June 10, 2011

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201
Via e-mail: MLRAdjustments@HHS.gov

Re: Kentucky

Dear Secretary Sebelius:

If given the choice, most insurance companies would choose not to comply with the only provision in the Affordable Care Act with the potential to hammer insurance companies on cost – the medical loss ratio standard requiring insurers to spend 80% - 85% of premiums on health care instead of profits.

The industry spent the better part of the last year lobbying the NAIC to weaken this key insurance market reform, and the waiver process has become its latest mode of attack.

However the simple fact that most insurance companies do not like the medical loss ratio requirement does not mean that they are incapable of complying with it. Neither does the fact that some insurance companies will have to accept reduced profits in order to meet the standard. Creating greater value for consumers' health care premiums was the purpose of the MLR rule. This should necessitate greater efficiency and lower profits for some insurance companies.

Waivers to the MLR standard are intended only for circumstances in which the rule will disrupt the individual insurance market and thus consumers' access to insurance. We must again urge you to reject a state's application for waiver: Kentucky has failed to make its case.

Not one insurance company has stated that it may leave the Kentucky market if it must comply with the MLR standard.

Kentucky has requested a medical loss ratio waiver to allow insurance companies in its individual market to meet an MLR of just 65% this year, 70% in 2012 and 75% in 2013. Yet all four insurance companies large enough to be subject to the medical loss ratio rules had MLRs over 70% in 2010.

If you were to lower the MLR standard in Kentucky to 65% or 70%, every insurer in the state would be able to *reduce* the portion of premium it spends on patient care to well below the level

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they demonstrated they were capable of achieving in 2010. This would be a devastating step backwards for consumers, not a push towards greater efficiency.

The state's dominant insurer, Anthem, controls 85% of the market and would have had a 78.2% MLR in 2010. A second insurer, Time, was over 75%. There is no reason to expect these companies already so close to the 80% standard could not match or at least remain close to it in 2011.

The 2010 MLR for Humana and Golden Rule would have been 71.1%. Does this mean Kentucky needs a one-year waiver of the MLR standard to 75% to preserve its individual market? Again, the data do not make the case.

First, as HHS has acknowledged, MLR estimates using 2010 data do not take into account the shift in practices towards greater efficiency that should have occurred at insurance companies over the past year to increase MLR in anticipation of the new requirements.

Kentucky's analysis also didn't consider company profitability and reserves. Although the state refused to make basic financial information public, Golden Rule has reported an RBC ratio of 654% in other states, and Humana has reported 535%. Both are well above minimum standards.

Golden Rule reports enough net underwriting profit in Kentucky in 2010 to cover the full rebate that would have been required that year. Humana reports a net underwriting loss, however the company's overall profitability was not disclosed. Nationally, Humana reported a 22% profit increase for the first quarter of 2011 alone. Such information suggests that both companies are in the financial position to pay expected rebates, or reduce premiums, to comply with the MLR standard this year.

Furthermore, we do not know if the Kentucky 2010 MLR estimates add quality improvement expenditures to premiums spent on patient care, or whether they exclude federal and state taxes paid. HHS has estimated that the average MLR adjustment for quality improvement alone could be 3%.

All of these factors suggest that actual 2011 MLRs will be significantly higher than the 2010 estimates, and are all the more reason to expect Kentucky insurance companies have the capacity to comply with the standard.

Kentucky has cited two companies that have left the individual market as evidence that other insurers will flee the market without a waiver. One of these companies in fact never sold individual policies, and the second stopped selling in the market in 2010, well before the MLR regulations took effect and perhaps even sooner than that. The application notes that Time says it may have to consider leaving some markets due to the MLR requirement – but not that Time will consider leaving Kentucky.

The counterpoint to these MLR waiver requests are moves by insurance companies in some states to come into compliance. Aetna in Connecticut just submitted rate decreases of 5%- 19%, citing reduced health care spending. Blue Shield in California responded to criticism of excessive reserves and executive salaries by setting a 2% profit cap. Where they must, insurance companies have shown that they have the capacity to make the changes necessary to meet the MLR rules.

An MLR waiver should be granted only when a serious disruption in the individual health insurance market is likely. Kentucky's application is missing even basic financial information, making it clear that the state made no effort to determine whether insurers are capable of meeting the new standard. Without such data there is no reason to believe threats or speculation that insurance companies will leave the market if they must comply.

Consumers cannot handle three more years of the kind of excessive premium increases that the medical spending standard is intended to help alleviate. Kentucky's request for an MLR waiver should be denied.

Sincerely,

Carmen Balber

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