



The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Submitted via e-mail:
MLRAdjustments@hhs.gov

September 16, 2011

Re: Georgia Medical Loss Ratio Adjustment Request

Dear Secretary Sebelius:

Thank you for the opportunity to submit public comments in response to Georgia's request for an adjustment to the medical loss ratio (MLR) rules in the Patient Protection and Affordable Care Act (ACA). We are writing on behalf of Georgians for a Healthy Future, Georgia Watch and the 15 additional organizations listed below. While our organizations have distinct missions and represent a range of different populations, we share the goal of ensuring access to quality, affordable health care for Georgia consumers. As such, we have come together to respectfully ask you to reject the request by the Georgia Office of Insurance and Fire Safety Commissioner for an adjustment to the 80 percent medical loss ratio requirement in Georgia's individual health insurance market. The Georgia Office of Insurance and Fire Safety Commissioner has requested to reduce the minimum MLR to 65 percent for calendar year 2011, 70 percent for 2012 and 75 percent for 2013.

Georgia consumers have seen their health insurance premiums increase in recent years with few resources to measure how these premium dollars are spent or what represents good value in an insurance policy. The new MLR requirements are designed to spur insurers to operate more transparently and to ensure that consumers get the most value for their premium dollars. The requirements were developed after a thorough and deliberate process that considered a wealth of information from insurance companies, insurance regulators and consumers, and concluded this requirement was achievable and fair.

Beginning in 2012, insurance companies operating in Georgia's individual market must meet the 80 percent target or provide rebates to their customers. If the new requirements were implemented today, these insurance companies would have to rebate the nearly 350,000 Georgia

consumers enrolled in their health plans a total of about \$42.6 million. If the adjustment is granted, the total amount rebated would drop to about \$8.4 million, causing Georgia consumers to lose out on \$34 million in rebates.

We appreciate the strong productive working relationship we have developed with the Georgia Office of Insurance and Fire Safety Commissioner and their willingness to keep consumer advocates informed about this process. Nevertheless, we must raise several concerns about the adjustment request on behalf of the consumers we represent.

Adjustments to the MLR may be granted only if “the Secretary determines that the application of such 80 percent may destabilize the individual market” in a state. PHSA' 2718(b)(1)(A)(ii) US Department of Health and Human Services (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.

Georgia does not effectively make the case that our state’s individual insurance market will be destabilized if HHS fails to grant the adjustment it requests. The adjustment request is largely based on the fact that two of the issuers in the non-group market have stopped writing new policies in 2010. These two companies constitute only about 3% of the Georgia market, so whatever small number of new policies that these companies will not write in 2011 and beyond are easily accommodated by the rest of the insurance market. Furthermore, these two companies have not discontinued coverage for existing policies. No evidence is offered by the Office of Insurance and Fire Safety Commissioner that any issuers have given notice that they are planning to exit the Georgia market, and neither is any evidence offered as to the normal turnover in the individual insurance market in Georgia. It is not uncommon for small insurers to stop writing blocks of business or to even exit a market for all kinds of reasons, and the fact that two insurers have stopped writing new policies in a particular year is not necessarily an unusual event. Of course, minimum MLRs are being implemented nationwide, and unless an insurer intends to stop writing policies in the individual market nationwide, there is no particular reason why an issuer would leave Georgia alone.

It appears from data submitted by the Georgia Office of Insurance and Fire Safety Commissioner that a number of issuers in the Georgia individual market do not currently achieve an 80 percent medical loss ratio. Some of these issuers have sufficient underwriting gain in the individual market that they could cover the rebates they would owe with an 80 percent minimum MLR, but others do not. There is no explanation as to why those MLRs that fall below 80 percent cannot achieve the 80 percent MLR. It is suggested that new entrants will have a hard time reaching this level, but the federal MLR rule makes express allowance for new entrants.⁴⁵ C.F.R. ' 158.121 Moreover, the federal rule allows new issuers to accumulate contract reserves against later

negative experience.⁴⁵ C.F.R. ' 158.140 It is not clear that the Georgia application has taken these factors into account.

The Georgia Office of Insurance and Fire Safety Commissioner also claims, with supporting letters from the Georgia Association of Health Underwriters and from the Georgia Agent and Consumer Advocacy Network (another agent and broker organization), that “most carriers in the marketplace have reduced commissions by at least 20 percent with some individual market reductions of as much as 75 percent.” Georgia also submitted a sheet showing that a few insurers have indeed reduced commissions in the non-group market. The attached data submitted by the National Association of Health Underwriters to the National Association of Insurance Commissioners does not show any changes in commissions in the individual market between 2010 and 2011 for the ten insurers for which commissions in the individual market are reported. This issue should be investigated further.

If the Section 2718 MLR 80 percent rule is allowed to go into effect in Georgia, rebates of \$42.6 million would be paid to Georgia insurance consumers during the next three years, according to the Insurance Commissioner’s estimates as set out in the “revised supporting data” report. These rebates would be reduced to \$8.4 million if the adjustment request is granted, effectively transferring \$34 million to the profits of insurance companies from Georgia consumers. But this report is incomplete, as a number of insurers did not provide complete data. It is very likely, therefore, that actual rebates under the 80 percent MLR standard—and losses to consumers—would be even greater if the adjustment is 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 Georgia adjustment request cannot be justified under any of these criteria.

Despite its claim that insurers will leave the market if a MLR adjustment is not granted, the commissioner's office has offered no evidence in support of this. Under federal law, an insurer must give 180 days notice before leaving the non-group market. No insurer has yet given notice of withdrawal, and none could give notice and exit for 2011. Therefore, even if HHS grants a partial waiver of the MLR standards, the value used for 2011 should equal the higher transitional value for 2012, since it is currently impossible for any insurance company to leave the Georgia market during 2011. Furthermore, if a company withdraws from the market it may not reenter the market for five years. This restriction makes it unlikely that any health insurance company would withdraw from Georgia in 2012 or 2013 given the greatly expanded, and federally subsidized, individual market that will be available through the exchange beginning in 2014.

Because the Georgia Office of Insurance and Fire Safety Commissioner 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. If an insurer does withdraw from Georgia, it is likely that an individual who was covered by that insurer will be able to get coverage through one of the remaining insurers. There is no evidence of reduced access. Individuals who cannot get coverage because of health status issues may be able to get coverage through the preexisting condition insurance plan (PCIP).

The adjustment request expresses a concern that requiring companies to meet the statutory MLR requirement will result in reduced commissions and subsequently in loss of agents and brokers. Georgia offers letters from two broker and agent organizations claiming large reductions in commissions and a chart showing that some issuers have reduced commissions in the individual market. The attached data submitted by NAHU to the NAIC, however, shows that many issuers have not reduced commissions between 2010 and 2011 in the individual market. The data show that many insurers continue to offer commissions at the 10 percent to 15 percent level, which should be adequate to compensate brokers and agents for their services.

The federal rule, moreover, does not guarantee that broker and agent's compensation will never be reduced, but rather that consumers must have adequate access to brokers and agents. No evidence is provided that implementation of an 80 percent MLR will reduce access. Moreover, granting an adjustment would not guarantee that broker and agent compensation would be increased. Indeed, there is no reason to believe that insurers would not simply retain increased income as profit rather than passing it on to agents and brokers.

If the adjustment request is granted, the loss to Georgia insurance consumers of granting this adjustment request would be substantial. As already noted, Georgia consumers will lose at least \$34 million in rebates if the request is granted. They will also lose any effect that the rebate

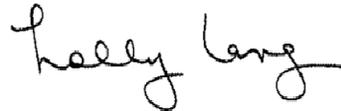
requirement would have on driving down premiums for the next three years. There is no evidence that premiums or cost-sharing would increase or benefits be reduced if the adjustment is not granted.

Thank you again for the opportunity to submit comments and for considering consumer input in Georgia's MLR adjustment request. While we share the Georgia Office of Insurance and Fire Safety Commissioner's goal of ensuring that the MLR requirements do not cause unintended consequences for consumers, there isn't sufficient evidence to grant it that would outweigh the harm caused to consumers by reducing their premium rebates.

Sincerely,



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