



200 Independence Avenue SW
Washington, DC 20201

January 27, 2012

The Honorable Eleanor Kitzman
Commissioner of Insurance
Texas Department of Insurance
Mail Code 113-1C
333 Guadalupe
P.O. Box 149104
Austin TX, 78714-9104

Re: State of Texas' Request for Adjustment to Medical Loss Ratio Standard

Dear Commissioner Kitzman:

This letter responds to the request of the Texas 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 Texas. The Department has requested an adjustment of that standard to 71 percent, 74 percent, and 77 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 carefully examined all of these materials and considered the criteria set forth in the statute and implementing regulation. Based on this, we have determined that the evidence presented does not establish a reasonable likelihood that the application of an 80 percent MLR standard will destabilize Texas' individual market. Consequently, we have determined not to adjust the MLR standard in Texas' individual market and, thereby, ensure that consumers receive the benefit of this provision of the Affordable Care Act. This letter explains the basis of our decision.

I. Summary of the Texas Application

CCIIO received the Department's request for an adjustment to the MLR standard on July 29, 2011. Among the information the Department included in support of its request were aggregate 2010 enrollment, market share, and premiums collected for issuers in Texas' individual market; estimates of MLRs, rebates, and profits for these issuers; and pertinent Texas statutes and regulations.

On September 7, 2011, CCIIO requested from the Department information needed in order for its application to be deemed complete and for clarification regarding matters raised by the Department's application. This letter included a request for information regarding the Department's methodology for estimating MLRs; 2010 SHCEs² for issuers with at least 1,000 life-years³ in 2010; the identity of the issuers referred to in the Department's application; estimated rebates under the Department's proposed MLR standard for the 2012 and 2013 reporting years; information regarding Texas' market withdrawal requirements; and information regarding the Texas Health Insurance Pool. The Department responded to these requests on November 14, 2011. CCIIO deemed complete the Department's application on November 28, 2011, and also requested information regarding issuers' plans to meet an 80 percent MLR standard; withdrawal plans of specific issuers; and clarification regarding rebate estimates for specific issuers. On December 12, 2011, the Department responded to the November 28, 2011 request and provided revised estimates.

Additionally, on November 28 CCIIO posted notice on its website that any public comments regarding Department's application were due by December 08, 2011, as provided in 45 CFR §158.342. CCIIO received twelve public comments, which we also address in this letter. These public comments include two letters from Texas State legislators, one of which was signed by 15 Representatives. In addition, on December 21, 2011, CCIIO received a letter from eight of Texas' Representatives to the U.S. House of Representatives.

¹ All of the documents and information described in this letter are posted on CCIIO's website at http://ccio.cms.gov/programs/marketreforms/mlr/mlr_Texas.html unless otherwise footnoted.

² Supplemental Health Care Exhibits (SHCEs) 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).)

II. Overview of the Texas Individual Health Insurance Market

According to the Department's application, more than 746,000 Texas residents obtained health insurance coverage through the Texas individual health insurance market as of December 31, 2010. Thirty-four issuers cover at least 1,000 life-years each and account for 99.8 percent of the individual market. Those issuers are:

Table 1: Texas Individual Market Issuers' 2010 Enrollees and Market Share⁴

Issuer ID ⁵	Issuer ⁶	Enrollees	Market Share ⁷
A	HCSC (BCBS-TX)	407,187	54.6%
B	Aetna	60,872	8.2%
C	Golden Rule	54,745	7.3%
D	Humana	43,506	5.8%
E	Time	39,215	5.3%
F	CGLIC	21,130	2.8%
G	United Healthcare	15,141	2.0%
H	Scott & White	14,048	1.9%
I	MEGA	10,533	1.4%
	New York Life	8,596	1.2%
J	World	7,900	1.1%
K	Southwest Service Life	7,741	1.0%
L	Anonymous Issuer L	6,915	0.9%
M	Freedom	5,133	0.7%
N	Standard	3,528	0.5%
O	John Alden	3,380	0.5%
P	Mid-West	3,302	0.4%
	Am Medical Security	3,291	0.4%
Q	Anonymous Issuer Q	3,217	0.4%
R	Celtic	3,037	0.4%
S	Citizens Nat'l	2,845	0.4%
T	Southern Farm	2,711	0.4%
U	American Republic	2,451	0.3%

⁴ Based on data provided with the Department's December 12 letter.

⁵ The alphabetic identifier was assigned by the Department to 24 of the 34 issuers included in the Department's initial application.

⁶ Although the Department has provided the names of only 16 issuers, 15 others can be identified from other information submitted by the Department, as well as by matching their data on the 2010 SHCEs provided with the Department's November 14 and December 12 letters. Three remaining issuers cannot be identified in this way due to either the Department not providing an SHCE for that issuer or because their data cannot be matched to available SHCE data. These three issuers are identified throughout this letter as Anonymous Issuer L, Anonymous Issuer Q, and Anonymous Issuer V.

⁷ Based on enrollment numbers for all issuers included in the Department's July 28 letter and data for additional issuers provided in the Department's December 12 letter.

	New Era	1,857	0.2%
	National Health	1,758	0.2%
V	Anonymous Issuer V	1,676	0.2%
Z	Chesapeake	1,065	0.1%
Y	State Farm	1,120	0.2%
W	Unicare	1,433	0.2%
X	Citizens of America	1,120	0.2%
	Jefferson	1,398	0.2%
	American Public	1,071	0.1%
	LifeSecure	1,055	0.1%
	Metropolitan	1,011	0.1%
	<i>Rest of Market</i>	<i>1,435</i>	<i>0.2%</i>
	TOTAL	746,423	100.0%

Although the Department’s application does not refer to any State-mandated MLR standard for the Texas individual market, the Department notes that “in the recent past, major medical policies were usually priced to achieve a lifetime loss ratio of 55%” and that “MLRs have ranged from 50% to 100% with the average falling between 71% and 73%.”

Texas 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 Texas Health Insurance Pool (“Pool”). The Pool provides guaranteed issue coverage to Texas 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 Texas residents. These features are discussed in more detail in Part III below.

According to the Department’s initial application and its November 14 letter, issuers wishing to withdraw either fully or substantially (defined as reducing premium volume by 75 percent or more) from the Texas individual health insurance market must submit a withdrawal plan to the Department for approval.⁸ As indicated in the Department’s initial application, Texas law requires that issuers must affirm that a notice of withdrawal will be disseminated to policyholders within 30 days of the date of approval of the withdrawal plan or within some other time period as specified and approved by the Commissioner.⁹ The Department advises that typically, “at least 180 days would be required to fully effectuate withdrawal.”¹⁰ Texas law mandates that issuers who fail to renew all policies in the individual market must provide enrollees 180 days notice.¹¹ As indicated in the Department’s initial application, Texas law grants the Commissioner the authority to modify, restrict, or limit a withdrawal plan “as necessary if the Commissioner finds that a line of insurance subject to the withdrawal plan is not offered in a quantity or manner to adequately cover the risks of Texans or to adequately protect

⁸ 28 TAC §7.1804(a) and 28 TIC §827.003.

⁹ 28 TAC §7.1805.

¹⁰ The Department’s November 14 letter, page 14.

¹¹ 28 TAC §3.3038(e).

the residents and policyholders of Texas.”¹² As we read Texas law, an issuer “that elects not to renew all individual ... coverage in Texas” may not issue such coverage for five years.¹³ Additionally, Texas law prohibits an issuer that withdraws from writing all lines of insurance in Texas from re-entering the market for a period of five years.¹⁴ As referenced in the Department’s initial application and its November 14 letter, Texas law allows an issuer that exits Texas’ individual health insurance to reenter only after it receives the written approval of the Commissioner.¹⁵ As stated in the Department’s November 14 letter, in “determining whether to permit a carrier to reenter..., the Commissioner may review the factual basis for the withdrawal ... to assure that the carrier’s reentry does not result in the carrier’s attainment of an objective ... that otherwise would violate ... provisions addressing unfair methods of competition or deceptive acts.”

III. Application of Regulatory Criteria to the Texas 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

¹² The Department’s July 28, 2011 application, pages 14-15, referencing 28 TIC §§827.003-005 and 28 TAC §7.1805.

¹³ 28 TAC §3.3038(f).

¹⁴ 28 TIC §827.006.

¹⁵ 28 TAC § 7.1808.

The Department's application asserts that absent an adjustment to the 80 percent MLR standard, "a number of carriers would exit the market" and this would lead to a "material difference in the availability of health insurance options." The Department is concerned that MLR rebates would negatively impact issuer profitability and incentivize issuers to exit the market. The Department explains that "with the high uninsured rate in Texas and the expected major expansion of the individual market in 2014 ... it is especially critical that Texas retain its current carriers and allow for new entrants in 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 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 34 issuers in the Texas individual market that each has 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)). 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.

Table 2: 2010 Estimated Federal MLRs, Rebates and Pre-Tax Net Gains
(\$ in millions)¹⁶

Issuer ID	Issuer	MLR After Credibility Adjustment¹⁷	Estimated Rebate	Pre-Tax Net Gain Before Rebate¹⁸	Pre-Tax Net Gain After Rebate
A	HCSC (BCBS-TX)	69.9%	\$89.89	\$109.28	\$19.38
B	Aetna	76.9%	\$4.14	\$24.23	\$20.09
C	Golden Rule	62.4%	\$19.26	\$31.18	\$11.92
D	Humana	60.5%	\$17.07	\$15.02	(\$2.05)
E	Time	73.7%	\$7.85	(\$5.26)	(\$13.11)
F	CGLIC	63.8%	\$5.47	\$1.29	(\$4.18)
G	United Healthcare	87.3%	\$0.00	\$3.44	\$3.44
H	Scott & White	91.2%	\$0.00	(\$0.87)	(\$0.87)
I	MEGA	71.4%	\$2.68	\$18.37	\$15.68
	New York Life	97.9%	\$0.00	(\$3.33)	(\$3.33)
J	World	69.4%	\$2.49	(\$0.49)	(\$2.98)
K	Southwest Service Life	55.8%	\$2.49	(\$2.99)	(\$5.48)
L	Anonymous Issuer L	87.9%	\$0.00	\$1.92	\$1.92
M	Freedom	77.2%	\$0.23	(\$0.04)	(\$0.28)
N	Standard	52.5%	\$1.35	\$0.32	(\$1.03)
O	John Alden	64.8%	\$1.69	\$2.91	\$1.22
P	Mid-West	78.4%	\$0.13	\$3.77	\$3.65
	Am Medical Security	77.7%	\$0.28	\$2.61	\$2.33
Q	Anonymous Issuer Q	69.5%	\$0.93	(\$0.03)	(\$0.95)
R	Celtic	81.7%	\$0.00	(\$0.32)	(\$0.32)
S	Citizens Nat'l	49.9%	\$0.62	\$0.27	(\$0.35)
T	Southern Farm	76.6%	\$0.56	\$0.61	\$0.05
U	American Republic	77.4%	\$0.19	(\$1.73)	(\$1.92)
	New Era	78.0%	\$0.09	\$0.92	\$0.82

¹⁶ Unless otherwise noted, the estimates are based on data from 2010 SHCEs submitted by the Department with its November 14 letter.

¹⁷ Based on issuer estimates provided to the Department and contained in its December 12 letter.

¹⁸ "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.]

	National Health	100.5%	\$0.00	(\$2.97)	(\$2.97)
V	Anonymous Issuer V	88.5%	\$0.00	\$0.59	\$0.59
Z	Chesapeake	65.7%	\$0.42	\$0.27	(\$0.15)
Y	State Farm	125.2%	\$0.00	(\$1.15)	(\$1.15)
W	Unicare	72.8%	\$0.92	\$1.37	\$0.45
X	Citizens of America	84.5%	\$0.00	(\$0.02)	(\$0.02)
	Jefferson	56.3%	\$0.00	\$0.41	\$0.41
	American Public	139.0%	\$0.00	(\$0.15)	(\$0.15)
	LifeSecure	78.2%	\$0.00	\$0.00	(\$0.00)
	Metropolitan	169.3%	\$0.00	(\$1.18)	(\$1.18)
	Total		\$158.77		

Of these 34 issuers, four have withdrawn or initiated withdrawal from the individual market. We have reviewed the circumstances of the withdrawals and do not find them to be relevant to the Department’s application. According to the Department’s issuer profiles, Unicare Life & Health Insurance Company (“Unicare”) was granted approval to withdraw from writing “small employer, large employer, association, and individual insurance” on October 27, 2009, before enactment of the Affordable Care Act.¹⁹ In its application, the Department indicates that National Health Insurance Company (“National Health”) provided a withdrawal notice on June 10, 2010. Based on the Department’s application, National Health would not have owed a rebate as it is estimated to have a 100.5 percent MLR, and thus the 80 percent MLR standard is unlikely to have been the reason for its withdrawal. American Enterprise Group, the parent company for World Insurance Company (“World”) and American Republic Insurance Company (“American Republic”), provided withdrawal notice on October 27, 2011. We note that American Enterprise Group has announced the withdrawal of World and American Republic in all States, including those in which neither company would be subject to rebates. These facts suggest that these issuers’ decisions to withdraw were not related to the MLR requirements.

Based on the Department’s application, ten of the remaining 30 issuers - United, Scott & White, New York Life, Celtic, State Farm, Citizens of America, American Public, Metropolitan, Anonymous Issuer L, and Anonymous Issuer V- are estimated to meet the 80 percent MLR standard and would not owe rebates. Additionally, at a credibility-adjusted MLR of 77.2 percent, Freedom is also very close to meeting the 80 percent standard. Therefore, we do not find that it is likely that any of these eleven issuers would exit the market as a result of the 80 percent MLR standard. These eleven issuers account for 7.9 percent of Texas’ individual market.

According to the Department’s application, an additional eight issuers informed the Department that they would not exit the market - HCSC, Aetna, Golden Rule, Humana, Time, CGLIC, John Alden, and Southern Farm. These issuers have a combined market share of 84.8

¹⁹ See page 4 of Department’s company profile at https://apps.tdi.state.tx.us/pcci/pcci_show_profile.jsp?tdiNum=93704

percent. Given their intent to remain in the individual market, it is unlikely they would withdraw as a result of the 80 percent MLR standard.

Thus, issuers with a combined market share of 92.7 percent either are estimated to meet the 80 percent MLR standard or have told the Department that they will not exit the market.

Information in the Department's December 12 and November 14 letters suggests that the MLR requirements would have little, if any, bearing on the decision by three - Jefferson Life, Chesapeake, and LifeSecure - of the remaining 11 issuers whether to remain in the individual market. We note that although Jefferson Life Insurance Company was included in the spreadsheet entitled "Attachment 1 - Section 158.321(d)(2) Second Revision_3.xlsx" submitted with the Department's December 12 letter, the issuer's 2010 SHCE indicates that it had only 728 life-years and would therefore be non-credible. Since Jefferson Life would not be subject to rebates in 2011, it is unlikely that the MLR requirements would cause it to exit the market. In its November 14 letter, the Department indicates that the life-years covered by Chesapeake are declining rapidly and it expects to become non-credible in 2011. This means that Chesapeake would not owe any rebates. In that same letter, the Department indicates that LifeSecure advised the Department that it does not offer coverage in the individual market. This suggests that it too would be expected to be non-credible and not owe rebates as its life-years (which were barely credible in 2010) decline in the coming years. Since neither issuer is expected to remain credible, neither would be affected by the MLR requirements.

The remaining eight issuers - MEGA, Southwest Service Life, Standard, Mid-West, American Medical Security, Anonymous Issuer Q, Citizens National, New Era- 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 ACA 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 four 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 Texas individual market.

According to the Department's December 12 letter, three of the remaining eight issuers - MEGA, Mid-West, and Standard - intend to price their products to achieve an 80 percent MLR. While Standard previously indicated to the Department that it intended to exit the market, the Department's December 12 letter indicates that Standard subsequently confirmed its plans to adjust its pricing model to meet the 80 percent MLR standard. It is reasonable to assume that issuers who are pricing their products to meet the 80 percent MLR standard will not be withdrawing from the market.

Two other issuers - New Era and American Medical Security - would retain significant profits after rebates based on their 2010 experience. Their post-rebate underwriting margins would be 17.2 and 17.5 percent of premiums respectively and their 2010 MLRs were only slightly below 80 percent. Therefore, the potential impact of rebates on these issuers'

profitability does not appear to be likely to create a financial incentive for them to exit the market.

The remaining three issuers representing only 1.8 percent of Texas' individual market - Southwest Service Life, Anonymous Issuer Q, and Citizens National - had 2010 MLRs below the 80 percent standard and, according to their 2010 SHCEs and estimates provided by the Department, Southwest Service Life and Anonymous Issuer Q experienced a pre-tax underwriting loss even before payment of rebates. Regardless of whether the MLR standard is 80 percent or the standard requested by the Department, they must adjust their business models and pricing structures if they are to become profitable. We note that their MLRs are so low that Southwest Service Life, Anonymous Issuer Q, and Citizens National would owe rebates even under the Department's proposal. Therefore, it is unlikely that our decision to deny the Department's request would affect these issuers' decisions to remain in the market. We further note that the Texas individual market is one of the most competitive in the nation based on the number of participating credible and partially credible issuers.

We note that Texas law provides significant incentive for issuers to remain in the market. An issuer that exits Texas' individual health insurance market may not reenter until it receives the written approval of the Commissioner, and an issuer that withdraws from writing all lines of insurance in Texas may not reenter the market for a period of five years. An issuer that fails to renew all coverage in the individual market cannot offer that coverage for five years. The Department notes in its application that Texas has a high number of uninsured individuals. The barrier to market reentry is a strong incentive for issuers to remain in the market, especially given the expected expansion of the individual market in 2014 when many of those currently uninsured will obtain coverage.

In sum, information provided by the Department shows issuers in the Texas individual market either already meet the 80 percent MLR standard, expect to meet the 80 percent standard in the near future, have indicated they will not exit the market, or should be able to adjust their business models to meet the MLR standard, suggesting that these issuers are unlikely to withdraw from the market.

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

As stated previously, the Department expressed concern about the impact of rebate payments on issuers' profitability and their business plans. As discussed in Part A above, four of the 34 issuers that the Department reports as partially credible have exited the market. Eleven other issuers already meet the 80 percent standard or are very close to meeting the standard. In addition, eight issuers indicated that they would not exit the market. Three other issuers are either non-credible or are expected to become non-credible. Of the eight remaining issuers, three with low MLRs are adjusting their business models to meet the 80 percent MLR standard. Additionally, two other issuers would remain profitable after rebates. The three remaining issuers - Southwest Service Life, Anonymous Issuer Q, and Citizens National - had MLRs below the 80 percent standard and would have owed rebates even under the Department's proposal. If Southwest Service Life, Anonymous Issuer Q, and Citizens National all were to exit the Texas individual market, this would affect 13,803 out of 746,423 enrollees or 1.8 percent of the market.

C. Consumers' ability to access agents and brokers

The Department indicates that issuers “will feel pressure to significantly reduce commissions for agents and brokers in order to meet the [80 percent] MLR standard” and notes that some issuers “have already begun cutting commissions.” The Department asserts that limiting access to agents and brokers will “prevent many Texans from receiving meaningful information.” Of particular concern to the Department are Texas’ rural and elderly populations that the Department advises rely on agents for information concerning coverage options.

Issuers representing approximately 80 percent of the market - HCSC, Aetna, Golden Rule, Humana, CGLIC, John Alden, Anonymous Issuer V, and State Farm - have indicated that they would not exit the market and are pricing their products to meet the 80 percent standard. They each paid commissions that averaged between 2 percent and 14 percent of premium toward agent and broker commissions. All but one issuer paid more than the market average of 11 percent. It does not seem that these issuers would need to reduce their commissions going forward as they already meet the 80 percent MLR standard or are pricing to it.

The Department expresses concern that inadequate compensation may cause producers to reduce services and limit their availability to Texas’ consumers. As discussed in Part A above, three issuers that would owe rebates even under the Department’s proposal will likely adjust their business models to be more competitive and increase their profitability: Southwest Service Life; Anonymous Issuer Q; and Citizens National. As a percent of premium, these issuers’ agent and broker commissions represented 25 percent, 16 percent, and 12 percent of premium. The weighted average for the Texas individual market was 11 percent of premium. However, the Department does not provide any information that would demonstrate that commission rate reductions would jeopardize consumers’ ability to access agents and brokers.

In sum, the Department has not provided evidence that would allow 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 Department’s application, Texas has a State-operated high-risk pool, the Texas Health Insurance Pool (“Pool”). The Pool provides guaranteed issue coverage to Texas 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 Texas residents. The Pool has a 12-month pre-existing condition exclusion, which is waived for Texas residents who have 12 months of creditable coverage. According to the Department’s November 14 letter, the Pool has capacity to accept additional enrollees. Monthly premium rates are capped at two times the standard market rate and the Pool offers plans with deductibles ranging from \$1,000 to \$7,500.

We conclude that the remaining issuers in Texas’ robust 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

As discussed in Part A above, we expect that issuers accounting for almost all of the individual market in Texas will remain in the market. However, even assuming Southwest Service Life, Anonymous Issuer Q, and Citizens National were to withdraw, the remaining issuers in the Texas individual market appear able to offer comparable products to their enrollees. The Department's November 14, letter notes that while some carriers offer coverage for unique benefits, "health insurance products in the Texas individual market are generally comparable in terms of product design." Further, "individual health insurance products must provide mandated benefits and meet mandated coverage provisions."

F. Other relevant information submitted by the State

In its initial application, the Department expresses concern about increased market concentration in 11 predefined regions if every issuer that expressed an uncertain intention to exit the market actually withdrew. The Department identifies the market share for the top two issuers in each region. The Department's conclusion of increased market concentration is based on the assumption that all 11 issuers that indicated an "uncertain" or "certain" intention to exit market would actually exit and that no other issuers would serve those regions. In each region the top issuer by market share is HCSC. The second largest issuer is identified as either Aetna, Golden Rule, Humana, Time, or Anonymous Issuer L. As discussed in Part A above, we do not conclude that it is likely that any of these issuers would exit the market.

In its application, the Department expresses concern that absent an adjustment, the 80 percent MLR standard will serve as a barrier to market entry. The MLR regulation's provision regarding newer experience²⁰ 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. Additionally, a new entrant would not become subject the MLR regulation's rebate requirement until it accumulates at least 1,000 life-years in the Texas individual market. In short, it is not clear that a denial of the Department's request would discourage new entrants from entering the market.

IV. Summary of Public Comment

During the public comment period, CCIIO received two comments in support of the Department's application. The Texas Association of Health Underwriters expresses concern that the the 80 percent MLR standard would adversely affect consumer access to the services agents provide. The Independent Insurance Agents of Texas ("IIAT") suggests a general six-year adjustment to the MLR standard. In support of their suggestion, the IIAT cites unspecified reduced agent commissions and the exit of small issuers from the individual market and the general harm to consumers. In addition, the IIAT asserts that the statutory MLR formula "fails to take into account the role that agents play." We note that the governing regulation, Subpart C of 45 CFR Part 158, does not grant CCIIO the authority to adjust the MLR formula as part of a State MLR adjustment consideration process.

²⁰ 45 CFR §158.121

CCIIO also received ten public comments urging the denial of Texas' application. Sixteen Texas State Representatives submitted two identical letters requesting denial of the Department's application, suggesting that "consumers will pay a steep price" and that there will be "an average loss of \$350" for each Texan if an adjustment to the MLR standard is granted. The Representatives also express doubt that many issuers will actually exit due to a five year participation ban for issuers that fail to renew all of their individual market policies. Referring to the Department's application, they suggest that the market will not destabilize because issuers representing over 90 percent of the market do not intend to withdraw. A petition signed by 2,775 individuals voices identical concerns. Three additional Texas residents each emailed CCIIO recommending the denial of 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) the Department has not "demonstrated that consumers' access to brokers and agents would be limited;" (3) State law "protects consumers from market exit and provides incentives for carriers to remain;" and (4) "Texas's largest carrier must be held accountable through immediate enforcement." CU cites NAIC reports, stating that "[i]n Texas, of eight individual market carriers surveyed, only one reduced commissions on individual market business from 2010 to 2011, from 15 percent to 12 percent." A letter submitted by 11 public interest groups²¹ echoed many concerns raised by the State Representatives and CU.

On December 21, 2011, eight Texas Congressional Representatives urged CCIIO to deny the application for essentially the same reasons articulated by the State Representatives.

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 "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.²²

After applying the standards and criteria set out in section 2718 and 45 CFR Part 158 to the information submitted by the Department, we conclude that the evidence presented does not establish a reasonable likelihood that the implementation of an 80 percent MLR standard may destabilize the Texas 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 Texas individual market addressed in that analysis.

As discussed in Part III A, Texas laws provide little incentive for issuers to exit before the individual market reforms take hold in 2014. Of the 30 issuers included in the Department's

²¹ Alamo Breast Cancer Foundation; Center for Public Policy Priorities; Children's Defense Fund-Texas; Gateway to Care; La Fe Policy Research and Education Center; Legacy Community Health Services; Methodist Healthcare Ministries; National Association of Social Workers-Texas Chapter; Texans Care for Children; Texas Impact; and Texas Public Interest Research Group.

²² 45 CFR §158.301.

application that remain in the market, eleven meet the 80 percent MLR standard or are very close to meeting the 80 percent MLR standard. Eight others indicated their intention to remain in the market. These issuers had a combined market share in 2010 of 92.7 percent. Three other issuers are either non-credible or expect to become non-credible in future years and would likely not be affected by the MLR standard. Based on the data submitted, the eight remaining issuers would have MLRs below the 80 percent standard. Of those eight, three issuers have changed their pricing models to reach an 80 percent standard. The data indicates that two other issuers would retain significant profitability even after paying rebates. Three other issuers had MLRs below the 80 percent standard. These three issuers would owe rebates even under the Department's proposal and therefore are incentivized to adjust their business models to be more competitive. Thus it is unlikely that any of these issuers would withdraw from the market as a result of the implementation of the 80 percent MLR standard. As discussed in Part III D, if any of these issuers were to exit, the remaining issuers in the market and the Texas Health Insurance Pool would provide alternative options, including for those with pre-existing conditions. As stated in the Department's application, "Texas has a diverse market with sufficient competition" and provides other options for Texas' consumers.

As discussed in Part III C above, the Department does not specifically demonstrate that consumer access to agents and brokers will be adversely impacted by the 80 percent MLR standard, or provide evidence that would lead us to such conclusion.

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

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.

Please contact me should you have any questions.

Sincerely,

/Signed, SBL, January 27, 2012/

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