surveyed consumers, we are confident that a much different result would have been obtained, one that would have supported the higher MLR in PPACA. Unfortunately, it appears that NDID did not make a similar effort to obtain consumer input before making the waiver request. The initial

MLR waiver request stated, "I have had many discussions with insurance carriers, the producer community and other stakeholders on the MLR percentage."[1] While it was not initially clear who these "other stakeholders" included, that was clarified later on as follows, "Other stakeholders include legislators, media, provider groups, insurance industry organizations, children's health organizations, rural health organizations, medical associations and other state agencies."[2] We would like to have seen a more robust effort to gather input specifically from policyholders and consumers on the issue of a waiver.

North Dakota's individual market is very much like the individual markets found in other states, with a dominant insurer and a number of smaller insurers, most of whose medical loss ratios are at or near the target set by the statute, but some beneath it. Although obviously some insurers would prefer to be able to maintain lower medical loss ratios, no evidence has been presented that the market will be destabilized if the adjustment request is not granted.

HHS regulations set out information that states must submit and criteria that HHS must apply in determining whether or not to grant a state an adjustment. 42 C.F.R. '' 158.321, 158.330. The criteria HHS must consider includes:

> (a) The number of issuers reasonably likely to exit the State or to cease offering coverage in the State absent an adjustment to the 80 percent MLR and the resulting impact on competition in the State.
> (b) The number of individual market enrollees covered by issuers that are reasonably likely to exit the State absent an adjustment to the 80 percent MLR.
> (c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers.
> (d) The alternate coverage options within the State available to individual market enrollees in the event an issuer exits the market,
> (e) The impact on premiums charged, and on benefits and cost-sharing provided, to consumers by issuers remaining in the market in the event one or more issuers were to withdraw from the market.
> (f) Any other relevant information.

The North Dakota adjustment request cannot be justified under any of these criteria.

North Dakota has offered no evidence that any insurers will exit the state or cease offering coverage absent an adjustment.

North Dakota offers no evidence that any insurer will leave the market if an MLR adjustment is not granted. No insurer has yet given notice of withdrawal, which is

[1] March 18, 2011 letter from Insurance Commissioner Adam Hamm to The Honorable Kathleen Sebelius, Page 1

[2] May 5, 2011 letter from Insurance Commissioner Adam Hamm to Acting Director Gary Cohen, Letter 1, Item 2

required under North Dakota law. “No insures [sic] to-date have provided notice to the Department to exit the North Dakota individual health insurance market.”[3] While two companies did indicate in response to the Department survey that “some carriers” might leave the market absent an MLR adjustment, they did not themselves threaten to do so.

Another consideration regarding withdrawal from the health insurance market is that, “Companies must also provide notice of the decision to all affected individuals, participants and beneficiaries at least 180 days prior to the nonrenewal.”[4] Given this, it is not possible for an insurance company to leave the health insurance market in 2011. Furthermore, if a company withdraws from the market it “… may not write new business in the applicable market for a period of five years from the date of notice to the commissioner.”[5] This restriction makes it unlikely that any health insurance company would withdraw from North Dakota in 2012 or 2013.

Indeed, it is unclear why an adjustment is even being requested. According to reported information, most insurers in the individual market expect to meet the medical loss ratio requirement or to be excused from compliance. Only one insurer in the market is expected to have to pay a rebate for 2011. It is difficult to understand why insurers would leave the market if they can in fact achieve the medical loss ratio and are not faced with the threat of paying rebates.

North Dakota has offered no evidence that any enrollees are covered by insurers that will exit the state absent an adjustment.

Because North Dakota has offered no evidence that any insurer will leave the state absent an adjustment, it has also failed to prove that any enrollee will lose coverage because of insurers exiting the state.

North Dakota does not demonstrate that access to agents and brokers will be disrupted if an adjustment is not granted.

The adjustment request expresses a concern that requiring companies to meet the statutory MLR requirement could result in reduced commissions and subsequently in loss of access to producers, a concern also expressed in a supporting letter from the North Dakota Association of Insurance and Financial Advisors. Nevertheless, no evidence is in fact offered that insurers have in fact cut producer compensation, or that consumers are losing access to producers. Data recently provided by the National Association of

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[3] May 5, 2011 letter from Insurance Commissioner Adam Hamm to Acting Director Gary Cohen, Letter 2, Item 6

[4] March 18, 2011 letter from Insurance Commissioner Adam Hamm to The Honorable Kathleen Sebelius, Page 3

[5] March 18, 2011 letter from Insurance Commissioner Adam Hamm to The Honorable Kathleen Sebelius, Page 3

Insurance Underwriters to the NAIC do not demonstrate reductions of commissions in North Dakota.

Alternative coverage is available to North Dakota insurance consumers if an insurer exits the state.

The adjustment application states that if the dominant insurer left North Dakota, other insurers would not be able to take up its business. The dominant insurer, however, already meets the 80 percent MLR requirement and in fact opposes an adjustment. The application admits that if any of the smaller insurers leave the state, there is capacity in other insurers to take up the business. Moreover, both the state high risk pool and the PCIP are available to individuals who might lose coverage and not be able to obtain standard coverage because of pre-existing conditions. The market will not be destabilized if a small insurer leaves the state, even though there is not sufficient evidence to suggest that this will occur.

The loss to North Dakota consumers of granting this adjustment request would be substantial.

While the commissioner solicited the opinions of insurers and producers before seeking this adjustment, there is little evidence that consumers were involved in the decision. The commissioner states at page 3 of the initial request that some insurers may increase benefits or decrease premiums if they are required to meet federal medical loss ratio requirements, which would seem to be a benefit to consumers. The application subsequently alleges on page 4 that insurers may need to raise premiums to meet the federal loss ratios. This statement contradicts the earlier statement and is confusing. Given a specific level of benefits, a higher medical loss ratio will always correspond to a lower premium.

Although, as noted earlier, large rebates are unlikely to be paid to North Dakota consumers because insurers are already at or close to the 80 percent threshold, at least one insurer is projected to pay $700 to $800 thousand in rebates for 2011, and these would be lost to consumers as well if the request is granted.

The Commissioner has failed to establish that this adjustment request is necessary. Granting it would cause harm to North Dakota consumers. We request that this adjustment proposal be denied.

Sincerely,

American Cancer Society Cancer Action Network, Great West Division
Center for Rural Affairs
Family Voices of North Dakota
NDPeople.org