DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

November 8, 2011

The Honorable Ralph T. Hudgens
Commissioner of Insurance
Office of Insurance and Safety Fire Commissioner
Two Martin Luther King, Jr. Drive
West Tower, Suite 704
Atlanta, GA 30334

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

Dear Commissioner Hudgens:

This letter responds to the request of the Georgia Department of Insurance ("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 Georgia. 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 ("ACA") 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 comment 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 although application of the 80 percent MLR standard in Georgia in 2011 may lead to the destabilization of the individual market, the MLR standard sought by the Department exceeds the adjustment necessary to avoid the likelihood of market destabilization between now and 2014, and therefore would unnecessarily deny consumers some of the benefits of section 2718. Consequently, we have determined that the MLR standard in Georgia shall be adjusted to 70 percent in 2011 and 75 percent in 2012, with the statutory standard of 80 percent to apply beginning 2013. This letter explains the basis of our decision.

I. Summary of the Georgia Application

CCIIO received the Department's request for an adjustment to the MLR standard on March 17, 2011. Among the information the Department included in support of its request were 2009 enrollment numbers, premium amounts, and market share for the largest issuers in Georgia's individual market, as well as estimated MLRs and rebates for some of the issuers offering coverage in the Georgia individual market for each of the reporting years 2011, 2012, and 2013, under the 80 percent MLR standard and under the Department's proposed adjustment.

On April 4, 2011, CCIIO requested from the Department information needed in order for Georgia's application to be deemed complete. This letter included a request for the information missing from the Department's initial submission, as well as a request that the Department revise its proposed MLR standard adjustment to be consistent with that permitted by 45 CFR Part 158. On April 18 and July 1, 2011, CCIIO also requested from the Department follow-up information and clarifications regarding matters raised by the Department's application. After the Department responded to these requests, the Department's application was deemed complete on September 9, 2011, and the processing period provided for in 45 CFR §158.345 began. On September 14 and October 21, 2011, the Department submitted additional information in support of its application.

In addition, on September 9, 2011 CCIIO posted notice on its website that any public comments regarding Georgia's application were due by September 19, 2011, as provided in 45 CFR §158.342. CCIIO received one public comment, which we also address in this letter.

II. Overview of the Georgia Individual Health Insurance Market

According to the Department's application, nearly 346,000 Georgia residents obtained health insurance coverage from 23 issuers in the Georgia individual health insurance market as of December 31, 2010.[2] According to the Department's application, the number of enrollees and market shares of these issuers as of December 31, 2010 are:

[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_georgia.html unless otherwise footnoted.
[2] Although the Department initially calculated the total number of enrollees as 347,163, the Department subsequently determined that one issuer, Metropolitan Life Insurance Company, offered primarily Hospital

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

MLR ID#[4]	Issuer[5]	Enrollees	Market Share[6]
13	BCBS	139,524	40.3%
15	Coventry	35,566	10.3%
1	Aetna	34,431	10.0%
	BCBS Healthcare	25,614	7.4%
14	Kaiser	23,387	6.8%
11	Golden Rule	18,446	5.3%
16	Humana Employers	17,389	5.0%
2	Time	17,356	5.0%
4	Humana	6,847	2.0%
5	World	3,727	1.1%
3	MEGA	3,032	0.9%
10	Connecticut General	3,011	0.9%
8	Consumers	2,984	0.9%
	American General	2,728	0.8%
9	Mid-West	2,571	0.7%
18	American Republic	2,158	0.6%
6	John Alden	1,892	0.5%
	New York Life	1,410	0.4%
	Freedom	1,179	0.3%
17	Alliant	1,119	0.3%
12	Celtic	860	0.2%
19	Independence	600	0.2%
	Metropolitan	86	0.0%
TOTAL		345,917	100.0%

According to the Department's application, Georgia does not have an MLR requirement that applies to the Georgia individual market. The Department further states that Georgia does not have a guaranteed issue requirement, limits on health status rating, an issuer of last resort, or a State-operated high-risk pool.

Indemnity policies. Consequently, the Department revised the number of that issuer's enrollees down from 1,332 to 86.

[3] Based on data provided by the Department in its July 15, 21 and 28, 2011 letters. No information was provided for issuer #7, whose business was 100% assumed by issuer #5 in 2010, according to Notes to Exhibit 7 to the Department's July 15 letter.

[4] The numeric identifier was assigned by the Department to each of the 19 issuers included in the Department's initial application.

[5] Although the Department has not provided the names of the issuers, issuers can be identified by matching the data from their 2010 Supplemental Health Care Exhibits ("SHCE"s) that issuers file with the National Association of Insurance Commissioners ("NAIC"), provided in Exhibit 6 to the Department's May 18 and July 15 letters, to the complete SHCEs which are publicly available from the NAIC.

[6] Market shares were recalculated from those provided by the Department in Exhibit 7 to its July 15 letter, to reflect the fact that the correct enrollment for Metropolitan is 86 and not 1,332.

According to the Department's application, Ga. Comp. R. & Regs. r. 120-2-67-.10(b)(5) requires issuers wishing to withdraw from the Georgia individual market to provide at least 180 days notice to their policyholders and the Commissioner, and may not re-enter the Georgia individual market for five years.

III. Application of Regulatory Criteria to the Georgia 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*

At the time we deemed Georgia's application complete, no issuers in the Georgia individual health insurance market had provided notice of exit. The Department's initial application states that "97,377, or 28.29% of the market, of the enrollees are covered by insurers that have indicated that an exit from the Georgia individual market was possible." The Department further expresses concern that "without [an adjustment] to the MLR standard in Georgia that several insurers will be unable to operate the individual line profitably" and that "[a]s a consequence, some insurers have indicated that they may exit the individual market." In its May 18 letter, the Department identifies the issuers it believes could exit the market as issuers ##1, 2, 3, 5, 6, 9, 15, and 18, which correspond to Aetna, Time, MEGA, World, John Alden, Mid-West, Coventry, and American Republic. Additionally, the Department argues that the five-year ban on re-entry imposed by Georgia law on issuers that withdraw would result in diminished competition and consumer choice.

The Department focuses specifically on the needs of the smaller issuers, some of which the Department believes "will not be able to make sufficient adjustments to business models and practices to meet an 80% MLR with or without a phase-in period." The Department concludes that "smaller insurers that cannot operate at a profit (or at least without major losses) are high risks for market exit." The Department suggests that "[t]he objective for these insurers should be to keep them from withdrawing from the individual market" to "minimize the market disruptions for those who are currently insured by those insurers and have health issues."

The Department also focuses on the issuers attempting to penetrate the market or scale up their operations, asserting that "[t]he effect of an 80% MLR is that insurers will either need to grow quickly (which can be a solvency concern) or be part of a holding company that is willing to commit significant capital for returns that are inherently capped or both." The Department explains that "the newer blocks of individual business tend to have healthier enrollees than more established and mature blocks of individual business" and suggests that "[f]or these insurers, the immediate application of the 80% MLR standard is not sustainable during the transitional period."

On October 21, 2011, the Department informed CCIIO that American Republic and World have notified the Department of their intention to exit the Georgia individual market. Both issuers are part of the American Enterprise Group. As shown in Table 1 above, in 2010 American Republic and World insured a combined total of 5,414 enrollees, or 1.7 percent of the Georgia individual market. According to these issuers' 2010 SHCEs and information provided by the Department, American Republic and World had credibility-adjusted 2010 MLRs of 70 percent and 58 percent, and expected to owe rebates in 2011 of $0.6 million and $0.9 million, respectively. American Republic was unprofitable in the Georgia individual market. 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. The fact that American Enterprise Group's decision to withdraw from the Georgia individual market was made without taking into account any adjustment to the MLR standard we might make, coupled with the fact that it is withdrawing from markets where it would not be affected by the MLR provisions, suggest that its decision was not related to the risk of paying rebates in Georgia 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 ACA and implementing regulation. The Department's application calculates the estimated MLRs using data from calendar year 2010. These data will have a one to three year lag relative to each issuer's 2011 through 2013 results, the reporting years for which the Department is requesting an adjustment to the 80 percent MLR standard.

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 ACA 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.

Twenty issuers in the Georgia individual market are expected to have at least 1,000 life-years each in 2011 and thus to be at least partially credible (as defined in 45 CFR §158.230(c)).[7] 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 Department's estimates of MLRs of these issuers are shown in the chart below.

Table 2: Georgia's Estimate of 2010 Federal Medical Loss Ratios[8]

MLR ID#	Issuer	Life Years	MLR Before Credibility Adjustment	Credibility Adjustment[9]	MLR After Credibility Adjustment
13	BCBS	154,100	80.9%	0.0%	80.9%
15	Coventry	33,301	61.7%	1.5%	63.2%
1	Aetna	33,147	67.8%	1.5%	69.2%
	BCBS Healthcare	13,321	51.2%	3.2%	54.4%
14	Kaiser	27,956	117.8%	1.6%	119.3%
11	Golden Rule	19,900	66.0%	1.9%	67.9%
16	Humana Employers	15,502	51.6%	2.8%	54.3%
2	Time	18,465	66.7%	2.4%	69.1%
4	Humana	6,440	70.4%	4.3%	74.7%
5	World	3,448	51.6%	6.5%	58.1%
3	MEGA	3,588	75.1%	5.7%	80.8%
10	Connecticut General	2,221	77.7%	5.8%	83.5%
8	Consumers Life	2,834	81.2%	5.0%	86.2%
	American General	2,909	44.5%	5.1%	49.6%
9	Mid-West	3,067	56.5%	6.1%	62.5%
18	American Republic	1,966	61.4%	8.9%	70.3%
6	John Alden	2,059	60.4%	7.2%	67.6%
	New York Life	1,408	98.3%	8.3%	106.6%
	Freedom	1,131	49.8%	10.8%	60.6%
17	Alliant[10]	879	61.2%	8.3%	69.5%

[7] Life-years are the total number of months of coverage for enrollees during the year, divided by 12. 45 CFR §158.230(b). 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(c) and (d).

[8] Calculated based on data from 2010 SHCEs, with the exception of MEGA and Mid-West, which are based solely on the data provided by the Department as their incurred claims amounts differ from those reported on their 2010 SHCEs.

[9] The estimates shown in Table 2 include deductible factors provided under 45 CFR §158.232(c) for all issuers except Aetna, Kaiser, and Coventry, which did not provide deductible factors. The credibility adjustments available to these three issuers may thus be understated.

[10] According to the Department's application, Alliant has a fast-growing block of business and consequently expects to be partially credible and to owe rebates in 2011. Its MLR before credibility adjustment was estimated based on Alliant's SHCE, and the credibility adjustment was provided in the Department's September 14, 2011 response.

According to the 2010 MLR data shown above, it appears that six issuers in the Georgia individual market – BCBS, Kaiser, MEGA, Connecticut General, Consumers Life, and New York Life – meet the 80 percent MLR standard. Additionally, according to the Department's application, Humana Employers is already pricing its products to 80 percent and will achieve an 80 percent MLR sometime after 2011, and Golden Rule also intends to price its products to a higher MLR. Consistent with their stated intention to price their products to higher MLRs, Golden Rule and Humana Employers indicate that they expect to pay 2011 rebates of $1.9 million and $0.1 million, respectively, much lower than the amounts suggested by the 2010 experience shown in Table 3, below.

Nonetheless, there remain ten issuers with MLRs expected to be below the 80 percent standard in 2011: Coventry; Aetna; BCBS Healthcare; Time; Humana; American General; Mid-West; John Alden; Freedom; and Alliant.[11] These issuers must adjust some combination of their operations and financial targets in order to satisfy an 80 percent MLR standard. In its basic form under the ACA and implementing regulation, the MLR is the ratio of monies spent on incurred claims and quality improving activities to premium revenue (adjusted for certain State and Federal taxes and fees). See 45 CFR §158.221. Therefore, all other things being equal, these ten 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 Georgia individual market.

The chart below shows, for each issuer expected to have at least 1,000 life-years in the Georgia individual market in 2011, the issuer's estimated 2010 MLR, estimated rebate based on 2010 MLR, 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.[12]

Table 3: Estimated 2010 MLRs, Rebates and Pre-Tax Net Gain ($ in millions)

MLR ID#	Issuer	MLR After Credibility Adjustment	Estimated Rebates[13]	Pre-Tax Net Gain Before Rebates	Pre-Tax Net Gain After Rebates
13	BCBS	80.9%	$0.0	$32.7	$32.7
15	Coventry	63.2%	$7.6	$1.3	($6.3)
1	Aetna	69.2%	$6.8	$17.3	$10.5

[11] As noted previously, American Republic and World are withdrawing from the Georgia individual market.
[12] "Pre-tax net gain" is the underwriting gain or loss as reported on 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.
[13] The Department's original rebate calculations were based on 2009 data. The estimates shown in Table 3 are calculated using the data from the 2010 SHCEs and the MLRs provided by the Department in its May 18 and July 15, 21, and 28 letters.

	BCBS Healthcare	54.4%	$4.3	$5.7	$1.4
14	Kaiser	119.3%	$0.0	($20.6)	($20.6)
11	Golden Rule	67.9%	$5.2	$8.7	$3.4
16	Humana Employers	54.3%	$5.1	$0.3	($4.7)
2	Time	69.1%	$4.1	$0.2	($3.9)
4	Humana	74.7%	$0.5	$5.8	$5.3
5	World	58.1%	$1.7	$0.9	($0.8)
3	MEGA	80.8%	$0.0	$3.9	$3.9
10	Connecticut General	83.5%	$0.0	($0.6)	($0.6)
8	Consumers Life	86.2%	$0.0	($0.4)	($0.4)
	American General	49.6%	$0.1	$0.0	($0.0)
9	Mid-West	62.5%	$0.9	$2.1	$1.1
18	American Republic	70.3%	$0.6	($0.3)	($0.8)
6	John Alden	67.6%	$0.5	$1.0	$0.4
	New York Life	106.6%	$0.0	$0.1	$0.1
	Freedom	60.6%	$0.4	$0.1	($0.3)
17	Alliant	69.5%	$0.0	$0.1	$0.1

While we agree with the Department that significant impact of rebates on issuers' ability to operate the individual line of business profitably generally may precipitate market exit by such issuers, we do not share the Department's concern that Aetna, MEGA, John Alden, or Mid-West are likely to exit the market. As shown in Table 3 above, Aetna would retain significant pre-tax net gains in the Georgia individual health insurance market even after payment of rebates under an 80 percent MLR standard. MEGA had a 2010 MLR above 80 percent, and also had significant pre-tax net gains in the Georgia individual market. Lastly, not only would John Alden and Mid-West remain profitable after payment of rebates based on 2010 data, but they also project 2011 rebates that are 33 to 40 percent lower than the rebate amounts suggested by the 2010 data, and thus may be even less affected by the payment of rebates than 2010 data suggest. Furthermore, an issuer electing to withdraw from the Georgia individual health insurance market may not reenter the individual market for five years. Although the Department focuses on the fact that the five-year ban on re-entry could reduce competition and consumer choice, we note that the five-year ban is also a significant disincentive to exiting the market for an issuer who will remain substantially profitable even after payment of rebates.

Of the ten issuers with MLRs considerably below 80 percent, three would be expected to be unprofitable after payment of rebates based on 2010 data: Coventry; Time; and American General.[14] However, this analysis presumes certain facts, most notably the continuation of 2010 financial performance and no changes to 2010 business models that likely have changed in 2011. Indeed, according to the Department's application, two of these issuers – Time and American General – project rebate payments for the 2011 MLR reporting year that are 24 percent and 36

[14] Although Freedom would also be unprofitable after payment of rebates based on 2010 SHCE data, Freedom projects 2011 rebates of only $0.1 million, four times lower than the amount suggested by its 2010 SHCE. Furthermore, Freedom expects to be non-credible after 2011, and thus would not be subject to rebate payments beyond 2011. Therefore, we do not consider Freedom to be likely to withdraw due to the rebate requirement.

percent lower, respectively, than the amounts estimated based on their 2010 experience. This suggests that these issuers are changing their business models to achieve higher MLRs in 2011.[15]

With regard to the Department's concern about the impact of the 80 percent MLR standard on issuers attempting to penetrate the market or scale up their operations, there appear to be two such issuers in the Georgia individual market: BCBS Healthcare and Alliant. Although Alliant would not have had to pay rebates in 2010 if the rebate requirement applied in 2010, the Department indicates that Alliant expects to become partially credible in 2011 due to having a fast-growing block of business and consequently projects 2011 rebates of $0.3 million. Similarly, according to the Department's application, BCBS Healthcare, which also has a fast-growing block of business, projects 2011 rebates of $7-$11 million, significantly more than the amount suggested by the 2010 performance. We note that the MLR regulation's provision regarding newer experience, 45 CFR §158.121, allows an issuer with 50 percent or more of its experience during an MLR reporting year resulting from new business to exclude the experience of these policies from MLR calculations for that reporting year. According to the Department's September 14 letter, Alliant's business grew by 60 percent in 2010. Assuming a similar growth rate in 2011, Alliant would be able to significantly reduce its 2011 rebate payments by taking advantage of 45 CFR §158.121. Similarly, BCBS Healthcare's 2011 rebate estimates are 65 percent to 160 percent higher than 2010-based estimates, suggesting an expectation of significant growth. BCBS Healthcare does note that its 2011 and 2012 rebate estimates do not take into account the potential effect of 45 CFR §158.121 regarding newer experience, which suggests that its actual rebate liability in 2011 and 2012 will be significantly lower. We also note that BCBS Healthcare, together with BCBS, is a subsidiary of WellPoint, Inc., the largest health benefits company in the U.S., that would likely be able, if necessary, to commit capital to BCBS Healthcare's growth.

In sum, although evidence shows that a number of issuers in the Georgia individual market either 1) already meet the 80 percent MLR standard, 2) have indicated that they are already pricing their products to meet a higher MLR, or 3) are sufficiently profitable to absorb the impact of rebate payments, the potential impact of rebates on the financial performance of Coventry, Time, and possibly American General, supports the Department's concern that immediate implementation of the 80 percent MLR standard could lead to market destabilization.

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

As stated previously, the Department expresses concern about the impact of rebate payments on issuers' profitability, and concludes that six issuers in addition to World and American Republic – Aetna, Time, MEGA, John Alden, Mid-West, and Coventry – could exit the State. As discussed in Part A, we do not share the Department's concern that Aetna, MEGA,

[15] We note that, according to the Department, American General has a closed block of business. Furthermore, American General's 2010 SHCE data show average annual premium per enrollee of just over $100, which is more typical of supplemental health insurance products, which are not subject to MLR rebate provisions. According to its websites, http://www.americangeneral.com/lifeinternet2000/careerweb.nsf/contents/products_accident (*updated* Sept. 19, 2011) and http://dropoptions.com/lifeinternet2000/careerweb.nsf/contents/products_ga (*updated* May 28, 2009), it appears that American General offered only supplemental health insurance products in Georgia. Therefore, it is likely that, like Metropolitan, American General has only a small number of comprehensive major medical policies in the Georgia individual market. Consequently, American General will likely be non-credible and thus not subject to rebate payments in the near future.

John Alden, or Mid-West are likely to be so significantly affected by the 80 percent MLR standard as to consider exiting the market. However, we do share the Department's concern with regard to Coventry and Time, and we believe that this concern may reasonably be extended to American General. These three issuers insure a combined total of 55,650 enrollees, or 16 percent of the individual market.

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

The Department asserts that "[a]s a consequence of the 80% MLR standard insurers are decreasing agent commissions," and that it is "self-evident" that a decrease in commission rates will reduce the number of agents operating in the individual health insurance market. The Department concludes that, as a consequence, Georgia consumers "will find it far more difficult to access the agents and brokers." In support of its assessment, the Department states that "15 out of 16 insurers that are still actively writing in Georgia indicated that commissions have already been or would soon be decreased." The Department includes a chart showing that in the individual market, Coventry, Time, Aetna, and Connecticut General reduced first-year and renewal commission rates in 2011, and BCBS reduced renewal rates only; no information was provided for the remaining 15 issuers included in the Department's application. We note that even after reductions, the first-year commission rates for these five issuers remained at 9 percent or higher.

As noted previously, in 2010, BCBS, the largest issuer, with a 40 percent market share, had an 81 percent MLR and, according to Exhibit 5 to the Department's application, is pricing it products to meet the 80 percent MLR standard. The Department has not indicated, nor does it appear likely, that BCBS will need to further reduce its commission rates in order to keep its MLR at or above 80 percent. Based upon the data provided by the Department, in 2010, BCBS accounted for half of all agent and broker compensation in the Georgia individual market.

As discussed in Part III.A, based on 2010 data, three issuers would likely require significant adjustments to their business models to meet the 80 percent MLR standard and remain profitable: Coventry; Time; and American General. Coventry and Time reported commissions on their SHCEs that averaged 13 and 11 percent of total earned premium in 2010, respectively. However, according to the chart included with the Department's application, Coventry and Time have already reduced their commission rates in 2011.

In summary, notwithstanding the reductions in commissions that have already occurred, or may be made in the future by other issuers, the Department has not provided evidence that would lead us to conclude, according to the criterion established by CFR §158.330(c), that "absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers."

Included with the Department's initial application were letters to former Commissioner Oxendine from the Georgia Association of Health Underwriters ("GAHU") and the Georgia Agent and Consumer Advocacy Network ("GACAN"). In its letter, GAHU asserts that "[m]ost carriers in the marketplace have reduced commissions by at least 20% with some individual market reductions of as much as 75%." GAHU suggests that this is problematic because agencies have overhead costs that range from 50 to 80 percent of gross income. GACAN offers anecdotal evidence of an "exodus of agents from the market." However, these organizations do not provide information on the number of agents or brokers who have or might leave the business, or on the number of Georgia consumers who could be affected.

Finally, we also note that the public comment submitted by 17 public interest organizations relates that "data submitted by the National Association of Health Underwriters ["NAHU"] to the National Association of Insurance Commissioners ["NAIC"] does not show any changes in commissions in the individual market between 2010 and 2011 for the ten insurers for which commissions in the individual market are reported." The commenters include the relevant portion of the NAHU report, which is posted on the CCIIO's website, along with the public comments, at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_georgia.html. We note that the NAHU report to the NAIC appears to contradict assertions by the Department, GAHU, and GACAN that most issuers in the Georgia health insurance market have reduced commission rates in 2011. The commenters further note that "[t]he federal rule … does not guarantee that broker and agent's compensation will never be reduced, but rather that consumers must have adequate access to brokers and agents." The commenters' assessment is that "[n]o evidence is provided that implementation of an 80 percent MLR will reduce access."

D. *Alternate coverage options*

As discussed in Part A above, while the information provided by the Department does not support the Department's concern with regard to most issuers whom the Department believes could exit, our analysis suggests that Coventry, Time, and possibly American General could withdraw absent an adjustment to the 80 percent MLR standard. Based on our analysis of the premium and benefit level information submitted by the Department, there is no indication that any of these three issuers offer unique products. Further, there is no indication that remaining issuers in the Georgia individual health insurance market would be unwilling or unable to provide enrollees of these issuers, if they were to exit the market, with comparable products, at comparable prices, to what the enrollees presently receive from their issuers.

However, the Department expresses concern that in the event issuers exit the Georgia individual market, policyholders with pre-existing conditions may have difficulty obtaining new coverage. According to the Department's application, Georgia does not have a guaranteed issue requirement, limits on health status rating, an issuer of last resort, or a State-operated high-risk pool. Furthermore, the Commissioner indicates that he does not have authority to require remaining issuers to absorb the enrollees of exiting issuers, or to inhibit an issuer's exit from the market. The Department concludes that policyholders with pre-existing conditions would likely be left without coverage for six months until they can qualify for the federally administered Pre-Existing Condition Insurance Plan ("PCIP"). We agree with the Department's assessment that some consumers could be left without coverage for some period of time if any issuers do exit the market. In addition, we recognize that for an individual whose issuer leaves the market, having to find new, possibly more expensive coverage, and to change provider networks is disruptive.

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 Georgia individual health insurance market if application of the 80 percent individual market MLR standard causes one or more issuers to leave the market. Since the Department did not raise the issue, we assume that this is not of concern to the Department.

F. *Other relevant information submitted by the State*

According to Exhibit 3 to the Department's application and the Department's July 21, 28, and September 14 letters, the total amount of rebates the Department expects consumers to receive in 2011-2013 if the issuers offering coverage in the Georgia individual market had to meet an 80 percent MLR standard in each of those years is $66.8 million. The total amount of rebates that consumers would receive under the Department's proposed adjustment to the MLR standard is $6.5 million. The latter amount is somewhat understated because the rebate projections under the Department's proposed adjustment to the MLR standard for BCBS Healthcare, American General, and Freedom were unavailable. Nonetheless, granting the Department's request could deprive consumers of a large amount in rebates.

IV. Summary of Public Comment

In addition to the two letters submitted to the Department by GAHU and GACAN, and addressed in Part III.C, above, CCIIO received one public comment submitted jointly by 17 public interest organizations. This comment opposes the Department's request, and argues that the Department'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. The public interest organizations assert that the Department has offered no evidence to support its claim that issuers will leave the market absent an adjustment. These commenters also point out that the Department has not offered "any evidence … as to the normal turnover in the individual insurance market in Georgia," suggesting that "[i]t is not uncommon for small insurers to stop writing blocks of business or to even exit a market for all kinds of reasons, and the fact that two insurers have stopped writing new policies in a particular year is not necessarily an unusual event." The commenters further express concern that Georgia consumers will be deprived of a significant amount in rebates if the Department's request is granted. 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 (§158.301).

In this case, we agree with the Department and conclude that, based on the application of the criteria and standard set out in section 2718, there is a reasonable likelihood that immediate implementation of an 80 percent MLR standard may destabilize the Georgia individual market. Specifically, we recognize that application of an 80 percent standard in 2011 could cause issuers that will be subject to rebate requirements to incur losses in the Georgia individual market, and could lead these issuers to withdraw from that market, assuming that their 2011 experience mirrors their 2010 experience. Coventry and Time, the second and eighth largest issuers in the market, would incur losses even if a 75 percent MLR standard were applied in 2011 based on 2010 data. These issuers will require time to adjust their business models to meet an 80 percent MLR standard without a significant negative impact on their financial performance. Indeed, the Department indicates that it believes that Coventry and Time could exit the market absent an adjustment. An exit by one or both of these issuers, and potentially American General, could leave up to 55,650 enrollees temporarily without coverage. Because Georgia has no mechanisms to provide consumers with options in the event an issuer withdraws from the individual market, such as a guaranteed issue requirement or a State-operated high-risk pool, enrollees with pre-existing conditions who lose coverage due to issuer withdrawal would be left with virtually no immediate alternative coverage options.

While we agree with the Department that implementation of an 80 percent MLR standard in 2011 may risk destabilizing the Georgia individual market, we do not agree that an adjustment to 65 percent in 2011, 70 percent in 2012, and 75 percent in 2013, as requested by the Department, is warranted. In our view, adjusting the MLR to such a low number in 2011 and delaying until 2014 full implementation of the 80 percent statutory standard overcompensates for the general risk of destabilization asserted by the Department.

This is due in part to the fact that 12 of the 18 largest issuers in the Georgia individual market had 2010 MLRs above 65 percent. Therefore, most issuers, including Time, already exceed the Department's requested adjusted standard of 65 percent for 2011. All three issuers that are likely to be significantly impacted by the rebate requirement in 2011 – Coventry, Time, and American General – should be able to avoid incurring losses at an MLR standard of 70 percent. As discussed in Part III.C above, according to the Department, Coventry has already reduced its commission expenses in 2011, which should increase its net gains beginning in 2011. Additionally, as shown in Table 3 above, Coventry estimates that it would not owe rebates under the Department's proposed adjustment to a 65 percent standard in 2011, suggesting that Coventry expects its 2011 MLR to be above 65 percent. The combination of higher 2011 MLR and higher 2011 pre-tax net gains should allow Coventry to remain profitable after payment of rebates under a 70 percent standard in 2011. Likewise, according to the Department, Time has also reduced its commission expense in 2011, which should be sufficient for Time to retain some pre-tax net gains after payment of rebates under a 70 percent standard. Based on the fact that American General's estimates of 2011 rebates are 36 percent lower than the estimates suggested by its 2010 experience, American General should also be able to achieve sustainable financial performance under a 70 percent standard.

Consequently, based on the information provided by the Department, including the 2010 SHCE data, we believe that establishing an MLR standard of 70 percent for 2011 and 75 percent for 2012, with the 80 percent standard to apply beginning 2013, reasonably addresses the risk of destabilization set out in the application. An adjustment to the MLR standard in 2011 and 2012 mitigates the risk of market destabilization while preserving for consumers the intended benefits of section 2718. This approach, which creates a glide path for compliance with the 80 percent standard, balances the interests of consumers, the State, and the issuers in accordance with the principles underlying section 2718.

Accordingly, pursuant to section 2718(b)(1)(A)(ii) of the PHS Act (42 U.S.C. §300gg-18(b)(1)(A)(ii)), the MLR standard applicable to the Georgia individual health insurance market is adjusted to 70 percent for the MLR reporting year 2011 and to 75 percent for the MLR reporting year 2012. The 80 percent statutory standard will apply in MLR reporting year 2013 and thereafter.

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, November 8, 2011/

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