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June 28, 2011

Via e-mail to MLRAdjustments@hhs.gov

Gary M. Cohen
Acting Director, Office of Oversight
U.S. Department of Health & Human Services
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop C2-21-15
Baltimore, Maryland 21244-1850

RE: Petition for Adjustment of Medical Loss Ratio Requirements

Dear Mr. Cohen:

Thank you for your two letters of April 4, 2011, regarding Florida's Request for Adjustment to the Medical Loss Ratio Standard, requesting additional information. The Florida Office of Insurance Regulation's (the Office) responses are set forth below.

As a preliminary matter, however, I would like to express again that, in response to our initial request for information, and the follow-up more detailed request to enable the Office to answer your April 4 letters, many carriers submitted the data only upon the assurance of anonymity. Furthermore, some carriers perfected their claims to trade secret protection of such data under Florida law in accordance with the requirements of Chapter 624, Florida Statutes, and invoked trade secret protection of the data under the federal Freedom of Information Act. The Office hereby tenders the data, but has redacted information that would directly identify the issuers. The Office has a legal obligation to do so under Florida law. Nonetheless, I am confident that the information provided herein meets your need for the requested substantial and discrete information.

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MARY BETH SENKEWICZ • DEPUTY COMMISSIONER
200 EAST GAINES STREET • TALLAHASSEE, FLORIDA 32399-0326 • (850) 413-5104 • FAX (850) 488-2348
WEBSITE: WWW.FLOIR.COM • EMAIL: MARYBETH.SENKEWICZ@FLOIR.COM

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Responses to Letter #1 (Information Needed in order for Florida's application to be complete)

Question #1. In its response to 45 CFR § 158.321(b) on page 4 of its petition, the Florida Office of Insurance Regulation ("FOIR") references FL ST s. 627.6424 [sic] in describing its State market withdrawal requirements but does not mention FL ST s. 624.430. FL ST s. 624.430 also appears to contain State market withdrawal requirements that, if applicable, should be described in the FOIR's petition. Please explain the applicability, if any, of this provision to the Florida health insurance market.

Response #1. 627.6425, F.S., is the specific statute governing individual health insurance and renewability of individual coverage, including market withdrawal. 624.430, F.S., is the general statute governing withdrawal from the market in a line of insurance. If an issuer were withdrawing from the health insurance market entirely, it would have to comply with both provisions and would have the health insurance line removed from its certificate of authority after one year of inactivity. I would note that no health insurer has utilized 624.430, F.S. in my nearly four-year tenure as Deputy Commissioner. The notice provisions in 627.6425 that are more favorable to the consumer would prevail since they are in the specific statute.

Question #2. In its response to 45 CFR §158.321(d)(1) on page 5 of its petition, the FOIR indicates that the number of individual enrollees by product for each of the 21 issuers who presently offer coverage in the Florida individual market is not available to the Office from filed information, other than for HMOs. Please either ask the non-HMO issuers for this information or provide the FOIR's best estimates of the required figures. If estimates are provided, please indicate the assumptions underlying the FOIR's estimates and provide any analyses the FOIR performed to reach those assumptions.

Response #2. No estimates are used. See issuer attachments for specific responses.

Question #3. In its response to 45 CFR §158.321(d)(1), with respect to HMOs, the FOIR provides data on individual enrollees by product only for Preferred Medical Plan (in the Excel attachment labeled "Preferred Medical Plan Inc."). However, Attachment C to the FOIR's petition indicates that there are four other HMOs (Aetna Health, Avmed, Coventry, and Health Options) that are also currently active in the Florida individual market. Please provide the number of individual enrollees by product for these and for any other HMOs in the Florida individual market.

Response #3. See issuer attachments for specific responses.

Question #4. The FOIR's response to 45 CFR§158.321(d)(1) provides premium rate data by product for nine issuers in a series of 13 attachments. However, the FOIR indicates on page 5 of its petition that there are 21 issuers presently offering coverage in the Florida individual market. We appreciate that, as explained on page 6 of the FOIR's petition, the FOIR does not receive rate filings from out-of-state issuers. Therefore, for any of the 12 issuers for which the FOIR has not provided premium rate data that are out-of-state issuers, please ask the out-of-state issuers for this information, or provide the FOIR's best estimates of the required figures. If estimates are provided, please indicate the assumption underlying the FOIR's estimates and provide any analyses the FOIR performed to reach those assumptions.

Response #4. No estimates are used. See issuer attachments for specific responses.

Question #5. Please provide the information in "Attachment B" of the FOIR's petition, which was submitted in response to 45 CFR§158.321(d)(1), in Excel spreadsheet format as specified in the Center for Consumer Information and Insurance Oversight ("CCIIO") Guidance issued on December 17, 2010. This guidance is posted on the CCIIO website at http://cciio.cms.gov/programs/marketreforms/mlr/12-17-2010ociao_2010-2a_guidance.pdf.

Response #5. The original attachment covers the entire individual market, and the majority of carriers on the list do not "offer" coverage in the individual market, as is contemplated by 45 CFR§158.321(d)(1). See a new "Attachment B-1" which is more responsive to the information requested in (d)(1).

Question #6. In its response to 45 CFR§158.321(d)(2) on page 5 of its petition, the FOIR states that the required information has been provided "on an anonymous basis, as requested by certain issuers." Please state, with regard to the FOIR's attachment that appears on the CCIIO website as "Financial Information by Issuer," the alphabetical letter identifier of each issuer that has not requested anonymity. For all 21 issuers whose information appears on that attachment, please match the information submitted in response to 45 CFR§158.321(d)(1) (e.g., the number of individual enrollees by product, premium data by product, and market share in the Florida individual market) to the appropriate issuer's alphabetical letter identifier.

Response #6. See Attachments B-1 and E, "Alpha - Company match."

Question #7. The FOIR's response to 45 CFR§158.321(d)(2)(iii) through 158.321(d)(vii), provided in the FOIR's attachment appearing on the CCIIO website as "Financial Information by Issuer," indicates that certain financial data by issuer are "Not Available," "Not Provided," or "Consolidated." The required data by issuer include estimated Federal MLRs, total commissions, and estimated rebates in the Florida individual market, as well as the net underwriting profit, after-tax profit and profit margin for both the individual market business and consolidated business in Florida. For data labeled as "Not Available," "Not Provided," or "Consolidated," please either ask the issuers for the requested information or provide the FOIR's best estimates of the required figures, using data readily available to the FOIR through rate filings, NAIC filings, and any other source the FOIR deems appropriate. If estimates are provided, please indicate the assumptions underlying the FOIR's estimates and provide any analyses the FOIR performed to reach those assumptions.

Response #7. No estimates used. See Attachment "Petition Spreadsheet Revised".

Question #8. The FOIR's attachment appearing on the CCIIO website as "Financial Information by Issuer" provides the net underwriting profit, after-tax profit, and after-tax profit margin for the individual market business of each issuer offering coverage in the Florida individual market to more than 1,000 enrollees. Pursuant to 45 CFR §§158.321(d)(2)(vi) and 158.321(d)(2)(vii), please also provide these figures for the consolidated accident and health lines of business (including the consolidated individual, small group, and large group businesses) of each issuer offering coverage in the Florida market to more than 1,000 enrollees.

Response #8. See Attachment "Petition Spreadsheet Revised."

Question #9. Based on Attachment A of the FOIR's petition, the FOIR's proposed adjustment to the Federal 80 percent MLR standard applicable to the Florida individual insurance market is to delay implementation of that standard until 2014. However, the adjustment permitted by 45 CFR § 158.301 is an adjustment to the numerical MLR standard established by Federal statute, which, in contrast to Florida law, requires an issuer to pay rebates if the MLR standard is not met. Thus, as we read the FOIR's proposal, the FOIR is requesting a zero percent Federal MLR standard for the Florida individual insurance market for the reporting years 2011, 2012 and 2013. Please confirm that the FOIR is making such a request or revise the FOIR's proposal, as required by 45 CFR §158.322, accordingly. We note that neither the statute nor the regulation governing the Federal MLR standard provides for the substitution of different definitions or methods for calculating that MLR standard, the use of different MLR standards for different types of issuers within a State's individual insurance market, or the waiver of the Federal rebate requirement.

If the FOIR provides a revised proposal, please also provide an updated estimate of the total rebates that issuers offering coverage in the individual market in Florida would pay if issuers had to meet the revised Federal MLR standard to be proposed by the FOIR, as required by 45 CFR §158.322(d).

Response #9. The Office apologizes for any confusion regarding its request. The Office is presenting a revised proposal. The Office requests an adjustment of the MLR standard, set at 80%, and to be calculated using the federal definitions and methodology, for the calendar years identified, as follows:

2011 – 68%
2012 – 72%
2013 – 76%

See Attachment F, “Estimated Rebates in accordance with MLR Transitional Adjustment.”

An incremental phase-in of the MLR standard will have a significantly less jarring effect on the issuers. For example, see Company K, a small, successful regional HMO. Without an adjustment, the HMO would have to rebate an estimated \$4.3 million of an after-tax profit of \$5.2 million on consolidated business. Such a substantial negative effect on a business's bottom line would surely cause the owners to reconsider whether they wanted to stay in business, and potentially disrupt the lives of its almost 28,000 satisfied customers.

Responses to Letter #2 (Follow-Up Questions based on CCIIO preliminary review)

Question #1. Page 5 of the FOIR's petition states that "there are 21 issuers who presently offer coverage in the individual market," but Attachment C to the Office's petition lists 22 companies as active carriers in Florida's individual market. Please confirm that 21, not 22, issuers currently offer coverage in the Florida individual market and identify which issuer listed in Attachment C is not presently offering coverage in that market.

Response #1. There are 21 issuers that presently offer coverage in Florida's individual market. Aetna Life Insurance Company is listed twice in Attachment C.

Question #2. Page 2 of the FOIR's petition states that one impact of the implementation of the 80 percent MLR standard is that "issuers will exit or stop selling new business in the individual market." As we read the petition, the FOIR suggests that "106 ... companies totaling almost 52,000 insureds" may exit the individual market, and that four issuers have already provided notice of their impending withdrawal. Attachment D to the petition indicates that each of the four issuers specifically identified as having recently withdrawn from the Florida individual insurance market (Citrus Health, Guarantee Trust, Guardian Life, and National Health) cover fewer than 300 enrollees. Although the number of insureds at each of the 106 companies mentioned is unknown, a simple average suggests that each company covers 490 enrollees, although in reality some companies may cover more and others may cover far fewer enrollees.

Under 45 CFR §158.230(c)(3) and (d), any issuer that covers fewer than 1,000 enrollees will not be subject to MLR rebate requirements in 2011. Depending on future enrollment, these issuers may not be subject to rebate requirements in 2012 or 2013 as well, or would otherwise likely qualify for sizeable credibility adjustments. In light of the impact of credibility adjustments, please provide any additional information supporting the expectation that implementation of an 80 percent MLR standard will cause or has caused the identified issuers to withdraw from Florida's individual market.

Response #2. To be sure, credibility adjustments will play a factor in a company's determination to exit, or not to exit the market. The specific adjustments and the effects thereof with respect to specific companies and their deliberations are unknown to the Office.

Question #3. Page 2 of the FOIR's petition suggests that issuers may cancel or nonrenew policies as a result of the 80 percent MLR standard due to solvency concerns. However, 45 CFR §158.270 allows a State's insurance commissioner or comparable authority to request the deferral of all or a portion of an issuer's rebate requirement if payment of such rebate may threaten the issuer's solvency. In light of this provision, please provide any additional information supporting the expectation that implementation of an 80 percent MLR standard will cause issuers to cancel or nonrenew policies.

Response #3. The fact that an insurance commissioner may “defer” a rebate payment has no effect on the company’s bottom line. It is still a liability that will be reflected in the company’s balance sheet.

Question #4. Page 2 of the FOIR's petition suggests that "the MLR requirements will erect barriers to entry in the individual market." In order to better understand the ease of entry into the Florida individual market, please provide for the past five years any new entrants into the Florida individual market, their year of entry, and their annual enrollment from year of entry through 2010.

Response #4. Florida encourages companies to enter the marketplace and increase competition. The applicable business units of the Office are ready to assist any company that wishes to enter Florida’s marketplace. Please see Attachment G, “Individual Major Medical Data for Companies Recently Entering the Florida Market” for the specific response. These are the new entrants into the Florida individual market, to the best of the Office’s knowledge.

Question #5. Page 5 of the FOIR's petition states that Florida's high risk pool has been closed to new enrollees since 1991. Please explain the circumstances behind the closing of the high risk pool to new enrollment and describe how funds for the pool are generated.

Response #5. The Florida Comprehensive Health Association (FCHA) under its former name, State Comprehensive Health Association, was created in 1983. The Florida legislature voted to halt membership in the pool effective October 1, 1990. Members enrolled in FCHA were allowed to stay in the pool.

As a condition of doing business in Florida, health insurers are required to pay assessments to fund the deficits of the FCHA. Companies subject to the assessment include all health insurance companies, health maintenance organizations, fraternal benefit societies, multiple employer welfare arrangements, and prepaid health clinics. Self-funded employers and governmental entities are not subject to the assessment.

The board assesses each insurer annually a portion of incurred operating losses of the FCHA, based on the insurer's market share in Florida as measured by premium volume. The total of all assessments per participating insurer is capped at 1 percent of such insurer's health insurance premium earned in Florida during the calendar year proceeding the year for which the assessment is levied.

In the late 1980s, growth and losses in the FCHA had increased significantly. Membership peaked in 1990 at 7,500. That same year, premiums paid by FCHA members were about \$15 million compared with about \$47 million in claims. At this point, the issuers objected to continuation of new members and won legislation to close the pool to new enrollment.

Question #6. Attachment A of the FOIR's petition requests that implementation of the 80 percent standard be delayed until 2014. However, many of the issuers featured in the FOIR's September 24 hearing testimony and associated affidavits were supportive of a phase-in approach to the 80 percent MLR standard. Please explain whether the FOIR considered requesting an adjustment that would incrementally phase in the 80 percent MLR standard, rather than providing a single year transition to the statutorily-required 80 percent standard between 2013 and 2014.

Response #6. Yes, the Office did consider an incremental phase-in and has adjusted its request. See previous Response #9 to Letter #1.

Question #7. Attachment D of the FOIR's petition lists instances of discontinuance of product forms and market withdrawals in the Florida health insurance market over the past few months. Please also provide for the entire years 2008, 2009, and 2010, any instances of discontinuance of product forms or market withdrawals specific to the Florida individual market.

Response #7. The Office did not specifically keep electronic track of such withdrawals until after the passage of the Affordable Care Act. However, the Office is aware of four withdrawals from the market in that time period: Total Health Choice, American National, Citrus Healthcare and Medical Savings.

Question #8. The FOIR's attachment to its petition that appears on the CCIIO website as "Financial Information by Issuer" provides the estimated Federal MLR and estimated individual market rebate under the 80 percent MLR standard for each issuer in the Florida individual market that provides coverage to over 1,000 enrollees. Please explain the assumptions and calculations used to estimate these figures. Please also indicate whether the MLR estimates provided are based on 2009 data, and provide any available data on each issuer's 2008 and 2007 MLRs.

Response #8. See Attachment H, "Issuer Responses to FLOIR Further Inquiry."

Question #9. Please provide a summary chart comparing the plan benefits across plans for which premium rates are provided in the FOIR petition's 13 rate information attachments. Please also include benefit comparisons for any other issuer for which the FOIR submits supplemental rate or financial data.

Response #9. Information by issuer for available plans and rates are contained herein in specific company responses. Most issuers have multiple plans available. The transformation of this highly detailed plan information into a summary is unduly burdensome to the Office. The Office requests that the Secretary move forward with her determination as the information has been supplied. See 45 CFR §158.320.

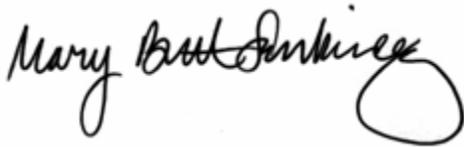
Question #10. The FOIR states on page 3 of its petition that "existing products have been changed to comply with the MLR requirements and the other changes in the Act." Please identify the existing products that have been changed to comply with the MLR requirements and what those changes were.

Response #10. Virtually all issuers selling and renewing health insurance coverage in Florida have updated their forms to reflect the ACA requirements that came into effect on September 23, 2010.

Thank you for your consideration of the Office's request to adjust the MLR requirement in the individual market. Florida's consumers and market would be well-served if the MLR standard can transition to 80% in 2014.

And thank you for the extended timeframe in which to respond. Please do not hesitate to contact me if you have additional questions.

Sincerely,

A handwritten signature in black ink that reads "Mary Beth Senkewicz". The signature is written in a cursive style with a large, circular flourish at the end.

Mary Beth Senkewicz

MBS/ayh