STATE OF INDIANA
MITCHELL E. DANIELS, JR., Governor

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Stephen W. Robertson, Commissioner

December 16, 2011

Via Email MLRAdjustments@hhs.gov

U.S. Department of Health and Human Services
Attn: Director Steven B. Larsen
200 Independence Avenue SW
Washington, D.C. 20201

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

Dear Director Larsen:

The Indiana Department of Insurance (IDOI) is in receipt of your letter dated November 27, 2011 declining to adjust the medical loss ratio (MLR)[1]. Pursuant to 45 CFR 158.346, the IDOI hereby requests reconsideration of your determination issued in that letter. Although IDOI respectfully disagrees with your decision, this letter serves not to go line-by-line and highlight every disagreement, but it serves to highlight the areas in which we think there was error in this decision and requests reconsideration through that prism. Therefore, please accept this letter as a formal request to reconsider your decision of our request for relief, as provided in our May 13, 2011 original request for adjustment, our July 26, 2011 response to your request for clarification and our August 10, 2011 response to your request for additional information.

The IDOI proposes the following reasonable alternatives in order to meet Indiana's immediate needs; The preamble to the regulations implementing 42 USC 300gg-18(b) asserts: "State insurance commissioners have valuable local knowledge of their State's insurance market and share a responsibility to protect consumers, which makes them best qualified to attest to the impact of the MLR standard on consumers within their State."[2] It is this valuable local knowledge that Indiana has relied upon in its application for adjustment. Specifically, assuming the law remains unchanged and/or is upheld by the U.S. Supreme Court, we proposed an alternative policy that would better ensure continued competition, incentivize new products and enable the market to retain as many carriers as possible to potentially, if they choose, offer products on the exchange (regardless of whether the State or the federal government operates the exchange). Our State has not decided whether it is in our best interests to operate an exchange, and we are unable to even set a timeline for this decision at least until the U.S. Department of Health and Human Services (HHS) provides the regulatory requirements to make an informed decision and the Supreme Court has handed down its ruling.

[1] 42 USCS § 300gg-18(b)(1)(ii).
[2] See 75 Fed. Reg. 74863, 74887 (December 1, 2010).

Secondly, the IDOI highlighted one tool in our letter to advance a presumably shared goal between the State and the federal government of reducing actual health care costs. We cited consumer driven health plans (CDHPs) and requested relief from the MLR standard based on independent evidence substantiating the success of CDHPs in Indiana. Despite accompanying exhibits demonstrating these results, these findings were summarily dismissed because "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." 42 USC § 300gg-18(b) broadly applies to the individual market and does not exclude individual health insurance products designed as CDHPs. An April 28, 2010 analysis of the potential disruptions to the individual market by the American Academy of Actuaries (AAA) noted that certain product designs that are popular in the individual market have had lower actuarial values due to higher policyholder cost-sharing features and lower medical costs.[3] Indiana has relied upon the broad meaning of "individual market" in making its application for an adjustment. We respectfully request you reconsider our proposal in full or in part regarding CDHPs.

Third, your letter states: "[T]he IDOI does not specifically address the impact of the 80 percent MLR standard on consumers' ability to access agents and brokers. . . . [T]he 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.'" To clarify, IDOI believes that without a phase-in to the 80% MLR agents and brokers will be eliminated and/or downsized more dramatically. Although the IDOI has been approached by insurance carriers to move to a fee structure for agents and brokers, it admittedly does not have the economic data to provide you the percentage of unemployed agents and brokers relative to the already high unemployment rate. The concern is that since a MLR waiver may not be implemented, the agents and brokers could be massively displaced and to ask for relief at a later date will be of little use.

Finally, your letter suggests that the five issuers that have withdrawn from our market only had a combined market share of 2.6%, and, "therefore, we do not believe that the exit by these five issuers supports IDOI's concern that immediate implementation of the 80 percent MLR standard could lead to market destabilization." Neither the regulation nor the law defines destabilization. The plain meaning of the term "destabilize" is "to make unstable," which itself means to upset, to make unsteady and to introduce fluctuation as distinguished from that which is steady and fixed. AAA also set forth criteria in its May 14, 2010 comments to HHS. Those criteria included the following: the loss of carriers marketing products; the loss of the ability of customers to easily find product offerings due to the reduction or elimination of marketing channels; the possibility of customers having their current coverage changed materially or canceled; the inability of canceled customers to find new coverage that covers pre-existing conditions; and the potential for increased volatility in premium rates. Indiana relied upon this plain meaning of the statutory term and industry criteria in making its assessment of the market circumstances and its application for adjustment.[4] Nonetheless, regarding the 192,463 individual covered lives in Indiana's market submitted to you as of our last correspondence with your office

[3] Bell, Rowen B., *PPACA Medical Loss Ratio Provisions and Potential Disruption to Individual Market.* American Academy of Actuaries, Pp. 3. April 28, 2010.

[4] Bell, Rowen B., *Medical Loss Ratios—Request for Comments Regarding Section 2718 of the Public Health Service Act.* American Academy of Actuaries, Pp10. May 14, 2010.

on August 10, 2011, 2.6% represents more than 5,000 covered lives. These individuals will likely be forced to change products, carriers or unable to obtain insurance at all if they have pre-existing conditions.

Our request for reconsideration provides an alternative proposal to phase-in the MLR standard so that we Indiana state-based regulators have the ability to stabilize the market and most importantly mitigate the unintended consequences that adversely affect our consumers now and in the future. An October 13, 2010, letter from the National Association of Insurance Commissioners (NAIC) to HHS recommended that HHS give deference to the State regulators' analyses and recommendations regarding the means to address any risk of destabilization. In the preamble to the regulations implementing 42 USC 300gg-18(b), it states that "HHS agrees with the NAIC that, just as a State commissioner is best qualified to request an adjustment to the MLR standard, a State commissioner seeking an MLR adjustment is also best qualified to suggest an appropriate alternative to the MLR standard."[5] For these reasons, we respectfully ask that you reconsider our request for an adjustment.

Sincerely,

Stephen W. Robertson

Stephen W. Robertson
Indiana Commissioner of Insurance

[5] See 75 Fed. Reg. 74863, 74887 (December 1, 2010).