DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

November 27, 2011

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

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

Dear Commissioner Donelon:

This letter responds to the request of the Louisiana Department of Insurance ("LDI"), 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 Louisiana. The LDI has requested an adjustment of that standard to 70 percent and 75 percent for the reporting years 2011 and 2012, respectively.

Section 2718 was added to the PHS Act by Section 1001 of the Affordable Care Act and 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 in 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 LDI'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] After a careful examination of these materials and consideration of the criteria set forth in the statute and implementing regulation, we have determined that the evidence presented does not establish a reasonable likelihood that the application of the 80 percent MLR standard will destabilize the Louisiana individual market. Consequently, we have determined not to adjust the MLR standard in the Louisiana individual market and, thereby, ensure that consumers receive the full benefit of this provision of the Affordable Care Act. This letter explains the basis of our decision.

I. Summary of the Louisiana Application

CCIIO received the LDI's request for an adjustment to the MLR standard on March 29, 2011. Among the information the LDI included in support of its request were aggregate 2010 enrollment numbers and premium amounts, average MLR for the entire Louisiana individual market, as well as aggregate rebate estimates for each of the reporting years 2011, 2012, 2013, and 2014 under the LDI's proposed adjustment.

On April 18, 2011, CCIIO requested from the LDI information needed in order for Louisiana's application to be deemed complete. This letter included a request for the information missing from the LDI's initial submission. On April 19 and July 1, 2011, CCIIO also requested from the LDI follow-up information and clarifications regarding matters raised by the LDI's application. After the LDI responded to these requests, the LDI's application was deemed complete on September 28, 2011, and the processing period provided for in 45 CFR 158.345 began.

In addition, CCIIO that same day posted notice on its website that any public comments regarding Louisiana's application were due by October 8, 2011, as provided in 45 CFR 158.342. CCIIO received one public comment, which we also address in this letter.

On October 28, 2011, CCIIO informed the LDI that it would extend the review period for up to an additional 30 days, as provided in 45 CFR 158.345(b).

II. Overview of the Louisiana Individual Health Insurance Market

According to the LDI's application, more than 179,000 Louisiana residents obtained health insurance coverage through the Louisiana individual health insurance market as of December 31, 2010. Ten issuers have at least 1,000 life-years[2] each, and account for 98 percent of the individual market: (1) Louisiana Health Service & Indemnity Co. ("LA Health"); (2) HMO Louisiana, Inc. ("HMO LA"); (3) Humana Health Benefits Plan of LA, Inc. ("Humana"); (4) Coventry Health Care of LA ("Coventry"); (5) Time Ins. Co. ("Time"); (6) Golden Rule Ins. Co. ("Golden Rule"); (7) Mid-West National Life Ins. Co. of TN ("Mid-West"); (8) Aetna Life

[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_Louisiana.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).)

Ins. Co. ("Aetna"); (9) MEGA Life & Health Ins. Co. ("MEGA"); and (10) Vantage Health Plan Inc. ("Vantage"). According to the LDI's application, the number of enrollees and market shares of these issuers as of December 31, 2010 are:

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

	Issuer	Enrollees	Market Share
1.	LA Health	109,735	61.2%
2.	HMO LA	21,326	11.9%
3.	Humana	11,347	6.3%
4.	Coventry	11,016	6.1%
5.	Time	5,431	3.0%
6.	Golden Rule	5,174	2.9%
7.	Mid-West	3,875	2.2%
8.	Aetna	3,499	2.0%
9.	MEGA	3,013	1.7%
10.	Vantage	1,118	0.6%
	Rest of Market	3,733	2.1%
	TOTAL	179,267	100.0%

According to the LDI's application, Louisiana does not have a State statutorily mandated MLR standard that applies to the Louisiana individual market. Louisiana does not have a guaranteed issue requirement.

Louisiana individual market has, according to the LDI's application, a State-operated high-risk pool. The high-risk pool provides guaranteed issue coverage to Louisiana residents with qualifying medical conditions who have been denied coverage in the individual market and to HIPAA-eligible Louisiana residents. These features are discussed in more detail in Part III below.

According to the LDI's application, LSA-R.S. 22:1074(C)(2) requires issuers wishing to withdraw from the Louisiana individual market to provide at least 180 days notice to their policyholders and the Commissioner, and may not re-enter the Louisiana individual market for five years.

III. Application of Regulatory Criteria to the Louisiana 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;

[3] These numbers are based on data provided with the LDI's May 18 and September 1, 2011 letters.

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*

Although no issuers in the Louisiana individual health insurance market have provided notice of exit, the LDI's states that "smaller carriers may be disincented to remain in our market if they cannot continue to compete while working to get to the MLR in 2014." Additionally, the LDI's initial application states that "[i]ssuers have expressed a concern about the payment of rebate dollars to their enrollees and its effect on their companies which could potentially cause their withdrawal from the market," although in its April 29, 2011 letter, the LDI was unable to identify the issuers that have expressed such a concern, nor assess the imminence of withdrawal.

In its initial application, the LDI states that Louisiana "ha[s] had some small carriers leave or discontinue selling in [the Louisiana] marketplace since the adoption of the Affordable Care Act." In its April 29 letter, the LDI identifies these issuers as Guardian Life Ins. Co. of America, Principal Life Ins. Co., and National Health Ins. Co. We note that, according to the LDI's April 29 letter, Guardian and Principal have indicated that they withdrew for business reasons; Guardian had one enrollee in the Louisiana individual market, and Principal did not have any individual business in Louisiana. While National has indicated that its withdrawal was related to the Affordable Care Act, National insured only 12 enrollees in Louisiana in 2010, and thus would not have been subject to the Affordable Care Act's MLR rebate requirements. Therefore, we do not believe that the exit by these three issuers supports the LDI's concern that immediate implementation of the 80 percent MLR standard could lead to market destabilization.

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 LDI's application calculates the estimated MLRs using 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 2011-2012. 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' claims 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.

Ten issuers in the Louisiana individual market have at least 1,000 life-years each and thus are at least partially credible (as defined in 45 CFR 158.230(c)). Therefore, these issuers could be expected to 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 LDI, these ten 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.[4]

Table 2: 2010 Estimated Federal MLRs, Rebates and Pre-Tax Net Gains ($ in millions)[5]

	Issuer	MLR Before Credibility Adjustment	Credibility Adjustment[6]	MLR After Credibility Adjustment	Estimated Rebates	Pre-Tax Net Gain Before Rebates	Pre-Tax Net Gain After Rebates
1.	LA Health	84.1%	0.0%	84.1%	$0.0	($4.1)	($4.1)
2.	HMO LA	85.5%	1.8%	87.3%	$0.0	$2.3	$2.3
3.	Humana	61.8%	2.5%	64.3%	$4.2	$4.8	$0.7
4.	Coventry	72.9%	3.3%	76.2%	$0.7	$0.7	$0.0
5.	Time	70.5%	4.5%	75.0%	$0.7	($1.5)	($2.2)
6.	Golden Rule	45.5%	5.1%	50.7%	$1.7	$3.2	$1.5
7.	Mid-West	73.1%	7.7%	80.8%	$0.0	$1.2	$1.2
8.	Aetna	81.7%	4.7%	86.4%	$0.0	$0.8	$0.8
9.	MEGA	73.0%	8.4%	81.4%	$0.0	$2.1	$2.1
10.	Vantage	84.0%	8.1%	92.0%	$0.0	($0.4)	($0.4)

According to the 2010 MLR data shown above, it appears that six of the ten issuers in the Louisiana individual market that are at least partially credible – LA Health, HMO LA, Mid-West, Aetna, MEGA, and Vantage – meet the 80 percent MLR standard, and would not be

[4] "Pre-tax net gain" is the underwriting gain or loss as reported on the Supplemental Health Care Exhibit ("SHCE") that issuers file with the National Association of Insurance Commissioners ("NAIC"), 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 in Table 2 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.

[5] These numbers are based on data from issuers' 2010 SHCEs submitted by the LDI with its September 1 letter, as well as data provided by issuers and submitted with the LDI's October 5 letter.

[6] The estimates shown in Table 2 include deductible factors provided by issuers and submitted with the LDI's October 5 letter.

expected to owe rebates in 2011-2012. Thus, it is unlikely that section 2718's MLR standard will cause any of these six issuers to leave the Louisiana individual health insurance market.

The remaining four issuers – Humana, Coventry, Time, and Golden Rule – 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 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 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 Louisiana individual market.

As shown in the chart above, although Golden Rule had the lowest MLR (51 percent) of the four issuers with MLRs below the 80 percent standard, Golden Rule would retain significant pre-tax net gains in the Louisiana individual health insurance 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, the pre-tax net gain of Golden Rule after payment of rebates would still be 20 percent. Therefore, the potential impact of rebates on the its profitability does not appear to be likely to create a financial incentive for Golden Rule to exit the market.

Although rebates would consume a significant amount of Humana's pre-tax net gains, in its annual report to the shareholders, Humana states that "while [Humana] anticipates a challenging near-term profitability environment in the individual market, reform-related provisions are expected to increase the prospect pool by between 23 million and 40 million people in the next six years," and that Humana "expect[s] to be well-positioned to take advantage of this opportunity."[7] Humana's statements suggest that, notwithstanding the near-term impact of the Affordable Care Act's provisions on its profitability, Humana intends to stay in the individual market in order to benefit from the influx of new policyholders into the market in 2014.

Similarly, while rebates would consume a significant amount of Coventry's pre-tax net gains, in its 2010 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 across [their] business lines at levels that [Coventry Health Care and its subsidiaries] believe will contribute to continued profitability."[8] Furthermore, in its 2011 third quarter report ("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% to 77.0%, an increase from the 2010 MLR of 66.1%, largely driven by compliance with new healthcare reform regulations."[9] We note that, unlike the

[7] Humana Inc., 2010 Annual Report, at 6, *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODQ2ODh8Q2hpbGRJRD0tMXxUeXBlPTM=&t=1.
[8] Coventry Health Care, Inc., Annual Report (Form 10-K), at 12 (Feb. 25, 2011)
[9] Coventry Health Care, Inc., Quarterly Report (Form 10-Q), at 27 (Nov. 4, 2011).

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, while continuing to be profitable.

Time, with a 75 percent MLR, was unprofitable in the Louisiana individual market before payment of rebates, and would be somewhat more unprofitable 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 Time's 2010 business model that has likely changed in 2011. Indeed, in its Q3-2011 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%" in the first nine months of 2011 versus the comparable period in 2010.[10] 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.

In sum, evidence shows that all issuers in the Louisiana individual market either 1) already meet the 80 percent MLR standard, 2) are sufficiently profitable to absorb the impact of rebate payments under an 80 percent MLR standard, or 3) are adapting their business models in order to continue to achieve sustainable financial performance in the individual market. Based on this, we do not expect any issuers to withdraw from the Louisiana individual market.

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

As stated previously, although no issuer has provided a notice of exit, the LDI expresses concern that the impact of rebate payments on the profitability of smaller issuers and their ability to remain competitive may lead some issuers to withdraw. As discussed in Part A above, six of the ten issuers in the Louisiana individual market that are at least partially credible, including the dominant issuer, meet the 80 percent MLR standard, and thus would not be likely to leave the market due to section 2718's MLR standard. One of the four smaller issuers with low MLRs – Golden Rule – would retain significant pre-tax net gains even after payment of rebates under an 80 percent MLR standard, while the remaining three issuers – Humana, Coventry, and Time – appear to be successfully changing their business models. We further note that an issuer electing to withdraw from the Louisiana individual health insurance market may not reenter the individual market for five years, which presents a significant disincentive to exiting the market for an issuer who will remain profitable even after 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 LDI asserts that "[i]ndividual health insurance is primarily purchased through insurance producers (agents) in Louisiana" and that "many [issuers] are considering decreasing

[10] Assurant, Inc., Quarterly Report (Form 10-Q), at 42 and 52 (Nov. 2, 2011).

commissions to these producers as part of the way to meet the MLR." The LDI concludes that "having some [producers] leave their business because they cannot be adequately compensated … will be extremely detrimental to the marketplace."

As stated previously, in 2010, LA Health and HMO LA, the two largest issuers with a combined 73 percent market share, had MLRs well above the 80 percent standard. In 2010, these two issuers paid commissions that averaged 4 percent of total earned premium, slightly below the State average. The LDI has not indicated, nor does it appear likely, that these two issuers will need to reduce their commission rates in order to keep their MLRs at or above 80 percent. In 2010, these two issuers accounted for two thirds of all agent and broker compensation in the Louisiana individual market.

As discussed in Part A above, four issuers had 2010 MLRs below the 80 percent standard and would be expected to pay rebates beginning in 2011. One – Humana – paid commissions that averaged 3 percent of total earned premium in 2010. Given this low number, it is not clear that Humana is likely to 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 total earned premium in 2010. However, as discussed previously, Golden Rule would retain significant pre-tax net gains even after payment of rebates under the 80 percent standard. Therefore, it is not clear that Golden Rule would need to dramatically reduce its commission rates in order to comply with the rebate requirements and remain profitable. Furthermore, the LDI's application also states that "[t]he adjustment would allow a transition period for necessary negotiations between issuers and producers relative to compensation arrangements," suggesting that issuers are limited in their ability to reduce commission rates between now and 2014.

In sum, 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."

D. *Alternate coverage options*

As discussed in Part A above, we expect that all of Louisiana's individual coverage issuers are likely to remain in the market subsequent to the implementation of an 80 percent MLR standard. We also note that in its September 1 letter, the LDI indicates that remaining issuers in the Louisiana individual health insurance market would be able to provide enrollees of any exiting issuers with products comparable to those that the enrollees presently receive from their issuers.

Additionally, according to the LDI's application, Louisiana has a State-operated high risk pool, Louisiana Health Plan. The Louisiana Health Plan offers guaranteed coverage to individuals who are unable to secure health and accident coverage due to health conditions (High Risk Pool), and to HIPAA-eligible individuals who have lost individual coverage due to an issuer's withdrawal (HIPAA High Risk Pool). The Louisiana Health Plan has a six month pre-existing condition exclusion, which is waived for the HIPAA-eligible individuals. According to the website for the Louisiana Health Plan, premium rates for individuals with health conditions are 10 percent higher than the average of the top five health issuers in Louisiana, and are 25

percent higher for the HIPAA-eligible individuals.[11] According to the LDI's May 24, 2011 letter, the HIPAA High Risk Pool has no associated enrollment, funding, or other constraints, while the regular High Risk Pool is currently operating at approximately one quarter of projected capacity, suggesting that it could absorb an additional 1,824 enrollees.

E. *Impact on premiums, benefits, and cost-sharing of remaining issuers*

The LDI's initial application expresses concern that market concentration due to withdrawal by smaller issuers may "lead to less competition and higher premium costs." However, the LDI has not presented specific evidence regarding the potential impact on premiums in the market should any issuers exit. Furthermore, in its September 1 letter, the LDI states that it agrees with CCIIO's statement that the products offered in the individual market are comparable. Therefore, at this time, there is no conclusive evidence that suggests that the premiums, benefits, and cost-sharing of the remaining issuers in the individual market would be impacted if any of the issuers other than LA Health withdraws. As noted in Part A above, LA Health is unlikely to leave the market due to implementation of an 80 percent MLR standard, in light of its 84 percent MLR in 2010. 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 Louisiana individual market a significant factor in making our determination.

F. *Other relevant information submitted by the State*

In explaining its rationale for requesting an adjustment of the MLR standard to 70 percent for 2011, the LDI states that "[d]ata collected regarding the individual health insurance market indicates an aggregate loss ratio for 2010 of just under 79% in Louisiana's individual marketplace" but that "[i]f the largest issuer in [the] market is factored out of the data, the loss ratio for the remaining issuers drops to approximately 67%." According to the LDI's application, these data were collected during a data call. However, the 2010 SHCE data and information provided by issuers show that the aggregate MLR for the Louisiana individual market is in fact 82 percent. If the largest issuer is factored out of the data, the aggregate MLR is 79 percent, significantly higher than the 67 percent originally estimated by the LDI.

IV. Summary of Public Comment

CCIIO received one public comment submitted jointly by a group of public interest organizations, the Louisiana Consumer Healthcare Coalition ("LCHC"). This comment opposes the LDI's request, and argues that the LDI's application does not satisfy the criteria provided in Title 45 CFR Part 158 for granting an adjustment to the MLR standard applicable to a State's individual health insurance market.

LCHC asserts that "Louisiana has failed to make the case that its individual insurance market will be destabilized if HHS fails to grant the adjustment it requests." LCHC argues that the LDI has offered no evidence to support its claim that issuers will leave the market or cease offering coverage absent an adjustment. LCHC points out that "only two of the issuers … did not have sufficient underwriting gain in the individual market to cover the rebates they would

[11] http://www.lahealthplan.org/eligibility.html.

owe with an 80% minimum MLR" and observes that "[n]o explanation is offered as to why those insurance companies with MLRs that fall below 80% cannot achieve the 80% medical loss ratio." LCHC further express concern that "[t]he loss to Louisiana consumers of granting this adjustment would be substantial," explaining that "$16.7 million … would be transferred from Louisiana individuals and small businesses to insurance companies, at a time when insurance premiums are steadily rising and consumers' income is not."

We acknowledge the views and concerns expressed in this comment. They are discussed, many in great detail, in the body of this 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 LDI, we conclude that the evidence presented does not establish a reasonable likelihood that implementation of an 80 percent MLR standard may destabilize the Louisiana 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 Louisiana individual market addressed in that analysis.

As noted in Part III.A above, no issuers have provided notice of withdrawal from the Louisiana individual market. Ten issuers are at least partially credible and would thus be expected to be subject to MLR rebate provisions. However, six of these issuers would not owe rebates because they had MLRs of 80 percent or higher. Although the other four issuers – Humana, Coventry, Time, and Golden Rule – would be expected to owe rebates beginning in 2011, these four issuers are either sufficiently profitable or are adapting their business models, which should allow them to achieve sustainable financial performance in the individual market. There is no basis to conclude, based on these facts, that there is a reasonable likelihood that 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, although the LDI expresses concern that an 80 percent MLR standard may cause producers to leave the marketplace due to receiving inadequate compensation, the LDI does not provide specific data to support this concern. As noted in Part III.C, it is not immediately obvious that most issuers would need to reduce commissions in order to meet an 80 percent MLR standard. Additionally, according to the LDI's application, issuers are limited in their ability to reduce commission rates between now and 2014. In sum, there is insufficient evidence to conclude that an 80 percent MLR standard would significantly reduce consumers' ability to access agents and brokers in Louisiana.

As further discussed in Part III.F, the LDI's proposed phase-in of the statutory MLR standard from 70 percent to 80 percent over two years was predicated on LDI's belief that the aggregate MLR of the non-dominant issuers in 2010 was 67 percent. As stated previously, data filed by issuers with the NAIC, as well as more recent data provided by issuers to the LDI, show that the aggregate MLR of the non-dominant issuers in 2010 was in fact 79 percent, just under the 80 percent MLR standard.

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

Pursuant to 45 CFR 158.346, the LDI 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, November 27, 2011/

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