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

200 Independence Avenue SW
Washington, DC 20201

November 27, 2011

The Honorable Stephen W. Robertson
Commissioner of Insurance
Indiana Department of Insurance
311 W. Washington Street, Suite 300
Indianapolis, Indiana 46204-2787

Re: Indiana's Request for Adjustment to Medical Loss Ratio Standard

Dear Commissioner Robertson:

This letter responds to the request by the Indiana Department of Insurance ("IDOI") that (1) the 80 percent medical loss ratio ("MLR") standard that section 2718 of the Public Health Service ("PHS") Act, 42 U.S.C. §300gg-18, applies to both the individual and small-group health insurance markets in Indiana be waived permanently for consumer driven health plans ("CDHPs"); (2) new market entrants and products be exempt until 2014 from the 80 percent individual market MLR standard required by section 2718; and (3) the MLR standard be adjusted for the Indiana individual market to 65 percent, 68.75 percent, 72.50 percent, and 76.25 percent for the MLR reporting years 2011, 2012, 2013, and 2014, respectively.

Section 2718 requires issuers in the individual and small-group markets to spend at least 80 percent of premium dollars on reimbursement for clinical services and for activities that improve health care quality for enrollees. Issuers in the large-group market must spend at least 85 percent of premium dollars on reimbursement for such services and activities. Beginning in 2011, issuers are required to provide rebates to enrollees if they do not meet these standards.

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.

While 45 CFR Part 158 allows the Secretary to adjust the MLR standard applicable to a State's individual health insurance market, it does not extend that authority with respect to a State's small group market. (45 CFR 158.301.) Likewise, while Part 158 provides for a

credibility adjustment for calculating the MLR of a high-deductible plan (45 CFR 158.232(c)), section 2718 of the PHS Act does not authorize a waiver or an adjustment of the 80 percent standard for CDHPs or permit a different MLR standard for CDHPs than for other products. There consequently can be no permanent waiver from the 80 percent small group and individual market MLR standards of section 2718 for CDHPs offered in Indiana, as requested by the IDOI. Similarly, although Part 158 does allow for the deferral, in certain circumstances, of newer experience (45 CFR 158.121), the statute does not provide for a waiver for new individual market entrants and products from the 80 percent individual market MLR standard of section 2718 until 2014, as requested by the IDOI.

Title 45 Part 158, however, does provide, as noted before, that an adjustment may be made "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.) Title 45 CFR 158.311 permits a State to request that an adjustment to the MLR standard be for up to three MLR reporting years. Thus, at this time the IDOI's request for an adjustment to the MLR standard for Indiana's individual health insurance market will be considered for MLR reporting years 2011-2013. The IDOI may, if it wishes, request an adjustment for MLR reporting year 2014 in the future if, at that time, it deems circumstances to so warrant.

With regard to the IDOI's individual market MLR standard adjustment request for reporting years 2011-2013, the Center for Consumer Information and Insurance Oversight ("CCIIO") within the Centers for Medicare & Medicaid Services ("CMS") has reviewed the IDOI's application, as well as the supplemental information that the IDOI provided to CCIIO in response to questions raised by the application and the public comments filed with regard to the application.[1] After a careful examination of these materials and consideration of the criteria set forth in the statute and implementing regulation, 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 Indiana individual market. Consequently, we have determined not to adjust the MLR standard in the Indiana 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 Indiana Application

CCIIO received the IDOI's request on May 13, 2011. Among the information the IDOI included in support of its request were enrollment numbers and premium amounts for issuers in the Indiana individual market, as well as estimated MLRs (without credibility adjustments) and rebates for the 2011 reporting year under the 80 percent MLR standard.

On June 14, 2011, CCIIO requested from the IDOI information needed in order for Indiana's application to be deemed complete. CCIIO concurrently sent the IDOI a letter requesting additional information in relation to information the IDOI had previously submitted. After the IDOI responded to these requests, the IDOI's application was deemed complete on September 28, 2011, and the processing period provided for in 45 CFR 158.345 began.

[1] Unless otherwise noted, all documents and information described in this letter are posted on CCIIO's website at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_indiana.html.

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

On October 28, 2011, CCIIO informed the IDOI that it would extend the review period for up to an additional 30 days, as provided in 45 CFR 158.345(b).

II. Overview of the Indiana Individual Health Insurance Market

According to the IDOI's application, 187,526 Indiana residents obtain health insurance coverage through the Indiana individual health insurance market. The IDOI states that "Indiana has a robust individual health insurance market with more than 60 carriers actively marketing and writing business." However, only 16 issuers have at least 1,000 life-years[2] each in the Indiana individual market. According to the IDOI's application, the number of enrollees and market shares of these issuers as of December 31, 2010 are:

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

	Issuer	Enrollees	Market Share
1.	Anthem	114,671	61.1%
2.	Golden Rule	17,828	9.5%
3.	Time	13,498	7.2%
4.	UnitedHealthcare	12,179	6.5%
5.	MEGA	4,571	2.4%
6.	Humana	4,065	2.2%
7.	American Med Security	2,551	1.4%
8.	Consumer Life	2,023	1.1%
9.	Mid-West	1,709	0.9%
10.	John Alden	1,684	0.9%
11.	American National	1,564	0.8%
12.	Celtic	1,495	0.8%
13.	American Republic	1,376	0.7%
14.	Physicians	1,315	0.7%
15.	World	1,017	0.5%
16.	American Family	1,001	0.5%
	Rest of Market	4,978	2.7%
	TOTAL	187,525	100%

[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 data are from the 2010 Supplemental Health Care Exhibits ("SHCE"s) that issuers file with the National Association of Insurance Commissioners ("NAIC"), as provided in the Exhibits to the IDOI's August 10, 2011 letter. The table excludes Pekin Life, Aetna, American Community, Guardian Life, and CIGNA, which, according to the IDOI's application, no longer participate in the Indiana individual market.

According to the IDOI's application, "Indiana law does not identify a specific MLR for major medical insurance policies." However, the IDOI considers loss ratios as a guide as part of the rate approval process. The IDOI notes that, unlike the Affordable Care Act's MLR standard which "combines the experience of all individual plans, which adds health quality expenses to the numerator for claims and subtracts taxes from the denominator for premiums," "[t]he MLR reviewed by the IDOI as part of the rate review process is simply claims divided by premiums."

With regard to State withdrawal requirements, the IDOI's application states that "[a]lthough individual carriers are not statutorily required to notify IDOI that they are withdrawing from the individual market, most carriers do notify this agency out of courtesy." In addition, the IDOI views the Federal HIPAA statute as precluding an issuer electing to withdraw from the Indiana individual health insurance market from re-entering that market for five years. As discussed below, this can be a significant disincentive to exiting the market for an issuer who will remain substantially profitable even after payment of rebates.

As for safety net aspects of the Indiana individual health insurance market, as we read the IDOI's application, Indiana does not have a guaranteed issue requirement or an issuer of last resort in its individual health insurance market. Furthermore, according to the IDOI's application, "there is no statutory limit in Indiana on how much a rate can be increased or decreased based on an individual's health status for individual plans."

The IDOI, however, also notes that Indiana has a State-operated high risk pool. The high-risk pool provides guaranteed issue coverage to Indiana residents with qualifying medical conditions who have been denied coverage in the individual market and to HIPAA-eligible Indiana residents. These features are discussed in more detail in Part III below.

III. Application of Regulatory Criteria to the Indiana 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*

Although no issuers in the Indiana individual health insurance market had provided notice of exit at the time the IDOI submitted its initial application, the IDOI states that "[i]nformation IDOI has received from carriers indicates that many will discontinue sales activities in hopes of minimizing the risk of not meeting MLR requirements, which destabilizes the market by providing fewer choices." The IDOI also expresses concern that "carriers may choose to terminate their existing blocks of business and leave the individual market to avoid inescapable losses and avoid solvency concerns." The IDOI adds that "Indiana has received letters from carriers warning that a withdrawal from the individual health insurance market could be imminent because of this MLR regulation." The IDOI further states that "at least five carriers have withdrawn from the Indiana individual major medical health insurance market since [the Affordable Care Act] was enacted" and that "[c]urrently, another carrier ... is closely contemplating a withdrawal from Indiana's market."

In its subsequent July 26, 2011 letter, the IDOI clarifies that one of the five issuers that the IDOI originally believed to have withdrawn – Principal Life – never actually participated in the Indiana individual market. The IDOI identifies the issuers that did withdraw from the individual market as Pekin Life, American Community, CIGNA, Guardian Life, and Aetna. In its July 26 letter, the IDOI also quotes comments from two anonymous issuers suggesting that the 80 percent MLR standard could incentivize issuers to minimize marketing activity prior to 2014, and could result in losses in the individual line of business due to inability to materially reduce administrative costs associated with existing business. The IDOI additionally indicates that MEGA "stopped actively marketing health benefit plans in Indiana on June 7, 2010."

We note that while Pekin Life's and Aetna's withdrawal letters did not specify the reasons for these issuers' exit, the fact that these withdrawals occurred after the passage of the Affordable Care Act does not in itself indicate that they were caused by the MLR provisions.[4] Indeed, according to data provided by the IDOI, Aetna's two companies had 2010 MLRs of 85 and 101 percent, and Pekin Life had a 2010 MLR of 94 percent. Because both issuers had MLRs well above the 80 percent standard and would have been unlikely to owe rebates in 2011, it is unlikely that their withdrawal was precipitated by the Affordable Care Act's MLR rebate requirements. Furthermore, the other three issuers that also withdrew subsequent to the passage of the Affordable Care Act did so for reasons unrelated to the MLR provisions. According to CIGNA's withdrawal letter, CIGNA discontinued a blanket student accident and sickness policy it had previously offered in Indiana because "this product does not fit within [CIGNA's] strategy for the future," and CIGNA had no active business in Indiana relating to this product. Guardian

[4] Issuers' withdrawal letters were provided in Exhibit B to the IDOI's July 26 response.

has indicated that its withdrawal was due to "lack of a competitive product and the associated long-term decline in Guardian's medical business, and is in no way related to health care reform." American Community indicated that it is withdrawing from the individual market in 13 other States as a consequence of an order of rehabilitation that had been entered against it in April 2010 due to its loss experience in its business. Therefore, we do not believe that the exit by these five issuers supports the IDOI's concern that immediate implementation of the 80 percent MLR standard could lead to market destabilization. The five issuers had a combined market share of 2.6 percent.

On November 17, 2011, the IDOI informed CCIIO that American Republic and World have notified the IDOI of their intention to exit the Indiana individual market. Both issuers are part of the American Enterprise Group. As shown in Table 1 above, in 2010 American Republic and World insured 1,376 and 1,017 enrollees, respectively, or a combined total of 1.2 percent of the Indiana individual market. According to American Republic's 2010 SHCE data provided by the IDOI, American Republic had a credibility-adjusted 2010 MLR of 60 percent and would owe rebates of $1 million if it would have had to pay rebates in 2010. American Enterprise Group's letter to the IDOI indicates that as of October 14, 2011, American Republic insured only 911 enrollees, and World insured 717 enrollees. Because American Republic's membership has fallen by a third in 2011, American Republic would likely owe less in rebates than the 2010 data suggest. World already had fewer than 1,000 life-years in the Indiana individual market in 2010, and consequently would not be subject to rebates in 2011. We note that American Enterprise Group has announced the withdrawal of World and American Republic in all States in which it does business in the individual market, even though in most States neither company would be subject to rebates. The fact that American Enterprise Group's decision to withdraw from the Indiana individual market was made without taking into account any adjustment to the MLR standard we might make, coupled with the fact that it is withdrawing from markets where it would not be affected by the MLR provisions, suggest that its decision was not related to the risk of paying rebates in Indiana and elsewhere.

As for the remaining issuers providing coverage in the Indiana individual health insurance market, the IDOI states that "[t]o date, IDOI is aware of no issuers actively marketing individual health products in Indiana that are in poor financial health." However, the IDOI expresses concern that "[b]ecause IDOI has not previously instituted MLR requirements similar to those required by the [Affordable Care Act], carriers, particularly smaller local and in many cases provider owned carriers, need time to adjust their pricing accordingly." The IDOI further states that "[e]ven though the larger carriers would likely be better positioned to immediately implement an 80% MLR, these rebates will not likely be able to be offset by slim business margins," and that "[a]s a result, more individual carriers would exit the market."

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 IDOI'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 2011-2013. 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' claim 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 2011-2013.

Fifteen issuers in the Indiana individual market had at least 1,000 life-years each in 2010 and thus were at least partially credible (as defined in 45 CFR 158.230(c)).[5] 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, for each of these issuers, the estimated 2010 MLR, estimated rebate based on 2010 MLR, 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.[6]

Table 2: Estimated 2010 MLRs, Rebates, and Pre-Tax Net Gains ($ in millions)[7]

	Issuer	MLR After Credibility Adjustment[8]	Estimated Rebates	Pre-Tax Net Gain Before Rebates	Pre-Tax Net Gain After Rebates
1.	Anthem	76.6%	$9.3	$28.6	$19.2
2.	Golden Rule	66.5%	$3.9	$5.8	$1.9
3.	Time	66.3%	$4.1	$2.7	$(1.4)
4.	UnitedHealthcare	54.5%	$1.0	$2.0	$1.1
5.	MEGA	65.0%	$1.5	$2.5	$1.0
6.	Humana	66.0%	$0.8	$1.0	$0.2
7.	American Med Security	64.0%	$0.9	$2.1	$1.2
8.	Consumer Life	105.4%	$0.0	$(0.9)	$(0.9)
9.	Mid-West	64.4%	$0.5	$1.3	$0.7
10.	John Alden	63.1%	$0.6	$1.1	$0.4
11.	American National	81.3%	$0.0	$(0.4)	$(0.4)
12.	Celtic	88.7%	$0.0	$(0.4)	$(0.4)
13.	American Republic	59.7%	$1.0	$0.7	$(0.3)
14.	Physicians	102.4%	$0.0	$(0.7)	$(0.7)
15.	American Family	91.4%	$0.0	$(0.2)	$(0.2)

According to the 2010 MLR data shown above, it appears that five issuers in the Indiana individual market – Consumers Life, American National, Celtic, Physicians, and American Family – meet the 80 percent MLR standard.

[5] World had only 619 life-years in 2010, and thus would be non-credible and not subject to rebate payments.
[6] "Pre-tax net gain" is the net 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.
[7] These data are from the IDOI's May 13 and August 10 letters, and 2010 SHCEs.
[8] The credibility adjustments used to prepare the MLR estimates shown in Table 2 do not include deductible factors provided under 45 CFR 158.232(c); therefore, the credibility adjustments available to issuers are likely understated.

Nonetheless, there remain nine issuers with MLRs expected to be below the 80 percent standard: Anthem; Golden Rule; Time; UnitedHealthcare; MEGA; Humana; American Medical Security; Mid-West; and John Alden.[9] These issuers must adjust some combination of their operations and financial targets in order to satisfy an 80 percent MLR standard. 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 nine issuers would either need to lower premiums or increase expenditures on claims or quality improving activities, or otherwise risk paying rebates to enrollees. Assuming that these issuers did not reduce their administrative costs, either of these actions could lead to deterioration in profitability, which may be a consideration for each company in assessing whether to remain in the Indiana individual market.

As Table 2 shows, of the nine issuers with MLRs below 80 percent, eight would remain profitable after payment of rebates even without making any adjustments to their business models, and thus are not reasonably likely to leave the market. One issuer – Time – would be expected to be unprofitable 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. The IDOI asserts that issuers have "vendor contracts related to administration and claims management as well as agent compensation contracts … cannot generally be retroactively changed for policies issued prior to the federal MLR requirements." However, the IDOI provides no specific information on how many and which issuers have such contracts in place, or when such contracts expire. Furthermore, the IDOI'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.[10] Time's parent company's statements suggest that Time has been able to successfully streamline its expense structure during 2011. In particular, these statements suggest that Time will likely achieve an 18 percent reduction to commissions and administrative expenses in the Indiana individual market by the end of 2011. This would increase Time's pre-tax net gains such that it would remain profitable after payment of rebates under an 80 percent MLR standard in Indiana.

The IDOI additionally expresses concern that "[b]ecause of Indiana's robust market, a portion of the insurance market in Indiana is heavily weighted with newer business because healthy Indiana consumers have the ability to shop the market for the best value." The IDOI believes that this "limits the ability for the individual market to meet [Affordable Care Act's] MLR requirements as compared to other health insurance markets that have a larger, mature mix of old and new policies with correspondingly higher MLRs." The IDOI explains that "new nonprofit carriers, newer companies and new products will face significant if not impossible obstacles to enter the markets." 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. The IDOI, however, contends that "one year is

[9] As noted previously, American Republic is withdrawing from the Indiana individual market.
[10] Assurant, Inc., Quarterly Report (Form 10-Q), at 42 and 52 (Nov. 2, 2011).

not a sufficient deferment period," citing the American Academy of Actuaries ("AAA")' May 14, 2010 comment letter regarding the MLR regulation. We note that in its comment letter, the AAA acknowledges that a two or three year deferral of new business experience would exclude a large segment of the individual market business from the scope of rebates, and that issuers may be able to address the impact of new business on MLRs by establishing contract reserves, which are part of the MLR calculation. We further note that the one-year deferral of new business experience provided for by 45 CFR 158.121 was recommended by the NAIC in the model MLR regulation adopted by the NAIC in October 2010.

In sum, evidence shows that all issuers in the Indiana individual market either 1) already meet the 80 percent MLR standard, 2) are sufficiently profitable to absorb the impact of rebate payments under an 80 percent MLR standard, or 3) are adapting their business models in order to continue to achieve sustainable financial performance in the individual market. Based on this, we do not expect any issuers to withdraw from the Indiana individual market.

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

As stated previously, although no issuer has provided a notice of exit, the IDOI expresses concern that the impact of rebate payments on some smaller issuers' profitability could lead them to withdraw from the Indiana individual market. As discussed in Part A above, most issuers either already meet the 80 percent MLR standard or will remain profitable even after payment of rebates. We further note that an issuer electing to withdraw from the Indiana individual health insurance market may not reenter the individual 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*

According to the IDOI, "[i]n Indiana the individual market has traditionally relied heavily on agents and brokers." The IDOI states that "Indiana has approximately 25,914 licensed resident health agents and 2,682 resident agencies." The IDOI asserts that "agent compensation contracts ... cannot generally be retroactively changed for policies issued prior to the federal MLR requirements," but that "[a]fter these agent/broker contracts expire, carriers will likely be forced to reduce agent/broker compensation in order to meet MLR requirements." The IDOI explains that "a mass reduction of companies utilizing agents and brokers ... will disrupt the distribution channel on which many ... smaller carriers rely to bring their products to the market." The IDOI expresses concern that "[b]etween now and 2014, the inability to use agents as a distribution channel could prevent many companies from surviving long enough to market their products on the [E]xchange."[11] The IDOI concludes that "limiting distribution channels via reduction in agents and brokers coupled with an inability to write new business would leave consumers with less choice in both the short-run and long-run."

[11] Affordable Insurance Exchanges, which will become available in 2014, are State-based competitive marketplaces in which individuals and small businesses will be able to compare health plans and purchase affordable private health insurance. For more information, see Affordable Insurance Exchanges: Seamless Access to Affordable Coverage – Overview, http://www.healthcare.gov/news/factsheets/2011/08/exchanges08122011a.html (*posted on* Aug. 12, 2011).

We note that while the IDOI appears concerned with the potential inability of smaller issuers to use agents as a distribution channel, and concludes that this will cause a reduction in consumer choice, the IDOI does not specifically address the impact of the 80 percent MLR standard on consumers' ability to access agents and brokers. We also note that, according to the IDOI, many issuers are currently unable to reduce commissions due to existing agent compensation contracts.

In sum, the IDOI has not provided evidence that would lead 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*

According to the IDOI's application, "[c]urrently, Indiana consumers have a wide variety of benefit options to choose from to meet their financial and health needs." The IDOI's initial application and subsequent response letters do not provide the number of enrollees and premium data by product of each issuer in the Indiana individual market. Nor do those documents state the IDOI's views on whether the issuers that are apt to remain in the Indiana individual market are likely to offer comparable policies, at comparable prices, to the enrollees of those issuers that the IDOI fears will leave the market.

As noted in Part II above, Indiana does not have guaranteed issue protection in the individual market or limits on health status rating. The IDOI asserts that policyholders losing coverage as a result of issuers withdrawal would be left "with no other options but to go without or purchase a plan through the Indiana Comprehensive Health Insurance Association (ICHIA), which is Indiana's high risk pool, or the federal Preexisting Condition Insurance Plan (PCIP)." The IDOI notes that "[t]he PCIP is often not a practical solution for the very sick because one has to go without coverage for six months."

According to the IDOI's August 10 letter, ICHIA provides health plans to federally eligible individuals or individuals with qualifying medical conditions who have been unable to obtain coverage in the individual market. ICHIA offers five products with deductibles ranging from $500 up to $5,000 and provides continuous enrollment. There is a 3 month pre-existing condition exclusion that is waived for HIPAA-eligible individuals. As of August 2011, approximately 7,600 persons were enrolled in ICHIA. The IDOI notes that "[a]lthough ICHIA works for the traditionally 'uninsurable' who have serious, chronic health problems, it was not meant for people who could traditionally obtain health insurance and pay their premiums." However, the IDOI does not specifically express concern that ICHIA would not be able to meet the increased demand for coverage by eligible individuals if one or more issuers were to exit the market.

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

While the IDOI points to a number of factors that the IDOI believes will "likely increase premiums at least in the short-run," these factors do not appear to be based on activities related to the MLR standard.

First, we note that, as discussed in Part III.A above, none of the issuers that did withdraw from the Indiana individual market appear to have done so as a result of the 80 percent MLR standard. We also note that the IDOI indicates that Indiana has a robust prospective rate review process. The IDOI relates that "[b]ecause Indiana has sufficient rate review authority, its individual market has remained diverse with numerous carriers offering coverage to thousands of residents." The IDOI explains that "its prospective rate review authority prevents small carriers from under-pricing" and "prevents larger carriers from anti-competitive practices." Additionally, according to the IDOI's application, Indiana law "provides the minimum individual accident and sickness policy provisions that must be in all individual policies sold in the State of Indiana" as well as a number of "specific mandated benefits" outlined on pages 9-11 of the IDOI's initial application. Therefore, it appears that Indiana has an effective regulatory framework in place in order to ensure that consumers receive adequate coverage at reasonable prices, that would prevent issuers from reducing benefits.

The IDOI also informs us that "[a]ccording to www.healthcare.gov, a single 35 year-old female wishing to purchase insurance has more than 240 plan options from among eight of the carriers doing business in Indiana that reported information to HHS." The IDOI adds that "[m]any others do business in the state currently making even more options available." Although the IDOI relates these facts in connection with its concern about potential reduction in consumer choice in the event issuers exit, these facts suggest that Indiana has a diverse and competitive individual health insurance market that would likely retain competitive pricing and numerous options for consumers even if some issuers were to exit.

Therefore, based on the facts presented in the IDOI's application, it does not appear that issuer withdrawal from the Indiana individual market would be reasonably likely to have a negative impact on premiums, benefits, and cost-sharing of remaining issuers.

IV. Summary of Public Comments

CCIIO received three public comments from Consumer Watchdog, Health Care for America Now ("HCAN"), and Robert Stone, Director of Hoosiers for a Commonsense Health Plan.[12] All three public comments oppose the IDOI's MLR adjustment request, asserting that the IDOI has failed to show that implementation of the 80 percent MLR standard is likely to destabilize the Indiana individual market.

Consumer Watchdog notes that the IDOI "does not identify any other insurers that intend to leave the market" and that "every company that Indiana estimates would owe a rebate in 2011 is operating profitably." HCAN notes that the IDOI has not offered "any evidence … as to the normal turnover in the individual insurance market in Indiana," suggesting that "[i]t is not uncommon for small insurers to stop writing blocks of business or to even exit a market for all kinds of reasons." HCAN also observes that "there is little evidence of serious erosion in commissions since the federal MLR requirement has gone into effect," and points out that "lower commissions do not mean that access to brokers is compromised." Lastly, HCAN expresses concern that "Indiana consumers will lose more than $20 million in rebates for 2011 alone if this

[12] In addition, an Indiana resident made a submission after the expiration of the public comment period that opposed the IDOI's request for reasons not addressable under the MLR regulation.

request is granted" and highlights the fact that "since the IDOI apparently has no idea what rebates will be owed by Indiana insurers in 2012 or 2013, its conclusion that adjustments will be necessary for those years is not credible." Dr. Stone asserts that granting the IDOI's request "would cause harm to Indiana consumers" and also expresses concern that the IDOI's proposal would "deny consumers rebates of roughly $23 million in 2011 alone and many millions in the next several years."

We acknowledge the views and concerns expressed in these comments. 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 MLR 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 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 IDOI, we conclude that the evidence presented does not establish a reasonable likelihood that implementation of an 80 percent MLR standard may destabilize the Indiana 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 Indiana individual market addressed in that analysis.

As noted in Part III.A above, five issuers that are at least partially credible and would thus be expected to be subject to MLR rebate provisions would not owe rebates because they had MLRs of 80 percent or higher. Additionally, eight of the nine issuers that would be expected to owe rebates beginning in 2011 are sufficiently profitable to absorb the impact of rebate payments under the statutory 80 percent MLR standard. As further discussed in Part III.A, the only issuer that, based on 2010 data, would be unprofitable after payment of rebates under an 80 percent MLR standard – Time – is adapting its business model, which should allow it to remain profitable after payment of rebates for 2011. There is no basis to conclude, based on these facts, that there is a reasonable likelihood that any of 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 IDOI expresses concern that smaller issuers may be unable to use agents as a distribution channel between now and 2014, the IDOI does not provide specific data to support this concern.

As discussed in Part III.E above, the IDOI suggests that if issuers were to withdraw due to the 80 percent MLR standard, this could increase premiums at least in the short run. However, information provided by the IDOI suggests that Indiana has a robust regulatory framework, as well as a competitive individual health insurance market, which should ensure that consumers

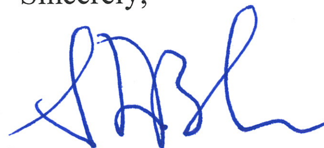
continue to receive adequate coverage at reasonable prices. Moreover, as previously stated, based on the evidence presented in the IDOI's application, there is no basis to conclude that there is a reasonable likelihood that any of issuers may withdraw.

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

Pursuant to 45 CFR 158.346, the IDOI may request reconsideration of the determination issued in this letter. A request for reconsideration must be submitted in writing to MLRAdjustments@hhs.gov within ten days of the date of this letter, 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,



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