OFFICE OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

January 4, 2012

The Honorable John D. Doak
Commissioner
Oklahoma Insurance Department
Five Corporate Plaza
3625 NW 56th Street, Ste. 100
Oklahoma City, OK 73112-4511

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

Dear Commissioner Doak:

This letter responds to the request of the Oklahoma Insurance Department ("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 Oklahoma. The Department has requested an adjustment of that standard to 65 percent, 70 percent, and 75 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 & 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 Oklahoma's individual market. Consequently, we have determined not to adjust the MLR standard in Oklahoma's 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 Oklahoma Application

CCIIO received the Department's request for an adjustment to the MLR standard on September 1, 2011. Among the information the Department included in support of its request were 2010 enrollment, market share, and premium numbers for issuers in Oklahoma's individual market; estimated MLRs and rebates for some of these issuers under the 80 percent MLR standard; product enrollment data; and letters of support from two agent and broker organizations.

On September 26, 2011, CCIIO requested from the Department information needed in order for Oklahoma's application to be deemed complete and clarification regarding matters raised by the Department's application. This letter included a request for the information missing from the Department's initial submission, including a description of the mechanisms to provide options for consumers; rebate estimates for the reporting years 2011-2013 under the Department's proposed adjustment; and explanation regarding calculation inconsistencies. On October 18, 2011, the Department responded to these requests, and on November 28, 2011 the Department's application was deemed complete and the processing period provided for in 45 CFR 158.345 began. In this letter, CCIIO also requested information regarding the Department's MLR rebate estimates and the laws governing market withdrawal. On December 2, 2011, the Department responded to this request.

On November 28, 2011, CCIIO also posted notice on its website that any public comments regarding Oklahoma's application were due by December 8, 2011, as provided in 45 CFR 158.342. CCIIO received three public comments during the comment period, which we also address in this letter.

II. Overview of the Oklahoma Individual Health Insurance Market

According to the Department's application, nearly 120,000 Oklahoma residents obtained health insurance coverage through the Oklahoma individual health insurance market as of December 31, 2010. According to the Department's application, nine issuers had at least 1,000 life-years[2] each and covered 95 percent of the individual health insurance market: (1) Health

[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_oklahoma.html unless otherwise footnoted.

[2] 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).)

Care Service Corp.; (2) Golden Rule Insurance Co. ("Golden Rule"); (3) Time Insurance Co. ("Time"); (4) Coventry Health & Life Insurance Co. ("Coventry"); (5) American Medical Security Life Insurance Co. ("American Medical Security"); (6) MEGA Life & Health Insurance Co. ("MEGA"); (7) Aetna Life Insurance Co. ("Aetna"); (8) World Insurance Co. ("World"); and (9) Humana Insurance Co. ("Humana"). According to the Department's application, the number of enrollees and market shares of these issuers as of December 31, 2010 are:

Table 1: Oklahoma Individual Market Issuers' 2010 Enrollees and Market Share[3]

Issuer	Enrollees	Market Share
Health Care Service Corp.	72,119	60.2%
Golden Rule	11,148	9.3%
Time	10,015	9.2%
Coventry	5,094	4.3%
American Medical Security	4,833	4.0%
MEGA	3,885	3.2%
Aetna	2,435	2.0%
World	1,541	1.3%
Humana	1,274	1.1%
Top Nine Issuers	**113,344**	**94.7%**
Rest of Market	6,364	5.3%
Total Market	**119,708**	**100%**

According to the Department's application, Oklahoma does not have a State-mandated MLR standard that applies to the Oklahoma individual market.

The Department's application suggests that that if an issuer withdraws from the individual market, the Department has limited mechanisms to provide options to consumers left without health insurance coverage. Issuers that wish to withdraw from the Oklahoma individual health insurance market must provide at least 180 days notice to the Department. Although the Department's December 2 letter confirms that Oklahoma law does not impose a five-year market re-entry ban on issuers withdrawing from the individual market, 45 CFR 148.122(f), a federal regulation promulgated to effectuate the Health Insurance Portability and Accountability Act of 1996, would preclude such issuer from re-entering that market for five years. Oklahoma law does not require guaranteed issue in the individual market.

However, Oklahoma has a high risk pool, the Oklahoma Health Insurance High Risk Pool ("OHRP"). OHRP is open to applicants that have had an individual policy involuntarily terminated for reasons other than non-payment and have been either denied other coverage or have been offered coverage with a "permanent underwriting restriction." These features are discussed in more detail in Part III below.

[3] The enrollee counts shown in Table 1 are based on data from the Department's application, except that the number of enrollees for MEGA and Humana, which were not provided by the Department, are from the 2010 Supplemental Health Care Exhibits ("SHCE"s) that issuers file with the National Association of Insurance Commissioners ("NAIC"), submitted with the Department's October 18 letter. The market shares were calculated based on the number of enrollees.

III. Application of Regulatory Criteria to the Oklahoma 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*

In its application, the Department states that "a careful review of all carrier responses to … [the Department's] questionnaire, and input from the producer community, show that immediate implementation of the MLR requirement will disrupt the individual health insurance market in Oklahoma." The Department states that small carriers will need a phase-in period to "modify current business models in order to compete with the larger carriers in the state." Specifically, the Department states that the transition will "give those carriers servicing the rural counties in Oklahoma needed time to adjust their distribution and administrative expense programs." However, the evidence presented in the Department's application does not support the conclusion that an 80 percent MLR standard would "disrupt" Oklahoma's individual market.

Although no issuer in the Oklahoma individual market had provided notice of exit at the time of the Department's initial application, the Department subsequently received notification of exit from the individual market from World and American Republic. Both issuers are part of the American Enterprise Group. We note that American Enterprise Group has announced the withdrawal of World and American Republic in all States, even though in most States neither company would be subject to rebates. According to data from its 2010 SHCE, World would have met the 80 percent MLR standard in Oklahoma and therefore would not owe a rebate.

Furthermore, as shown in Table 1 above, in 2010 World insured 1,541 enrollees, or 1.3 percent of the Oklahoma individual market. However, American Enterprise Group's letter to the Department indicates that as of October 14, 2011, World insured only 894 enrollees, and American Republic insured 603 enrollees. Because both issuers would likely have fewer than 1,000 life-years in the Oklahoma individual market in 2011, neither would be subject to rebates in 2011. Additionally, American Enterprise Group's decision to withdraw World and American Republic from the Oklahoma individual market was made without taking into account any adjustment to the MLR standard we might make. These facts, coupled with the fact that American Enterprise Group is withdrawing from other markets where it also meets the MLR standard and would not be affected by the MLR provisions, suggest that its decision was not related to the risk of paying rebates in Oklahoma and elsewhere.

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. 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.

In 2010, nine issuers in the Oklahoma individual market had at least 1,000 life-years each and thus are considered to have at least partially credible MLR experience (as defined in 45 CFR 158.230(c)).[4] Therefore, these issuers could be expected to be subject to paying rebates beginning in 2011 if their MLRs fall below the statutorily mandated 80 percent standard. The chart below shows, for each of these issuers, the estimated 2010 MLR, estimated rebate based on 2010 MLR, estimated 2010 pre-tax net gain in the individual market before payment of rebates, estimated 2010 pre-tax net gain in the individual market if the issuer would have had to pay rebates in 2010, and whether the issuer has indicated an intention to price its products to meet an 80 percent MLR in 2011 or 2012.[5]

[4] Experience of issuers with fewer than 1,000 life-years is considered to be non-credible and such issuers are not subject to rebate payments for the first reporting year. 45 CFR 158.230(d).

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

Table 2: Estimated 2010 MLRs, Rebates and Pre-Tax Net Gain ($ in millions)[6]

Issuer	MLR After Credibility Adjustment	Estimated Rebates	Pre-Tax Net Gain Before Rebates	Pre-Tax Net Gain After Rebates	Expects to price to 80% MLR by 2012[7]
Health Care Service Corp.	77.7%	$3.5	$10.4	$6.8	yes
Golden Rule	55.4%	$5.2	$8.9	$3.7	
Time	69.5%	$2.8	$0.1	$(2.7)	yes
American Medical Security	69.2%	$1.3	$4.0	$2.7	yes
MEGA[8]	56.5%	$2.4	$4.3	$1.9	yes
Coventry	72.6%	$0.6	$(0.3)	$(0.9)	yes
Aetna	86.5%	$0.0	$0.9	$0.9	
Humana	80.9%	$0.0	$0.0	$0.0	yes
World	87.6%	$0.0	$(0.3)	$(0.3)	yes

According to the 2010 MLR data in Table 2, it appears that two issuers in the Oklahoma individual market – Aetna and Humana – meet the 80 percent MLR standard and would not owe any rebates.[9] Although Aetna has indicated to the Department that it expects its MLR to decrease to 75 percent in 2011, and consequently to owe rebates of $31,029 for 2011, Aetna would maintain a positive net pre-tax gain even assuming its rebate projections provided to the Department.[10]

However, there remain six issuers with MLRs expected to be below the 80 percent standard: Health Care Service Corp.; Golden Rule; Time; American Medical Security; MEGA; and Coventry. These issuers must adjust some combination of their operations and financial targets in order to satisfy an 80 percent MLR standard, assuming 2011 experience mirrors the 2010 experience. 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 six 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 a reduction in profitability, which may be a consideration for each company in assessing whether to remain in the Oklahoma individual market.

[6] The estimates shown in Table 2 are calculated using the data from the 2010 SHCEs provided by the Department with its October 18 letter.

[7] In its October 18 letter, the Department provided a list of issuers that indicated they would be pricing their products to achieve an 80 percent MLR.

[8] According to the Department's application, MEGA projects rebates of only $0.1million for 2011, significantly lower than the $2.4 million estimate derived from its 2010 SHCE data. This suggests that MEGA expects its 2011 MLR to be significantly higher than 56.5 percent.

[9] As noted previously, World is withdrawing from the Oklahoma individual market.

[10] In its October 18 letter, the Department states that Aetna projects its MLRs and rebates to be 74.7% and $31,029, 71.1%, and $350,066, and 72.4% and $345,163 for the reporting years 2011, 2012, and 2013, respectively. Aetna did not explain the reasons for reducing its MLRs. Even when these rebate projections are considered, Aetna would retain a positive net pre-tax gain.

As shown in Table 2, four of the six issuers with MLRs below 80 percent – Health Care Service Corp., Golden Rule, American Medical Security, and MEGA – would remain profitable after payment of rebates under an 80 percent MLR standard even without making any adjustments to their business models.[11] At a credibility-adjusted MLR of 78 percent, Health Care Service Group, the dominant issuer with a 60 percent market share, was already close to meeting the 80 percent standard at the end of 2010. Furthermore, according to the Department, Health Care Service Corp., American Medical Security, and MEGA have indicated that they will begin pricing their products to achieve an 80 percent MLR by 2012. This suggests that none of these issuers intend to exit Oklahoma's individual market. Additionally, as shown in the chart above, although Golden Rule had the lowest MLR (55.4 percent) of the issuers with MLRs below the 80 percent standard, Golden Rule would retain significant pre-tax net gains in the Oklahoma individual market even after payment of rebates under an 80 percent MLR standard and even if Golden Rule did not adjust its business model. Expressed as a percentage of premium, Golden Rule's pre-tax gain after payment of rebates would still be 15 percent. Therefore, the potential impact of rebates on its profitability does not appear to be likely to create a financial incentive for Golden Rule to exit the market.

As shown in Table 2, Time would appear to show a pre-tax loss after payment of rebates based on 2010 data. Coventry was unprofitable in the Oklahoma individual market in 2010 and would be somewhat more unprofitable on a pre-tax basis after payment of rebates under an 80 percent MLR standard. However, this analysis presumes certain facts, most notably the continuation of 2010 financial performance and no changes to 2010 business models that have likely changed in 2011.

Indeed, according to the Department, Time has indicated that it has "already discontinued sales of those plans that did not meet reform requirements." Although Time has also indicated to the Department that it will "continually evaluate and adjust business plans" and review options including "discontinuing sales of certain products and/or exiting selected markets," data provided by the Department show that Time projects owing no rebates under an 80 percent MLR standard beginning in 2012. According to the Department, "[t]he absence of estimated rebates in years 2012 and 2013 is the result of product pricing to meet the 80% MLR." Furthermore, in its 2011 third quarter report ("Form 10-Q"), Assurant (Time's parent company) states that "Assurant Health Third Quarter 2011 results reflect progress as [Assurant and its subsidiaries] continue to adapt to the Affordable Care Act," and that "[s]elling, underwriting and general expenses decreased $79,084,000 or 18%" nationally in the first nine months of 2011 versus the comparable period in 2010.[12] Time's parent company's statements suggest that Time has been able to successfully streamline its expense structure during 2011. Therefore, the actual impact of rebates on Time's profitability in 2011 may be smaller than the 2010 data suggest. Based on the adjustments that Time is making to its business model, it appears unlikely that Time would exit the market if the MLR standard remains at 80 percent.

Similarly, in its 2010 annual report ("Form 10-K"), Coventry Health Care (Coventry's parent company) indicates that Coventry Health Care and its subsidiaries "continue to focus on selling, general and administrative expense efficiencies and on maintaining medical loss ratios

[11] As previously noted, MEGA expects owing significantly lower rebates than its 2010 SHCE data suggest.
[12] Assurant, Inc., Quarterly Report (Form 10-Q), at 42 and 52 (Nov. 2, 2011).

across [their] business lines at levels that [Coventry Health Care and its subsidiaries] believe will contribute to continued profitability."[13] Furthermore, in its 2011 Form 10-Q, Coventry's parent company states that for 2011, its "forecasted Commercial Individual MLR is expected to be in the range of 75.0 percent to 77.0 percent, an increase from the 2010 MLR of 66.1 percent, largely driven by compliance with new healthcare reform regulations."[14] We note that, unlike the Affordable Care Act's MLR standard, the MLR described in Form 10-Q does not include adjustments for quality improvement activities, taxes, or credibility. Therefore, Coventry's parent company's statements suggest that it expects its subsidiaries to achieve individual market Affordable Care Act MLRs of 80 percent or close to 80 percent, and at the same time achieve profitability. Indeed, as Coventry has indicated to the Department, it intends to price its products to reach an 80 percent MLR in the Oklahoma individual market by 2012. Therefore, it appears that Coventry also intends to remain in the market.

In sum, evidence shows that all issuers in the Oklahoma individual market either 1) already meet the 80 percent MLR standard, 2) intend to price their products to meet the 80 percent MLR standard, and/or 3) are sufficiently profitable to absorb the impact of rebate payments under an 80 percent MLR standard. Based on this, we do not expect any issuers to withdraw from the Oklahoma individual market.

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

As previously noted, the Department suggests that a "transition period would allow smaller carriers the necessary time to modify current business models in order to compete with the larger carriers in the State." However, as shown in Table 2 above, the three smallest issuers subject to rebate requirements already meet the 80 percent standard. In sum, as discussed in Part A, seven of the eight largest issuers remaining in the Oklahoma individual market either meet the 80 percent MLR standard or intend to do so by 2012, while another issuer is sufficiently profitable to absorb payment of rebates. In light of these circumstances, it appears that all issuers would remain in the market even with an 80 percent MLR standard.

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

The Department suggests that "a gradual transition over the next three years" would "give those carriers servicing the rural communities in Oklahoma needed time to adjust their distribution and administrative expense programs." However, as discussed in Part A, according to data provided by the Department, all issuers in the Oklahoma individual market that are expected to owe rebates either already meet the 80 percent MLR standard, intend to do so by 2012, and/or are sufficiently profitable to absorb rebates.

As part of its application, the Department included letters from the Oklahoma State Association of Health Underwriters ("OSAHU") and the Independent Insurance Agents of Oklahoma ("IIAO"). OSAHU asserts that Oklahoma has "many citizens … who will be affected adversely if the [adjustment] is not granted," while the IIAO adds that an adjustment would help "alleviate a large exodus of health insurance from the Oklahoma marketplace." However, neither OSAHU nor the IIAO provide specific information to support their claims that

[13] Coventry Health Care, Inc., Annual Report (Form 10-K), at 12 (Feb. 25, 2011)
[14] Coventry Health Care, Inc., Quarterly Report (Form 10-Q), at 27 (Nov. 4, 2011).

implementation of the 80 percent MLR standard could adversely impact consumers. We also note that one consumer advocacy group in its public comment argues that data provided by the Department suggest that issuers "are paying extraordinarily high amounts" in commissions.

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*

As discussed in Part A above, we do not expect any issuer to withdraw from the Oklahoma individual market as a result of an 80 percent MLR standard. We note that according to the Department's application, Oklahoma has a high risk pool, the Oklahoma Health Insurance High Risk Pool ("OHRP"). OHRP is open to applicants that have had an individual policy involuntarily terminated for reasons other than non-payment and have been either denied other coverage or have been offered coverage with a "permanent underwriting restriction."[15] Applicants are subject to a 12-month pre-existing condition exclusion, which is waived for applicants with continuous coverage for the preceding 6 months.

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 in the Oklahoma individual health insurance market if application of the 80 percent individual market MLR standard causes one or more issuers to leave the market. Based on this, we do not consider the impact of an 80 percent MLR standard on premiums, benefits, and cost-sharing of issuers remaining in the Oklahoma individual market in making our determination.

IV. Summary of Public Comments

In addition to the two letters submitted to the Department by OSAHU and IIAO, and addressed in Part III.C, above, CCIIO received three public comments from consumer groups opposed to the Department's request, and a letter written by Oklahoma's Congressional delegation, including its two Senators and five Representatives, to Secretary Sebelius in support of the Department's application. In its letter, Oklahoma's Congressional delegation asserts in general terms that a uniform national MLR standard "is neither in the best interest of consumer choice nor competition among health plans" and concludes that the individual market will be destabilized absent an adjustment.

The three consumer groups – Consumer Watchdog, the National Patient Advocate Foundation, and the Oklahoma Policy Institute –assert that the Department has not presented evidence to support its request and has failed to show that the market is likely to be destabilized under any criteria for granting an adjustment. The commenters highlight the fact that most issuers have already begun to adapt their business models to meet the 80 percent MLR standard.

[15] See BCBS of OK, Oklahoma High Risk Pool: Qualifying, http://www.bcbsok.com/ohrp/qualifying.html (*last accessed* Dec. 17, 2011).

The commenters further express disappointment with the fact that the Department does not appear to have considered the potential for market disruption from the patient and consumer perspective. The commenters also urge CCIIO to consider the amount of rebates that consumers would not receive if the Department's request is granted.

We acknowledge the views and concerns expressed in these comments. They are discussed, many in great detail, in the body of the letter.

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 (45 CFR 158.301).

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 Oklahoma 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 Oklahoma individual market addressed in that analysis.

As discussed in Part III A, there are nine issuers expected to be subject to MLR rebate provisions in 2011 based on 2010 enrollment. Six issuers intend to price their products to achieve an 80 percent MLR by 2012, including the only two issuers that would be unprofitable on a pre-tax basis after issuing rebates for 2011. One issuer is no longer in the market, while the remaining two issuers would retain significant pre-tax net gains after payment of rebates even without adjusting their business models. There is no basis to conclude, based on these facts, that there is a reasonable likelihood that any of these issuers may leave the market. Consequently, no enrollees are likely to require alternate coverage due to withdrawal of any issuer.

As discussed in Part III C above, the Department does not specifically articulate a concern that consumers' 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 Oklahoma 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 4, 2012/

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