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

200 Independence Avenue SW
Washington, DC 20201

February 16, 2012

The Honorable Wayne Goodwin
Commissioner of Insurance
North Carolina Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

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

Dear Commissioner Goodwin:

This letter responds to the request of the North Carolina Department of Insurance ("Department"), 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 North Carolina. The Department has requested an adjustment of that standard to 72 percent, 74 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 and Medicaid Services ("CMS") has reviewed the Department'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

[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_North_Carolina.html unless otherwise footnoted.

carefully examined all of these materials and the current state of the individual market and considered the criteria set forth in the statute and implementing regulation. We note that of the States that have requested an adjustment to the MLR standard, North Carolina's individual market is one of the most concentrated, with the State's largest insurer having 81% of the market. In addition, as described below, recent decisions by issuers to leave the State, while unrelated to MLR requirements, have resulted in reduced consumer options. Based on this information, we conclude that application of the 80 percent MLR standard in North Carolina in 2011 may lead to the destabilization of the individual market. However, the MLR standard sought by the Department exceeds the adjustment necessary to avoid the likelihood of market destabilization between now and 2014. Consequently, we have determined that the MLR standard in North Carolina shall be adjusted to 75 percent in 2011, with the statutory standard of 80 percent to apply beginning 2012. This letter explains the basis of our decision.

I. Summary of the North Carolina Application

CCIIO received the Department's request for an adjustment to the MLR standard on September 6, 2011. In support of its request the Department included aggregate 2010 enrollment, market share, and premiums collected for issuers in North Carolina's individual market; estimates of MLRs, rebates, and profits for these issuers; and pertinent North Carolina statutes and regulations.

On October 18, 2011, CCIIO requested from the Department information needed in order for its application to be deemed complete. This letter included a request for clarification regarding the Department's methodology for estimating MLRs; clarification regarding the North Carolina laws governing life-time loss ratio requirements; 2010 SHCEs[2] for issuers with at least 1,000 life-years[3] in 2010; issuer responses to the Department's survey upon which their application was based; and information regarding issuers' plans to meet an 80 percent MLR standard. The Department responded to these requests on December 5, 2011. On January 9, 2012, CCIIO deemed complete the Department's application.

Additionally, on January 9 CCIIO posted notice on its website that any public comments regarding the Department's application were due by January 20, 2012, as provided in 45 CFR §158.342. CCIIO received three public comments, which we also address in this letter.

II. Overview of the North Carolina Individual Health Insurance Market

According to the Department's application, more than 416,000 North Carolina residents had health insurance coverage through the North Carolina individual health insurance market as of December 31, 2010. The market's dominant issuer accounted for over 81 percent of the market and no other issuer had more than a 4.5 percent market share. In 2010, fourteen issuers

[2] Supplemental Health Care Exhibits ("SHCE"s) are filed by issuers with the National Association of Insurance Commissioners ("NAIC").

[3] 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).)

covered at least 1,000 life-years each and accounted for over 98 percent of the individual market.[4] Those issuers were:

Table 1: North Carolina Individual Market Issuers' 2010 Enrollees and Market Share[5]

Issuer	Enrollees	Market Share
BCBS of NC	337,545	81.05%
Wellpath Select	18,612	4.47%
Golden Rule	12,164	2.92%
Time	9,788	2.35%
Humana	5,348	1.28%
Aetna Life	5,216	1.25%
Celtic	4,322	1.04%
MEGA	3,570	0.86%
Mid-West	3,354	0.81%
World	2,172	0.52%
National Found Life	1,946	0.47%
American Republic	1,927	0.46%
John Alden	1,397	0.34%
American Med Security	1,331	0.32%
Rest of Market	*7,793*	*1.87%*
Total	**416,485**	**100%**

In its September 6 letter, the Department states that "non-group accident and health insurance policies are required to meet the NAIC minimum for future or lifetime loss ratio standards (generally 60 %)." In addition, HMOs are subject to "a minimum average incurred loss ratio of 65 % and a maximum of 80%." The Department notes that in recognition of BCBS NC's non-profit status, the Department and BCBS NC have agreed that BCBS NC would "use allowable loss ratio standards that are higher than" the State-based 80 percent maximum.

North Carolina does not have a guaranteed issue requirement in the individual market. However, according to the Department's application, it does have a State-operated high-risk pool, the North Carolina Health Insurance Pool ("Pool"). The Pool provides guaranteed issue coverage to North Carolina residents with qualifying medical conditions who have been denied coverage in the individual market or have been offered coverage with preexisting condition exclusions as well as to HIPAA-eligible North Carolina residents. These features are discussed in more detail in Part III below.

[4] As discussed below, only nine of these issuers are now offering new policies in the individual market in North Carolina.

[5] Based on enrollment numbers for all issuers included in the Department's September 6 letter.

According to the Department's September 6 letter, under NCGS 58-68-65(c)(2), issuers wishing to discontinue offering health insurance and to terminate existing coverage in the North Carolina individual market must give the Commissioner and its enrollees 180 days notice. Additionally, issuers that withdraw are prohibited from re-entering the individual market for five years.

III. Application of Regulatory Criteria to the North Carolina 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*

The Department's application states that absent an adjustment to the 80 percent MLR standard, "issuers will cease issuing new policies or exit the market." The Department further explains that immediate implementation of the 80 percent standard will negatively impact the issuers' financial viability and provide them an incentive to exit the market. In addition, the Department states that an adjustment would "help maintain and potentially increase competition in North Carolina's individual health insurance market." The Department asserts that immediate application of the MLR standard would make it more difficult for smaller issuers to stay in the market and to compete with the dominant issuer.

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 estimates shown in Table 2 below use data from calendar year 2010 based on information provided by the Department and on the issuer SHCEs included in the application. 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.

The Department's application includes 14 issuers in the North Carolina individual market that each have at least 1,000 life-years and thus are considered to have at least partially credible MLR experience (as defined in 45 CFR §158.230(c))[6]. Therefore, these issuers would 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 Department, these 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[7].

[6] While the Department's September 6 letter includes the experience of 15 issuers, its December 5 letter did not include Connecticut General Life Insurance Company ("CGLIC") because in 2010, CGLIC did not have at least 1,000 life years and would have non-credible experience in that year and therefore, would not have owed rebates.

[7] "Pre-tax net gain" is the net gain or loss plus any Federal, State, or other taxes and fees paid, as reported on the 2010 SHCE. 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 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.

For consistency purposes, and in order to avoid making assumptions regarding the impact of rebate payments on an issuer's tax liability, as well as assumptions regarding the allocation of Federal income taxes and investment income (which are reported by issuers at the national aggregate level across all lines of business, and not at the State and market level), we continue to use pre-tax net gain in our analysis, as we have done in our prior determinations.

Table 2: 2010 Estimated Federal MLRs, Rebates and Pre-Tax Net Gains ($ in millions)[8]

Issuer	MLR After Credibility Adjustment	Estimated Rebate at 80% MLR	Pre-Tax Net Gain Before Rebate	Pre-Tax Net Gain After Rebate at 80% MLR
BCBS of NC	98.4%	$0.0	($120.4)[9]	($120.4)
Wellpath Select	69.9%	$3.7	$4.4[10]	$0.7
Golden Rule	64.7%	$3.1	$6.0	$2.9
Time	67.5%	$2.7	$1.7	($0.9)
Humana	71.4%	$0.8	$1.0	$0.2
Aetna	87.2%	$0.0	$1.1	$1.1
Celtic	75.2%	$0.4	($0.4)	($0.9)
MEGA[11]	80.6%	$0.0	$6.9	$6.9
Mid-West[12]	78.0%	$0.1	$3.6	$3.5
World	86.7%	$0.0	($0.5)	($0.5)
National Foundation Life	60.0%	$0.5	$0.0	($0.5)
American Republic	86.5%	$0.0	($0.9)	($0.9)
John Alden	52.3%	$0.9	$1.6	$0.6
American Medical Security	81.3%	$0.0	$0.8	$0.8
Total		**$12.2**		

As shown in Table 2 above, seven issuers in the North Carolina individual market - BCBS of NC, Aetna, MEGA, World, American Republic, and American Medical Security - met or exceeded the 80 percent standard in 2010. Additionally, at a credibility-adjusted MLR of 78 percent, Mid-West was also close to meeting the 80 percent standard.

However, according to the Department's application, five of these seven issuers - all except the dominant issuer, BCBS of NC, and Aetna - have either withdrawn from the North Carolina individual market or have ceased marketing new policies in 2010. American Republic and World are withdrawing from all States, including those in which neither company would be subject to rebates. MEGA, Mid-West, and American Medical ceased sales of new policies in 2010. Two additional issuers not included in Tables 1 and 2 because their 2010 experience was non-credible - American National and Standard - have also ceased sales of new policies in 2010. As a result, regardless of the reason for these companies' decisions, more than one third of the

[8] Unless otherwise noted, the estimates are based on data from 2010 SHCEs submitted by the Department with its December 5 letter.

[9] While BCBS NC reported a net pre-tax loss of $120.4 million, the Department's September 6 letter indicates that this in part was due to a one-time consumer refund of $155 million.

[10] Although the Department's September 6 letter states that Wellpath "would have sustained pre-tax net losses before rebates in 2010," Wellpath's revised 2010 SHCE included with the Department's December 5 letter indicates that Wellpath would have experienced a positive net pre-tax tax gain after rebates.

[11] MEGA's and Mid-West's MLR and rebate estimates are based on the attachment included with the Department's December 5 letter entitled "Mega and Mid-West revised 2010.xls."

[12] *Id.*

credible and partially-credible issuers in North Carolina's individual market have either ceased marketing or initiated withdrawal. We note that North Carolina already had a highly concentrated individual market, with the dominant issuer accounting for over 81 percent of the market. The loss of over one third of active issuers is likely to further increase concentration of this market, and supports the Department's concern that smaller issuers are finding it difficult to compete with the dominant issuer, and that implementing an 80 percent MLR standard may further hinder competition and reduce consumer choice in this market. Indeed, American National and Standard have indicated to the Department that they would consider re-entering the market if an adjustment to the MLR standard is granted.[13] Additionally, while Aetna already meets the 80 percent standard, Aetna has indicated that an adjustment would "allow for larger investments in marketing and other efforts to sell new business in the state of North Carolina."[14]

The remaining seven issuers in the North Carolina individual market - Wellpath, Golden Rule, Time, Humana, Celtic, National Foundation, and John Alden - 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. 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 seven 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 North Carolina individual market.

Three of these seven issuers - Golden Rule, Humana, and John Alden - would retain a fair portion of their pre-tax net gains even after payment of rebates under an 80 percent standard. Further, Humana and John Alden report that they will price their products to meet an 80 percent MLR standard.[15] Although three other issuers - Time, Celtic, and National Foundation - would appear to show a pre-tax loss after payment of rebates based on 2010 data, these three issuers have also begun pricing their products to reach an 80 percent MLR.[16] Therefore, the potential impact of the statutory MLR standard on these six issuers' profitability does not appear to be reasonably likely to cause them to exit the market.

However, statements made by these and other issuers to the Department suggest that immediate implementation of the 80 percent MLR standard would make it more difficult for smaller issuers to compete with the dominant issuer. Six active issuers - Wellpath, Golden Rule, Time, Humana[17], Aetna, and John Alden - state that an adjustment to the MLR standard would allow more time for changes to their expense structures to be reflected in their MLRs, which

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[13] The Department's September 6 letter, pages 6 and 10.

[14] The Department's September 6 letter, page 11.

[15] See the attachment titled "Responses - Question #4.pdf" included with the Department's December 5 letter.

[16] See the attachment titled "Responses - Question #4.pdf" included with the Department's December 5 letter.

[17] While Humana indicates it does not need additional time to modify its business models, it states "the transition from a lower loss ratio to 80% takes time and [an adjustment] would support the necessary time needed to make expense reductions." See the attachment titled "Responses - Question #6.pdf" included with the Department's December 5 letter.

would allow them to compete with the dominant issuer.[18] Specifically, Humana and National Foundation state that "an adjustment to the MLR requirement would make it less likely that they would cease marketing new policies."[19] Time and John Alden state that "our companies would expect to write more new business if transitional relief is granted."[20] American National and Standard state that they would "seriously consider reentering the market" if North Carolina were granted an adjustment.[21] These statements suggest that absent an adjustment, issuers will likely make decisions that would reduce competition and consumer choice in North Carolina's already highly concentrated market.

In its 2010 Form 10-K, Coventry, Wellpath's parent company, indicated that its subsidiaries will "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."[22] However, Wellpath has subsequently indicated that it will not be able to price to an MLR higher than 70 percent in the North Carolina individual market and remain profitable without reducing its commission rates to uncompetitive levels. Wellpath reports that in 2011, it reduced agent commission rates by up to 50 percent for new plans, and that as a result, its sales of "individual policies issued to new members decreased by 11%."[23] Wellpath expects that its 2012 new sales will be 80 to 90 percent lower than projected if Wellpath must make additional commissions reductions in order to remain profitable under an 80 percent standard.[24] Wellpath states that absent an adjustment, it would have to "evaluate the continued financial viability of our individual product and our ability to distribute our products" in North Carolina.[25] Wellpath further expresses concern regarding its ability to continue offering low-cost products absent a transitional adjustment to the MLR standard. We note that Wellpath is the second largest issuer in the market with a 4.5 percent market share, and, according to the Department, the only HMO issuer in the market.[26] If Wellpath were to withdraw or cease offering products, this could dramatically reduce consumer choice and competition in an already highly concentrated market.

In sum, because North Carolina has an unusually concentrated market, exacerbated by the recent loss of a third of the credible or partially-credible issuers, a decision by any of the remaining issuers, particularly Wellpath, to withdraw or curtail marketing would have a significant negative impact on consumer choice and competition in that market. Additionally, immediate application of the MLR standard would make it more difficult for smaller issuers to compete with the dominant issuer and would likely cause issuers to make business decisions that would result in further drastic reductions to consumer choice.

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

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[18] See the attachment titled "Responses - Question #6.pdf" included with the Department's December 5 letter.

[19] The Department's September 6 letter, page 6.

[20] The Department's September 6 letter, page 10.

[21] The Department's September 6 letter, pages 6 and 10.

[22] Coventry Health Care, Inc., Annual Report (Form 10-K), at 12 (Feb. 25, 2011).

[23] See the attachment titled "Responses - Question #5.pdf" included with the Department's December 5 letter.

[24] The Department's September 6 letter, page 7.

[25] See the attachment titled "Responses - Question #4.pdf" included with the Department's December 5 letter.

[26] The Department's September 6 letter, page 8.

As stated previously, the Department expresses concern that the impact of rebate payments on issuers' profitability may lead some to withdraw. As discussed in Part A above, two of the 14 credible and partially-credible issuers - World and American Republic - have already initiated withdrawal from the market. Five other issuers ceased marketing new policies in 2010. The remaining issuers appear unlikely to withdraw as they either already meet the 80 percent standard, are pricing to 80 percent, or are profitable after rebates. However, statements by Wellpath, Humana, and National Foundation suggest that these issuers would consider ceasing to market plans in the individual market absent an adjustment which would lead to a further reduction of consumer choice.

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

The Department notes the role agents play in "assisting and educating consumers" and fears that immediate implementation of the 80 percent MLR standard will "hamper agent involvement in the individual market to the harm of North Carolina citizens."

The Department's application indicates that seven issuers - Wellpath, Golden Rule, Time, Aetna, Celtic, National Foundation, and John Alden - report adjustments to their commission schedules in 2011. The Department expresses its concern that reductions in agent commissions will limit consumer access to agents. In support, Wellpath reports that a 48 percent reduction in commissions resulted in an 11 percent reduction in projected new sales in 2011 and that "these commission changes have created a significant disruption to the market and to consumer access to our individual product."[27] However in its public comment, Consumers' Union states that "[s]ales that may be the result of higher-than-market commissions may not be in the best interest of consumers. By creating a more level playing field with respect to broker commissions, the MLR rule may prevent steering and foster competition based on value, not on how much brokers are paid."[28]

In sum, notwithstanding the reductions in commissions that have already occurred, or may occur in the future, the Department has not provided evidence that would lead us to conclude, according to the criterion established by 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 the remaining credible and partially credible issuers to remain in the North Carolina individual market. Additionally, according to the Department's application, North Carolina has a State-operated high-risk pool, the North Carolina Health Insurance Risk Pool ("Pool"). The Pool provides guaranteed issue coverage to North Carolina residents with qualifying medical conditions; to those who have been denied coverage in the individual market; to those who have been offered coverage with preexisting condition exclusions; and to HIPAA-eligible North Carolina residents. The Pool has a six-month pre-existing condition exclusion, which is waived for HIPAA-eligible residents.

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[27] See the attachment titled "Responses - Question #5.pdf" included with the Department's December 5 letter.
[28] Consumers Union's North Carolina public comment, pages 5-6.

We conclude that the remaining issuers in North Carolina's individual market and the Pool would be able to offer comparable products to the enrollees of any withdrawing issuer.

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

The Department did not address the impact on premiums charged, or benefits or cost-sharing provided, to consumers by issuers remaining the North Carolina individual market if application of the 80 percent MLR standard causes one or more issuers to withdraw from the market. Since the Department did not raise the issue, we assume that this is not of concern to the Department.

F. *Other relevant information submitted by the State*

North Carolina's market is characterized by extreme concentration. As discussed in Part A above, BCBS NC is the dominant issuer with an 81 percent market share. No other issuer had a market share above 4.5 percent in 2010. Only one credible and eight partially-credible issuers were writing new business by the end of 2011. Two issuers - American Republic and World - withdrew from the market in 2011 and five issuers - MEGA, Mid-West, American Medical, American National, and Standard - ceased marketing new policies in 2010.[29] Although the decisions by these seven issuers do not appear to have been caused by the MLR standard, their decisions have reduced consumer options and increased market concentration in North Carolina's already highly-concentrated individual market. As discussed in Part A above, the Department asserts that the immediate application of the MLR standard would make it more difficult for the remaining smaller issuers to compete with the dominant issuer.

IV. Summary of Public Comment

During the public comment period, CCIIO received three comments that oppose the Department's application. Consumers Union ("CU") asserts that: (1) the Department has not shown "that a destabilizing number of issuers are reasonably likely to exit" the individual market; (2) "smaller carriers that have ceased marketing policies did not do so as a direct result of the MLR rule"; and (3) the Department has not demonstrated that reduced agent commissions would limit consumers' access to agents. Action North Carolina echoed many of CU's concerns. The National Patient Advocate Foundation also suggested that CCIIO deny the Department's request.

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

[29] The Department's application indicates that in 2010, American National Life Insurance Company of Texas ("American National") and Standard Life & Accident Insurance Company ("Standard") were non-credible and would not owe rebates for that year. Therefore these issuers were not included in the Table 1 or Table 2 above.

"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.[30]

As noted above, North Carolina has an unusually concentrated market, exacerbated by the recent loss of a third of the credible or partially-credible issuers. In 2010, seven issuers (five of them partially credible issuers) withdrew from or ceased marketing products to the North Carolina individual health insurance market. A decision by any of the remaining issuers, particularly Wellpath, to withdraw or curtail marketing would have a significant negative impact on consumer choice and competition. We recognize in these circumstances that application of an 80 percent standard in 2011 will likely make it more difficult for the eight partially-credible smaller issuers still writing new business in North Carolina's individual market to compete with the dominant issuer and maintain their market share. Statements by three of these issuers suggest that absent an adjustment to the MLR standard, they would consider ceasing to market their products in the individual market.

While we agree with the Department that immediate implementation of an 80 percent MLR standard in 2011 may risk destabilizing the North Carolina individual market, we do not agree that an adjustment to 72 percent in 2011, 74 percent in 2012, and 76 percent in 2013, as requested by the Department, is warranted. In our view, adjusting the MLR to such a low number in 2011 and delaying until 2014 full implementation of the 80 percent statutory standard overcompensates for the general risk of destabilization asserted by the Department.

Based on the information provided by the Department, including the 2010 SHCE data, we believe that establishing an MLR standard of 75 percent for 2011 and 80 percent for 2012 and 2013 reasonably addresses the risk destabilization set out above. An adjustment to the MLR standard in 2011 mitigates the risk of market destabilization while preserving for consumers the intended benefits of section 2718. The approach, which creates a path for compliance with the 80 percent standard, balances the interests of consumers, the State, and the issuers in accordance with the principals underlying section 2718.

Accordingly, pursuant to section 2718(b)(1)(A)(ii) of the PHS Act (42 U.S.C. §300gg-18(b)(1)(A)(ii)), the MLR standard applicable to the North Carolina individual health insurance market is adjusted to 75 percent for the MLR reporting year 2011. The 80 percent statutory standard will apply in MLR reporting year 2012 and thereafter.

Pursuant to 45 CFR 158.346, the Department 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.

[30] 45 CFR §158.301.

Please contact me should you have any questions.

Sincerely,

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