DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

December 28, 2011

The Honorable James J. Donelon
Commissioner
Louisiana Department of Insurance
1702 N. Third Street
Baton Rouge, LA 70802

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

Dear Commissioner Donelon:

This letter responds to the Louisiana Department of Insurance ("LDI")'s December 8, 2011 request for 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 Louisiana 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.

As we read the LDI's December 8 letter, the LDI acknowledges the accuracy of the data which CCIIO used in reaching its decision to deny Louisiana's request, but rather it disagrees with some of the conclusions we reached. The LDI makes two main arguments: that smaller issuers will find it difficult to compete against the State's dominant carrier while having to meet an 80 percent MLR; and that issuers have made adjustments to their business operations in order to meet the MLR standard, including "an apparent reduction in agent commissions," which will have a negative impact on consumers in the State. We did not view LDI's request as submitting any new information in regard to these points.

The LDI expresses concern that the four issuers with MLRs below the 80 percent standard – Humana, Coventry, Time, and Golden Rule – would be "hard pressed" to compete with the dominant issuer if an adjustment to the MLR standard is not granted.[1] The LDI states that "restructuring their business practices to meet the looming MLR requirements" would impair these four issuers' ability to compete. As discussed in our November 27 letter, the available data demonstrate that the four issuers with MLRs below 80 percent will be able to achieve sustainable financial performance after payment of rebates. For 2011, Humana will

[1] The LDI points to the fact that Louisiana has recently lost a major insurer, Health Plus. We note that Health Plus withdrew from the Louisiana market in 2009, before the Affordable Care Act was enacted in 2010. Health Plus Press Release: Health Plus to Change Business Model (Aug. 5, 2009), http://www.wkhealthplus.com/FCKFiles/File/BusinessModelChange.pdf.

likely remain profitable even after paying rebates; in addition, it has stated publicly that it plans to continue offering coverage in the individual market. Coventry and Time have both stated that they are lowering administrative costs and therefore also should either be profitable or experience significantly reduced losses in 2011, while Golden Rule should continue to earn considerable profits even after paying rebates.

The LDI states that issuers "have made adjustments to their business operations in order to meet the federal MLR requirements including an apparent reduction in agent commissions" which "have had an adverse effect on the agent force and, as a result, will have a negative effect on the consumers." The LDI asserts that the 80 percent MLR standard would have "a detrimental impact on smaller health insurance companies who are dependent upon their agents."

On this point, the evidence presented to us in the LDI's application suggests that, based on 2010 data, the four smallest partially credible issuers in the Louisiana market – Aetna, Mid-West, MEGA, and Vantage – met or exceeded the 80 percent standard and thus would not owe any rebates. Therefore, these issuers would not need to reduce their agent commissions to meet the 80 percent standard, and would be able to continue to rely on their agents and the services agents provide to their enrollees. The same is true of the dominant issuer, which also already meets the 80 percent standard.

With regard to the four issuers with MLRs below the 80 percent standard, as discussed in CCIIO's November 27 letter, 2010 data show that Humana paid commissions that averaged 3 percent of premium in 2010, suggesting that it is unlikely that Humana would further reduce its level of agent compensation. The other three issuers with low MLRs – Coventry, Time, and Golden Rule – paid commissions that averaged 10 to 13 percent of premium in 2010. In its December 8 letter, the LDI expresses its support for the adjustment of the MLR formula to account for agent commissions up to 5 percent of premium, which the LDI indicates exceeds the average commission paid to agents by major health insurers doing business in Louisiana. This statement suggests that in 2010, Coventry, Time, and Golden Rule paid agent commissions that substantially exceeded the Louisiana market norm. The LDI has not provided evidence that would lead 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."

Therefore, based on the information 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 Louisiana individual health insurance market.

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