



December 28, 2011

The Honorable Stephen W. Robertson  
Commissioner of Insurance  
Indiana Department of Insurance  
311 W. Washington Street, Suite 300  
Indianapolis, IN 46204-2787

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

Dear Commissioner Robertson:

This letter responds to the Indiana Department of Insurance (“IDOI”)’s request for a reconsideration of the November 27, 2011 determination by the Center for Consumer Information and Insurance Oversight (“CCIIO”) not to adjust the 80 percent MLR standard applicable to the Indiana 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 a December 9, 2011 email, the IDOI requested reconsideration of CCIIO’s determination, and asked to have a verbal discussion of the issues the IDOI wished CCIIO to consider in connection with the IDOI’s reconsideration request. That same day, CCIIO requested that the IDOI submit all information it would like CCIIO to consider in writing, as required by 45 CFR §158.346. On December 16, 2011, the IDOI submitted a letter intended to “highlight the areas in which [the IDOI thought] there was an error in [CCIIO’s] decision.”

In its December 16 letter, the IDOI puts forth four arguments for why CCIIO should reverse its November 27 determination. We address each of those arguments here. First, the IDOI states that, based on the local knowledge of the Indiana Commissioner of Insurance, the IDOI’s proposal “would better ensure continued competition, incentivize new products and enable the market to retain as many carriers as possible to potentially, if they choose, offer products on the [E]xchange.” As stated in our November 27 letter, we have carefully examined the information provided to us by the IDOI concerning the impact of the 80 percent MLR standard on the number of issuers reasonably likely to remain and compete in the Indiana individual market. In fact, that information formed the basis for our analysis. As discussed in our determination letter, based on that information, all issuers in the State except Time either already meet the 80 percent standard and thus are not expected to owe rebates, or would remain profitable after payment of rebates even without making any adjustments to their business

models. Additionally, there is evidence to suggest that Time has already adjusted its business model during 2011 such that it, too, would remain profitable on a pre-tax basis after payment of rebates under an 80 percent MLR standard. In sum, implementation of the 80 percent standard is not likely to cause issuers to take actions that would reduce consumer choice, cause issuers to leave the market, or impair their ability to compete. Therefore, based on the information made available to us, we have found no basis to conclude, under the standard established by 45 CFR §158.301, that there is a “reasonable likelihood” that application of the 80 percent MLR standard will destabilize the Indiana individual health insurance market.

Second, the IDOI reiterates its request to exempt CDHPs from the MLR requirement. Although as noted in our November 27 letter, under section 2718 of the PHS Act, the Secretary does not have the authority to adjust or waive the MLR standard for specific products such as CDHPs, title 45 CFR §158.232(c) in fact provides for a credibility adjustment that takes high-deductible plans into account in calculating issuers’ MLRs. Specifically, the credibility adjustment can increase the MLR of an issuer that provides high-deductible plans by up to 14.4 percentage points. This approach regarding high deductible plans was recommended by the National Association of Insurance Commissioners (“NAIC”) in the model MLR regulation adopted by the NAIC in October 2010.

Third, the IDOI expresses a concern that absent an adjustment, “agents and brokers will be eliminated and/or downsized more dramatically” and “could be massively displaced.” However, as the IDOI acknowledges, we have not been presented with specific evidence to substantiate this concern. Consequently, we have no basis 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.”

Fourth, the IDOI contests CCIIO’s conclusion that the withdrawal of five issuers with a combined market share of 2.6 percent from the Indiana individual market does not constitute evidence of market destabilization. As discussed in our November 27 letter, based on the information presented in the IDOI’s application, we could not reasonably conclude that the five issuers that have withdrawn from the Indiana individual market did so as a result of the 80 percent MLR standard. The information presented strongly suggests both that the decisions by these issuers to withdraw were unrelated to MLR and that their withdrawals have not caused destabilization of the market. Two of the five issuers had MLRs well above the 80 percent standard and would have been unlikely to be affected by the MLR rebate requirement. The other three issuers have stated that their withdrawals were due to business considerations unrelated to the MLR requirements. Specifically, one of these issuers in fact had no active business, another clearly stated that its withdrawal was “in no way related to health care reform,” and the third one was liquidated nationwide. We further note that, according to issuers’ withdrawal notices provided by the IDOI, Pekin Life indicated that it would continue to service existing policies until further notice, CIGNA had no active policies related to the product it discontinued, Guardian Life had one policy, and American Community’s policyholders will be offered replacement coverage by Golden Rule on a guaranteed issue basis and without pre-existing conditions exclusions.<sup>1</sup> Although some enrollees constituting the 2.6 percent of the market

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<sup>1</sup> See American Community’s website, <http://www.american-community.com>; see also Michigan Office of Financial and Insurance Regulation’s Petition for Approval of Golden Rule Transition Plan Agreement, [http://www.michigan.gov/documents/dleg/Golden\\_Rule\\_Transition\\_323755\\_7.pdf](http://www.michigan.gov/documents/dleg/Golden_Rule_Transition_323755_7.pdf), and the Ingham County Circuit Court’s Order Approving Golden Rule Transition Plan Agreement

covered by these five issuers may find it disruptive to switch to different issuers and products, this disruption was not caused by the 80 percent MLR standard, and does not indicate that the Indiana individual market has already been, or is likely to become destabilized as a result of the 80 percent MLR standard.

For these reasons, we find no basis to modify our determination of November 27, 2011

Please contact me should you have any questions.

Sincerely,

/Signed, SBL, December 28, 2011/

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