DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

January 4, 2012

The Honorable Sandy Praeger
Commissioner of Insurance
Kansas Insurance Department
420 SW 9th Street
Topeka, KS 66612

Re: State of Kansas' Request for Adjustment to Medical Loss Ratio Standard

Dear Commissioner Praeger:

This letter responds to the request of the Kansas Insurance Department ("KID"), pursuant to section 2718 of the Public Health Service ("PHS") Act, 42 U.S.C. §300gg-18, for an adjustment to the 80 percent medical loss ratio ("MLR") standard applicable to the individual health insurance market in Kansas. The KID has requested an adjustment of that standard to 70 percent, 73 percent, and 76 percent for the reporting years 2011, 2012, and 2013, respectively.

Section 2718 was added to the PHS Act by Section 1001 of the Affordable Care Act and generally requires issuers in the individual market to spend at least 80 percent of premium dollars on reimbursement for clinical services and for activities that improve health care quality for enrollees. Beginning with MLR reporting year 2011, if an issuer does not satisfy the MLR standard, it is required to provide rebates to enrollees.

Section 2718 permits an adjustment to the 80 percent MLR standard for a State's individual health insurance market if it is determined that applying this standard "may destabilize the individual market in such State." The regulation implementing section 2718, 45 CFR Part 158, provides that an adjustment should be granted "only if there is a reasonable likelihood" that application of the 80 percent MLR standard will destabilize the particular State's individual health insurance market. (45 CFR 158.301.) The regulation also provides the criteria the Secretary may consider "in assessing whether application of an 80 percent MLR . . . may destabilize the individual market in a State that has requested an adjustment." (45 CFR 158.330.) These criteria are discussed in Part III of this letter.

The Center for Consumer Information and Insurance Oversight ("CCIIO") within the Centers for Medicare & Medicaid Services ("CMS") has reviewed the KID's application, as well as the supplemental information provided to us in response to questions raised by the application

and the public comments filed with regard to the application.[1] We have carefully examined all of these materials and considered the criteria set forth in the statute and implementing regulation. Based on this, we have determined that the evidence presented does not establish a reasonable likelihood that the application of the 80 percent MLR standard will destabilize the Kansas individual market. Consequently, we have determined not to adjust the MLR standard in the Kansas individual market and, thereby, ensure that consumers receive the full benefit of this provision of the Affordable Care Act. This letter explains the basis of our decision.

I. Summary of the Kansas Application

CCIIO received the KID's request for an adjustment to the MLR standard on April 29, 2011. Among the information the KID included in support of its request were the number of enrollees and premiums by product for issuers in the Kansas individual market, although issuers were identified solely by a numeric identifier assigned by the KID and not by name. Additionally, the KID provided premium amounts and MLR and rebate estimates for the reporting year 2011 under an 80 percent MLR standard. These numbers were also provided on an anonymous basis, with issuers identified only by a numeric identifier assigned by the KID. In addition, the KID included letters from two public interest organizations, and a transcript of the public fact-finding hearing held by the KID to assess the potential for disruption that the 80 percent MLR standard could cause in the Kansas individual market.

On May 25, 2011, CCIIO requested from the KID information needed in order for Kansas' application to be deemed complete. This letter included a request for the information missing from the Office's initial submission, including information regarding: issuer identity; issuer financial data; and rebate estimates for MLR reporting years 2011-2013 under both the 80 percent standard and the KID's proposed adjustment. CCIIO concurrently sent the KID a letter requesting additional information and clarification regarding matters raised by the KID's application. These matters included the assumptions used to prepare the KID's MLR and rebate estimates, accuracy of the data, details regarding the KID's analysis of the market, and details regarding Kansas' high risk pool. On August 25, 2011, CCIIO followed up with the KID by email regarding the timeframe for receiving the KID's responses to CCIIO's May 25 letters. The KID indicated that same day that it expected to submit its responses by September 9, 2011. After the KID subsequently indicated that it would require additional time, CCIIO again followed up with the KID by phone on October 18 and 31, 2011. The KID responded to CCIIO's requests on November 13, 2011. The KID's application was deemed complete on November 28, 2011, and the processing period provided for in 45 CFR 158.345 began. In its November 28 letter, CCIIO also requested information regarding the KID's rebate estimates and the nature of Reserve National Ins. Co.'s business. The KID responded to this request on December 21, 2011.

In addition, CCIIO that same day posted notice on its website that any public comments regarding Kansas' application were due by December 8, 2011, as provided in 45 CFR 158.342. CCIIO received three public comments, which we also address in this letter.

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[1] All of the documents and information described in this letter are posted on CCIIO's website at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_Kansas.html unless otherwise footnoted.

II. Overview of the Kansas Individual Health Insurance Market

According to the KID's application, more than 123,000 Kansas residents obtained health insurance coverage through the Kansas individual health insurance market as of December 31, 2010. Eight issuers have at least 1,000 life-years[2] each, and account for 98 percent of the individual market: (1) Blue Cross Blue Shield of Kansas ("BCBS-KS"); (2) Blue Cross Blue Shield of Kansas City ("BCBS-KC"); (3) Coventry Health Care of Kansas ("Coventry"); (4) Humana Ins. Co. ("Humana"); (5) Time Ins. Co. ("Time"); (6) Golden Rule Ins. Co. ("Golden Rule"); (7) Aetna Life Ins. Co. ("Aetna"); and (8) Reserve National Ins. Co. ("Reserve"). According to the KID's application, the number of enrollees and market shares of these issuers as of December 31, 2010 are:

Table 1: Kansas Individual Market Issuers' 2010 Enrollees and Market Share[3]

	Issuer	Enrollees	Market Share
1.	BCBS-KS	57,326	46.4%
2.	BCBS-KC	24,400	19.7%
3.	Coventry	17,838	14.4%
4.	Humana	7,347	5.9%
5.	Time	6,749	5.5%
6.	Golden Rule	4,432	3.6%
7.	Aetna	2,110	1.7%
8.	Reserve	1,679	1.4%
	Rest of Market	1,719	1.4%
	TOTAL	123,600	100.0%

According to the KID's application, since 1981, the MLR requirement for individual health insurance in Kansas has been a 55 percent lifetime anticipated loss ratio. Kansas' 55 percent loss ratio does not include adjustments for quality improving activities, taxes, or credibility.

The KID's application states that, under K.S.A. 40-2257, an accident and sickness insurer who elects to discontinue offering any individual policies in Kansas (1) must provide notice of such discontinuation to the Commissioner and to each individual policyholder at least 180 days prior to the date of the expiration of the coverage; and (2) is prohibited from issuing any individual policies providing such coverage in the State for a period of five years.

According to the KID's application, Kansas has a State-operated high-risk pool, the Kansas Health Insurance Association ("KHIA"). The high-risk pool provides guaranteed issue coverage to Kansas residents who have lost or have been denied coverage in the individual

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[2] Issuers with fewer than 1,000 life-years are not subject to rebate payments for the first reporting year. (45 CFR 158.230(d).) Life-years are the total number of months of coverage for enrollees during the year, divided by 12. (45 CFR 158.230(b).)
[3] These numbers are based on data provided with the KID's November 13 letter.

market, or who have been quoted a premium rate that is in excess of the rate that would be charged in the KHIA plan. These features are discussed in more detail in Part III below.

III. Application of Regulatory Criteria to the Kansas Individual Market

Title 45 CFR 158.330 lists six criteria that the Secretary may consider "in assessing whether application of an 80 percent MLR … may destabilize the individual market in a State." They are:

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; and

f) Any other relevant information submitted by the State's insurance commissioner, superintendent, or comparable official in the State's request.

The preamble to the regulation provides that 45 CFR 158.330 "does not set forth a single test" for determining whether application of an 80 percent MLR standard may destabilize the individual market in a State, but rather lists the "main criteria" to be considered in assessing such risk. (75 Fed. Reg. 74887 (Dec. 1, 2010).)

A. *Number of issuers reasonably likely to exit the State*

According to the Excel attachment to the KID's November 13 letter entitled "Kansas Issuers With More Than 1,000 Enrollees," seven of the eight issuers included in the KID's application have not provided a notice of exit. The same document indicates with respect to Reserve's potential to exit, "Not Yet, likely to withdraw from market without waiver relief."

We note that, according to the KID's December 21 letter, all of Reserve's policies in the Kansas individual market are "mini-med" policies (policies with total annual limits of $250,000 or less). Therefore, pursuant to 45 CFR 158.221(b)(3), Reserve's MLR numerator for 2011 will be multiplied by two. The KID's application estimates Reserve's MLR at 64.8 percent based on 2010 data. Based on Reserve's most recent 2011 quarterly filings, submitted to CCIIO pursuant to 45 CFR 158.110(b)(2) and 158.120(d)(3), CCIIO estimates Reserve's MLR at 58.2 percent. Application of the multiplier of two to Reserve's MLR numerator would cause both the KID's and CCIIO's MLR estimates for Reserve to significantly exceed the 80 percent standard.

Additionally, Reserve's MLR numerator will be multiplied by 1.75 for 2012 and by 1.5 for 2013. Consequently, Reserve will not be required to pay any rebates for 2011, 2012, or 2013, even if it does not make any adjustments to its business model. Because implementation of the 80 percent MLR standard will have no impact on Reserve, we do not consider Reserve to be likely to withdraw from the market absent an adjustment.

Under 45 CFR 158.321(d)(2)(iii), applicants requesting an adjustment to the MLR standard are asked to calculate the estimated MLR for issuers in the State using the methodology provided for in the Affordable Care Act and implementing regulation. The KID's application calculates the estimated MLRs using data from calendar year 2010. The 2010 estimated MLRs are an imperfect proxy for the actual results issuers may generate if held to the 80 percent standard in 2011-2012. One reason for this is that the Affordable Care Act was enacted at the close of the first quarter of 2010, presumably after pricing and other business decisions affecting MLRs had largely been made and implemented. Another reason historical data may constitute an imperfect proxy is that there can be year-to-year variability in issuers' claims experience, financial performance, and reported MLRs. Notwithstanding these limitations, the historical data remain the best available basis upon which to estimate the impact of the 80 percent standard in 2011.

Eight issuers in the Kansas individual market, including Reserve as noted above, have at least 1,000 life-years each and thus are at least partially credible (as defined in 45 CFR 158.230(c)).[4] Therefore, these issuers could be expected to be subject to rebate payments beginning in 2011 if their MLRs fall below the statutorily mandated 80 percent standard. The chart below shows, based upon the information provided by the KID, these eight issuers' estimated 2010 MLRs, rebates based on 2010 MLRs and an 80 percent MLR standard, estimated 2010 pre-tax net gain in the individual market before payment of rebates, and estimated 2010 pre-tax net gain in the individual market if the issuer would have had to pay rebates in 2010.[5]

[4] Experience of issuers with fewer than 1,000 life-years is considered to be non-credible and such issuers are not subject to rebate payments for the first reporting year. 45 CFR 158.230(d).

[5] "Pre-tax net gain" is the underwriting gain or loss as reported on the SHCE, plus any Federal, State, or other taxes and fees paid. The net underwriting gain or loss reported on the SHCE is calculated by subtracting the following from net adjusted premiums earned after reinsurance: net incurred claims after reinsurance; expenses incurred for quality improving activities; claims adjustment expenses; and general and administrative expenses. Unlike the underwriting gain or loss reported on the SHCE, the pre-tax net gain in Table 2 is not reduced by taxes, and is thus consistent with the way underwriting gain is reported on the annual financial statements that issuers file with the NAIC.

Table 2: 2010 Estimated Federal MLRs, Rebates and Pre-Tax Net Gains ($ in millions)[6]

	Issuer	MLR After Credibility Adjustment	Estimated Rebates	Pre-Tax Net Gain Before Rebates	Pre-Tax Net Gain After Rebates
1.	BCBS-KS	88.8%	$0.0	$2.2	$2.2
2.	BCBS-KC	79.4%	$0.3	($0.3)	($0.6)
3.	Coventry	72.6%	$1.2	$1.0	($0.2)
4.	Humana	70.8%	$1.0	$0.5	($0.5)
5.	Time	68.0%	$1.9	$0.9	($0.9)
6.	Golden Rule	62.0%	$1.2	$1.9	$0.7
7.	Aetna	85.1%	$0.0	$0.2	$0.2
8.	Reserve	109.5%	$0.0	$0.7	$0.7

According to the 2010 MLR data shown above, it appears that three of the eight issuers in the Kansas individual market that are at least partially credible – BCBS-KS, Aetna, and Reserve – meet the 80 percent MLR standard, and would not be expected to owe rebates for 2011. As previously noted, Reserve is likely to have a 2011 MLR significantly in excess of the 80 percent standard. Furthermore, at a credibility-adjusted MLR of 79.4 percent, BCBS-KC is very close to meeting the 80 percent standard. According to the KID's application, BCBS-KC projects owing no rebates for 2012 or 2013, suggesting that it expects to meet the 80 percent standard in those years. Although BCBS-KC was unprofitable in the Kansas individual market in 2010, it has already stated on its website that "[a]t Blue KC, we know that we need to manage our administrative cost structure more than we have in the past, and we have already begun a stringent process of refining and restructuring our cost structure."[7] Thus, it is unlikely that section 2718's MLR standard will cause any of these four issuers to leave the Kansas individual health insurance market.

The remaining four issuers – Coventry, Humana, Time, and Golden Rule – had 2010 MLRs below the 80 percent standard. These issuers must adjust some combination of their operations and financial targets in order to avoid incurring rebate liability, assuming 2011 experience mirrors the 2010 experience. In its basic form under the Affordable Care Act and implementing regulation, the MLR is the ratio of monies spent on incurred claims and quality improvement activities to premium revenue (as adjusted for certain State and Federal taxes and fees). See 45 CFR 158.221. Therefore, all other things being equal, these four issuers would either need to lower premiums or increase expenditures on claims or quality improving activities,

[6] These numbers are based on data provided by issuers and submitted with the KID's November 13 letter, as well as data from issuers' 2010 SHCEs. Issuers' MLR estimates provided to the KID generally appear to be based on accurate methodologies and, in some cases, more recent assumptions, as described in the KID's November 13 letter. However, the methodologies used by issuers to calculate rebate amounts and underwriting gains appear to be significantly less consistent. Therefore, issuers' projected MLRs were applied to 2010 SHCE data to calculate rebate estimates and the impact on pre-tax net gains. The resulting differences from the estimates provided in the KID's application are not material to our analysis. The numbers for Reserve are based on data from Reserve's quarterly filings. MLR shown for Reserve reflects the multiplier of 2, provided for in 45 CFR 158.221(b)(3).

[7] BCBS of KC, KCHealthCareReform.org: Frequently Asked Questions, http://www.kchealthcarereform.org/frequently-asked-questions/ (*posted* May 2, 2011).

or otherwise risk paying rebates to enrollees. Assuming that these issuers did not reduce their administrative costs, either of these actions could lead to a reduction in profitability, which may be a consideration for each company in assessing whether to remain in the Kansas individual market.

As shown in the chart above, although Golden Rule had the lowest MLR (62 percent) of the four issuers with MLRs below the 80 percent standard, Golden Rule would retain substantial pre-tax net gains in the Kansas individual health insurance market even after payment of rebates under an 80 percent MLR standard and even if Golden Rule did not adjust its business model. Furthermore, according to the KID's application, Golden Rule projects that it would pay no rebates under the KID's proposed adjustment to 73 percent and 76 percent in 2012 and 2013, respectively. This suggests that Golden Rule expects its MLR to increase at least to 73 percent in 2012 and 76 percent in 2013. Consequently, Golden Rule estimates that its rebates under an 80 percent MLR standard for 2012 and 2013 will be significantly lower than for 2011. In sum, the potential impact of rebates on its profitability does not appear to be likely to create a financial incentive for Golden Rule to exit the market.

Although the payment of rebates would result in Humana incurring a pre-tax loss based on 2010 data, in its annual report to the shareholders, Humana states that "while [Humana] anticipates a challenging near-term profitability environment in the individual market, reform-related provisions are expected to increase the prospect pool by between 23 million and 40 million people in the next six years," and that Humana "expect[s] to be well-positioned to take advantage of this opportunity."[8] Humana's statements suggest that, notwithstanding the possible near-term impact of the Affordable Care Act's provisions on its profitability, Humana intends to stay in the individual market in order to benefit from the influx of new policyholders into the market in 2014.

Similarly, Time would appear to show a pre-tax loss after payment of rebates based on 2010 data. However, this analysis presumes certain facts, most notably the continuation of 2010 financial performance and no changes to Time's 2010 business model that has likely changed in 2011. In its initial application, the KID states that without a three-year transition to the 80 percent standard, "issuers will not have an opportunity to make the adjustments in their administrative costs needed to ensure compliance with the new MLR requirement." However, the KID's concern does not appear to reasonably extend to Time. In its 2011 third quarter report ("Form 10-Q"), Assurant (Time's parent company) states that "Assurant Health Third Quarter 2011 results reflect progress as [Assurant and its subsidiaries] continue to adapt to the Affordable Care Act," and that "[s]elling, underwriting and general expenses decreased $79,084,000, or 18%" in the first nine months of 2011 versus the comparable period in 2010.[9] Time's parent company's statements suggest that Time has been able to successfully streamline its expense structure during 2011. Therefore, the actual impact of rebates on Time's profitability in 2011 may be smaller than the 2010 data suggest.

[8] Humana Inc., 2010 Annual Report, at 6, *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODQ2ODh8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1.

[9] Assurant, Inc., Quarterly Report (Form 10-Q), at 42 and 52 (Nov. 2, 2011).

Coventry would also appear to show a pre-tax loss after payment of rebates based on 2010 data. Additionally, at the March 14, 2011 public fact-finding hearing held by the KID to assess the potential for disruption that the 80 percent MLR standard could cause in the Kansas individual market, the CEO of Coventry of Kansas testified that "[a]pplication of the 80 percent standard will result in unsustainable losses for Coventry's individual health plan business and raise major concerns about our ability to continue operating this segment of business in the State of Kansas." However, in its 2010 Form 10-K, Coventry Health Care (Coventry's parent company) indicates that Coventry Health Care and its subsidiaries "continue to focus on selling, general and administrative expense efficiencies and on maintaining medical loss ratios across [their] business lines at levels that [Coventry Health Care and its subsidiaries] believe will contribute to continued profitability."[10] Furthermore, in its Q3-2011 Form 10-Q, Coventry's parent company states that for 2011, its "forecasted Commercial Individual MLR is expected to be in the range of 75.0% to 77.0%, an increase from the 2010 MLR of 66.1%, largely driven by compliance with new healthcare reform regulations."[11] We note that, unlike the Affordable Care Act's MLR standard, the MLR described in Form 10-Q does not include adjustments for quality improvement activities, taxes, or credibility. Therefore, Coventry's parent company's statements suggest that it expects its subsidiaries to achieve individual market Affordable Care Act MLRs of 80 percent or close to 80 percent, while continuing to be profitable.

We further note that, according to information provided in the KID's November 13 letter, eight months after the KID's fact-finding hearing, Coventry of Kansas appears to have estimated its 2010 MLR at 53 percent, in line with its 2010 SHCE data, but projects its 2011 MLR to increase to 73 percent. This increase is consistent with Coventry's national strategy, described in its Form 10-Q, to significantly raise the individual market MLR in order to comply with the Affordable Care Act. Therefore, based on the most recent information available from the KID's application and Coventry's public statements, it appears that the 80 percent MLR standard will have a much smaller impact on its financial performance than Coventry of Kansas originally expected. We further note that Coventry (1) is the third-largest issuer in the Kansas individual market, (2) has stated at the March 14 KID fact-finding hearing that it "is a significant provider of health insurance in the state," and (3) would not, due to K.S.A. 40-2257, be able to re-enter the individual market until well after 2014 if it were to withdraw in 2012. Taken together, these facts strongly suggest that Coventry will remain in the Kansas individual market even without an adjustment to the 80 percent MLR standard.

In sum, evidence shows that all issuers in the Kansas individual market either already meet the 80 percent MLR standard, or are adapting their business models in order to continue to achieve sustainable financial performance in that market, as well as to comply with, and benefit from, the provisions of the Affordable Care Act. Based on this, we do not expect any issuers to withdraw from the Kansas individual market and therefore could not conclude that it is "reasonably likely" that the market will be destabilized if the 80 percent standard is not adjusted.

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[10] Coventry Health Care, Inc., Annual Report (Form 10-K), at 12 (Feb. 25, 2011)
[11] Coventry Health Care, Inc., Quarterly Report (Form 10-Q), at 27 (Nov. 4, 2011).

B. *Number of enrollees covered by issuers that are reasonably likely to exit the State*

As stated previously, the KID indicates in its application that only Reserve is likely to exit the Kansas individual market absent an adjustment to the MLR standard. As discussed in Part A above, it is not reasonably likely that Reserve would be affected by the MLR provisions and, consequently, by an adjustment to the MLR standard. As further discussed in Part A, four of the eight issuers in the Kansas individual market that are at least partially credible, including the dominant issuer, meet the 80 percent MLR standard, and thus would not be likely to leave the market due to section 2718's MLR standard. One of the four issuers with MLRs below 80 percent – Golden Rule – would retain significant pre-tax net gains even after payment of rebates under an 80 percent MLR standard, while the remaining three issuers – Humana, Coventry, and Time – appear to be successfully changing their business models. We further note that an issuer electing to withdraw from the Kansas individual health insurance market may not re-enter that market for five years, which presents a significant disincentive to exiting the market for an issuer who will remain profitable even after payment of rebates. In light of these circumstances, it appears that all issuers would remain in the market even with an 80 percent MLR standard.

C. *Consumers' ability to access agents and brokers*

In its application, the KID states that "[d]uring the hearing held on March 14, 2011, we heard testimony from Kansas agents and brokers that some Kansas issuers that currently use an agent model for the marketing of their products are making significant adjustments to their compensation models." The KID observes that "[b]oth issuers and consumers rely on agents and brokers to identify and obtain the best possible coverage options for the needs of consumers" and that "agents and brokers should be fairly compensated for providing these services." According to the KID, "[w]ith a gradual phase-in of the new MLR requirement Kansas issuers will have time to develop and implement new compensation models that will ensure appropriate compensation for Kansas agents and brokers." However, the KID does not elaborate on the levels of producer compensation that it would consider appropriate, nor on whether or how this would impact consumers. One public commenter expresses an opinion that commissions averaging over 10 percent of total premium, such as those paid by Golden Rule and Coventry, are "outsized." The same commenter relates that "states that already have MLR requirements near or at ACA levels in the individual market reported last year to the National Association of Insurance Commissioners that they found no … lack of broker/agent availability in their states." In sum, the KID has not provided evidence that would allow us to conclude, according to the criterion established by 45 CFR 158.330(c), that "absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers."

D. *Alternate coverage options*

As discussed in Part A above, we expect that all issuers are likely to remain in the Kansas individual market subsequent to the implementation of an 80 percent MLR standard. We note that according to the KID's application, Kansas has a high risk pool, the Kansas Health Insurance Association ("KHIA"). KHIA provides guaranteed issue coverage to Kansas residents who have lost or have been denied coverage in the individual market, or who have been quoted a premium rate that is in excess of the rate that would be charged in the KHIA plan, and to HIPAA-eligible individuals. KHIA imposes a three-month pre-existing condition exclusion with

a six-month look-back if applicants have a lapse in coverage of more than 31 days prior to their enrollment in KHIA. According to KHIA's website, KHIA offers four plans with 30 percent coinsurance and deductibles ranging from $1,500 to $10,000.[12]

E. *Impact on premiums, benefits, and cost-sharing of remaining issuers*

The KID did not address in its application the impact on premiums charged, or benefits or cost-sharing provided, to consumers by issuers remaining in the Kansas individual health insurance market if application of the 80 percent individual market MLR standard causes one or more issuers to leave the market. Based on this, we do not consider the impact of an 80 percent MLR standard on premiums, benefits, and cost-sharing of issuers remaining in the Kansas individual market a significant factor in making our determination.

F. *Other relevant information submitted by the State*

In the cover letter to its application, the KID states that one reason for its request for an adjustment is that a gradual implementation of the 80 percent over a three year period would "maximize the opportunity for new entrants into the Kansas market." The KID does not elaborate further upon this point in either its cover letter or its application. We note that the MLR regulation's provision regarding newer experience, 45 CFR §158.121, allows an issuer with 50 percent or more of its experience during an MLR reporting year resulting from new business to exclude the experience of these policies from MLR calculations for that reporting year. Additionally, a new entrant would not become subject the MLR regulation's rebate requirement until it accumulates at least 1,000 life-years in the Kansas individual market. In short, it is not clear that a denial of the KID's request would discourage new entrants from coming to Kansas.

IV. Summary of Public Comments

As part of its application, the KID submitted a transcript of the public fact-finding hearing it conducted on March 14, 2011 regarding whether the 80 percent MLR standard could potentially disrupt the Kansas individual market. The hearing included testimony by Coventry, four agents and the president of the Greater Kansas City Association of Health Underwriters, as well as Century Health Solutions, an independent PPO. Notwithstanding being the third largest issuer in the Kansas individual market, Coventry expressed concern with its ability, as a small new entrant, to meet the 80 percent MLR standard. The agents principally offered personal stories describing the value of the services they provide to consumers, and expressed concern with commission rate reductions, although primarily in the small group market. Century Health Solutions expressed concern with issuers pursuing administrative cost efficiencies in negotiating provider network fees.

The KID also submitted letters it received from the Kansas Association of Community Action Programs ("KACAP") and the Statewide Independent Living Council. Both organizations oppose the KID's request for an adjustment because they believe that the 80

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[12] Premium and benefit level information for KHIA plans is *available from* http://www.khiastatepool.com/.

percent MLR standard is attainable by Kansas issuers and that the KID's proposed adjustment would deprive consumers of an important benefit provided by the Affordable Care Act. KACAP additionally expressed opposition to the proposed legislation that would exclude agent and broker commissions from the MLR calculation.

During the public comment period, CCIIO also received comments from three consumer groups – Consumer Watchdog, the National Patient Advocate Foundation, and the Kansas Health Consumer Coalition – opposed to the KID's request. The commenters assert that the KID has not demonstrated that issuers would be unable to either pay rebates to consumers or make their business models more efficient under an 80 percent MLR standard. The commenters further express disappointment with the fact that the Department does not appear to have engaged consumer and patient advocates, nor to have considered the potential for market disruption from the patient and consumer perspective. The commenters also urge CCIIO to consider the amount of rebates that consumers would not receive if the Department's request is granted.

We acknowledge the views and concerns expressed in this comment. They are discussed, many in great detail, in the body of this letter.

V. Conclusion

As described at the outset of this letter, section 2718 of the PHS Act permits the Secretary to adjust the 80 percent standard in the individual market if it is determined that applying this standard "may destabilize the individual market in [the] . . . State." The regulation implementing section 2718, 45 CFR Part 158, provides that an adjustment should be granted "only if there is a reasonable likelihood" that application of the 80 percent MLR standard will destabilize the particular State's individual health insurance market (45 CFR 158.301).

After applying the standards and criteria set out in section 2718 and 45 CFR Part 158 to the information submitted by the KID, we conclude that the evidence presented does not establish a reasonable likelihood that implementation of an 80 percent MLR standard may destabilize the Kansas individual market. We reach this conclusion for the reasons outlined in the analysis under the criteria set out above, and based on the specific characteristics of the Kansas individual market addressed in that analysis.

As noted in Part III.A above, of the eight issuers that are at least partially credible and would thus be expected to be subject to MLR rebate provisions, four already meet, or are close to meeting, the 80 percent standard. Although the other four issuers – Humana, Coventry, Time, and Golden Rule – would be expected to owe rebates beginning in 2011, these four issuers are either sufficiently profitable or are adapting their business models, which should allow them to achieve sustainable financial performance in the individual market. There is no basis to conclude, based on these facts, that there is a reasonable likelihood that these issuers may leave the market. Consequently, no enrollees are likely to require alternate coverage due to withdrawal of any issuer.

As discussed in Part III.C above, although the KID expresses concern that an 80 percent MLR standard may affect the fairness of agent and broker compensation, the KID does not

provide specific data to support this concern, or address its impact on consumers. Based on the information provided in the KID's application, there is insufficient evidence to conclude that an 80 percent MLR standard would significantly reduce consumers' ability to access agents and brokers in Kansas.

For these reasons, we conclude that an adjustment to the 80 percent MLR standard in the Kansas individual market is not appropriate.

Pursuant to 45 CFR 158.346, the KID may request reconsideration of the determination issued in this letter. A request for reconsideration must be submitted in writing within ten days of the date of this letter to MLRAdjustments@hhs.gov, and may include any additional information in support of such request. A determination on a request for reconsideration will be issued within 20 days of the receipt of the request.

Please contact me should you have any questions.

Sincerely,

/Signed, SBL, January 4, 2012/

Steven B. Larsen
Deputy Administrator and Director,
Center for Consumer Information and Insurance Oversight