



January 19, 2012

The Honorable Kevin M. McCarty
Commissioner
Florida Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399-0326

Re: Florida's Request for Reconsideration Regarding Its Request for Adjustment to Medical Loss Ratio Standard

Dear Commissioner McCarty:

This letter responds to the Florida Office of Insurance Regulation ("Office")'s December 30, 2011 request for a reconsideration of the December 15, 2011 determination by the Center for Consumer Information and Insurance Oversight ("CCIIO") not to adjust the 80 percent MLR standard applicable to the Florida individual health insurance market. We have carefully considered the points raised in your request. However, as discussed below, we have found no basis to modify our previous determination.

In its December 30 letter, the Office gives three reasons why it disagrees with some of the conclusions we reached in our December 15 determination. First, the Office contests CCIIO's conclusion that the withdrawal of six issuers with a combined market share of less than 1% of the Florida individual market does not indicate a reasonable likelihood of market destabilization. Second, the Office asserts that the 80 percent MLR standard creates a barrier to companies entering the market. Third, it states that CCIIO did not carefully consider that agents are a critical part of Florida's consumer protection framework. We address each of those arguments here.

As to the first issue, as discussed in our December 15 letter, based on the information presented in the Office's application, we could not reasonably conclude that the six issuers that have withdrawn from the Florida individual market did so as a result of the 80 percent MLR standard. Four of the six issuers had fewer than 300 enrollees each in the Florida individual market and thus would not be subject to the MLR rebate requirement. World had a 2010 MLR above the 80 percent standard and thus also would have been unlikely to be affected by the MLR rebate requirement. World and American Republic have withdrawn from the individual market in all States, even though in most States neither company would be subject to rebates. In addition, the Office's application for an adjustment indicates that more than 100 issuers provide coverage in its individual market. Thus, even if these six carriers had not already exited but

planned to do so, the market would not be destabilized due to the high degree of competition, as discussed in our December 15 letter. In sum, evidence presented in the Office's application suggests that these six issuers' withdrawals were not caused by the 80 percent MLR standard, and do not indicate that the Florida individual market has already been, or is likely to become destabilized as a result of the 80 percent MLR standard.

Second, the Office reiterates its argument that implementation of the 80 percent MLR standard "creates a barrier to entry." The Office asserts that since the passage of the Affordable Care Act, no new issuers have entered the Florida individual market. As discussed in our December 15 letter, there is no evidence that issuers would be unwilling to enter the market due to inability to meet the 80 percent MLR standard. Specifically, all five small issuers that have entered the Florida individual market since 2008 had 2010 MLRs ranging from 81 percent to 116 percent. As further discussed in our December 15 letter, new entrants would not become subject to rebate requirements until they accumulate at least 1,000 life-years in the market, and would likely be able to benefit from the deferred reporting of newer experience allowed by 45 CFR §158.121. Therefore, we cannot conclude that the fact that no new issuers have recently entered the Florida individual market has been caused by the MLR provisions.

Third, the Office expresses concern that our December 15 determination did not carefully consider the fact that "agents are a critical part of [Florida's] consumer protection framework." On January 6, 2012, the Office provided 21 emails and letters from agents supporting the Office's request for reconsideration. These comments generally describe the effect reductions in commission rates by Golden Rule, Aetna, CIGNA,¹ and Humana have had on agents' income and business, asserting that these reductions have caused agents to stop selling individual products and/or reduce staff. We further note that many commenters linked a reduction to their income to reduced commission rates in the group, rather than individual market, and two commenters have related that some agents' contracts were terminated by issuers due to agents failing to meet sales targets. However, the regulatory criterion is "whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers." Although some commenters stated that they have reduced the number of agents in their offices, the Office did not present evidence that consumers would be unable to access agents and brokers absent an adjustment to the MLR standard in the individual market.

Additionally, in its January 6, 2012 submission, the Office included letters from Aetna, AvMed, Golden Rule, Humana, and Preferred Medical Plan. These letters support the Office's request for reconsideration, and express a concern with the impact of the MLR provisions on Florida individual market issuers in general, and especially on smaller issuers. We note that our December 15 letter has already addressed many of the concerns raised by these issuers. Furthermore, none of these issuers indicate that they may consider withdrawing from Florida's individual market absent an adjustment to the MLR standard. Our December 15 letter analyzed the impact of the MLR provisions on specific issuers, taking into account their circumstances and financial performance, and found that this impact is not reasonably likely to lead to destabilization of the Florida individual market.

¹ We assume that the commenters refer to Connecticut General Life Ins. Co., which entered the market in 2009.

In addition to the information supplied by the Office, as of January 17, 2012, CCIIO received an additional 26 emails from agents supporting the Office's request, as well as two letters from consumer advocacy groups opposing the Office's request. The emails from agents primarily follow a uniform template that focuses on reductions in commissions that have already occurred and the resulting harm to agents. The evidence in these emails did not lead us to conclude that consumers would be unable to access agents and brokers absent an adjustment to the MLR standard in the individual market.

For these reasons, we find no basis to modify our determination of December 15, 2011.

Please contact me should you have any questions.

Sincerely,

/Signed, SBL, January 19, 2012/

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