

October 27, 2011

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Objections to Florida's Request for Adjustment of the Medical Loss Ratio Standard in the Individual Market

Dear Secretary Sebelius:

As organizations representing health care consumers and health insurance policyholders throughout Florida, the undersigned wish to express our strong opposition to the petition (Petition) submitted by the Florida Office of Insurance Regulation (OIR) seeking an adjustment to the 80% minimum medical loss ratio (MLR) standard in Florida's individual health insurance market as established by the Patient Protection and Affordable Care Act (PPACA).

OIR originally sought an outright waiver of the MLR standard until 2014, but in subsequent correspondence modified its request, requesting that you adjust the MLR standard in Florida's individual market to 68%, 72%, and 76% for calendar years 2011, 2012, and 2013, respectively.

As you are aware, the MLR gives consumers a straightforward calculation of how their premium dollars are spent and sets a minimum level of spending on medical benefits and quality improvement at 80% in the individual and small group markets. Congress, with the support of the Congressional Budget Office, concluded that an 80% minimum MLR in the non-group market was attainable by efficiently operated insurers.

Pursuant to PPACA, "adjustments to the 80% MLR standard may be granted only if the Secretary determines that the application of such standard may destabilize the individual market" in a state.¹ More specifically, MLR regulations unambiguously clarify that "application of the 80 percent MLR standard may destabilize the individual market in a State only if there is a reasonable likelihood that application of the requirement will do so."²

The burden is therefore on OIR to provide evidence that such destabilization would be reasonably to occur, absent an adjustment to the MLR standard. OIR has failed to meet that burden, providing almost nothing of substance in support of its four primary claims. Moreover, a significant portion of the data provided are not germane to the criteria that, pursuant to federal regulations, you may consider in assessing the likelihood that destabilization will occur.

¹ Section 2718(b)(1)(A)(ii) of the Public Health Service Act, as created by PPACA

² 45 CFR §158.301

In support of our request, we further assert as follows:

1. OIR fails to substantiate its claim that, absent an adjustment to the MLR standard, “[i]nsurers will exit or stop selling new business in the individual market.” In fact, the claim cannot be substantiated.

- a. **Active Individual Market.** Florida’s individual health insurance market is diverse and active, with more than 100 issuers, including 29 issuers with more than 1,000 covered lives.³ Most importantly, there are 21 active issuers in the market at present.⁴
- b. **No Evidence of MLR-Driven Market Withdrawals.** Over the course of two hearings convened by OIR in 2010 expressly for the purpose of eliciting testimony from insurers regarding their intent to leave the individual market in Florida absent an adjustment to the MLR standard, only one insurer testified to that effect.⁵ Even this insurer has not taken steps to withdraw from the individual market during the 13 months that have elapsed since the latter hearing.
- c. **Cited Instances of Market Withdrawals Are Irrelevant.** In the Petition, OIR cites six instances of recent Florida market withdrawals by insurers in ostensible support of its claim, but these examples fail to demonstrate any connection whatsoever between the imposition of the MLR standard and the potential destabilization of the individual market. Indeed, they fail to demonstrate any connection to the imposition of the MLR standard at all.

The specific nature of the withdrawals and the reasons given by the six insurers for that withdrawal, according to the Petition, are as follows:

Insurer #	Market(s)	Reason Cited for Withdrawal	Relevance to Petition
1	Individual market	None cited by OIR	None cited
2	Small Group market	None cited by OIR	None
3	All markets	None given by insurer	None cited
4	Individual market in ALL STATES	None cited by OIR	None
5	Individual and Small Group markets (only 43 policies total, and not shown in the Petition as current having <u>any</u> individual policies)	Insurer cited PPACA generally (not the MLR requirements in particular, from which it would be exempt based on small number of policies) – and is	None (No policies affected, not an active carrier)

³ See Petition, pp. 9-12

⁴ Petition, p. 5

⁵ Petition, p.2

		no longer writing business in <i>any state</i> ⁶	
6	Withdrawing from all markets	Insurer cited a decline in business overall	None

Indeed, only one of the six was an active issuer in Florida’s individual market.⁷

- d. **Protections for New/Small Insurers.** The MLR regulations themselves include protections for insurers that are new entrants to the market and/or have small numbers of covered lives, which OIR’s Petition appears to ignore. The MLR of any insurer that covers fewer than 1,000 lives is considered non-credible and will not be subject to MLR rebate requirements.⁸ Insurers that cover fewer than 75,000 lives will qualify for sizeable credibility adjustments.⁹

Of the six examples cited in the Petition of insurers withdrawing from *any* market (see table above), it appears that only one had more than 1,000 covered lives, and this. Even in this case, however, the withdrawal was from the small group market.

Data supplied by OIR shows that fewer than one third of the insurers in the market have more than 1,000 covered lives, drastically limiting the impact of enforcement of the unadjusted MLR standard on Florida. Yet OIR fails to consider this fact in formulating its Petition.

Finally, it must be noted that the availability of these protections was not known at the time of either OIR hearing.

- e. **Relief Requested Not Justified.** OIR provides no justification whatsoever for the specific MLR standard adjustment proposed. The proposed starting loss ratio of 68% for 2011 is extremely low, especially since when the various expense, premium and credibility adjustments allowed are taken into account, a 65% ACA MLR is comparable to an actual loss ratio in the range of 55% to 60%.¹⁰ It is below the 70% MLR currently required of HMOs by Florida law and in all likelihood below the current 65% MLR required by Florida law of other insurers after federal MLR adjustments are applied.
- f. **No Clear Evidence of Inability to Meet MLR Standard.** It appears from data submitted by OIR in response to HHS that a number of insurers in the Florida individual market do not currently achieve an 80% medical loss ratio. Some of these insurers have sufficient underwriting gain in the individual market that they could cover the rebates they would owe under an 80% minimum

⁶ According to the company’s [website](#) (visited 10/21/2011)

⁷ Petition, p.13

⁸ 45 CFR §158.230(c)(3),(d)

⁹ §158.230(c)(2)

¹⁰ See OIR Petition-Related Item 36, Attachment F: Estimated Rebates – Issuer Clarifications. OIR clarified that the tax and fees adjustment allowed by PPACA would be approximately 4 to 5%, depending on the company, while the credibility adjustment by the NAIC table would be about 4.5%. Therefore, the “real” loss ratio standard is actually in the 70.5% – 71.5% range, not 80%.

MLR¹¹, but others do not. For example, insurer “H”, which has the largest indicated rebate for 2011 of \$33 million, had a net underwriting profit in the individual market of \$55 million. OIR offers no explanation as to why those MLRs fall below 80% and why those insurers cannot achieve the 80% standard.

- g. **Market Withdrawals Contraindicated Under State Law Requirements.** Provisions of the Florida Insurance Code provide further indication that market exodus will not occur.

For one, under Florida and federal law, an insurer must give 180 days notice prior to withdrawal from the individual market.¹² No insurer has provided the required “notice of exit” beyond those that had already stopped writing new business, and none could give notice and exit in 2011.¹³

Furthermore, an insurer that withdraws from the individual market may not re-enter for five years.¹⁴ This restriction makes it unlikely that any health insurance company with a significant enrollment would withdraw from Florida in 2012 or 2013 given the greatly expanded, and federally subsidized, individual market that will be available through the exchange beginning in 2014.

In sum, OIR offers no real evidence that insurers will leave the market if an MLR adjustment is not granted.

2. OIR fails to substantiate its claim that “[t]he MLR requirement will erect barriers to entry in the individual market.” In fact, the claim cannot be substantiated.

- a. Even if the claim were true, this would not prove that disincentives to entry in the individual market alone will lead to destabilization. Destabilization refers to a reduction in current market capacity. Slower growth in an otherwise active market is not a reduction, particularly over only a three-year period.
- b. OIR asserts that, under an 80% MLR standard, “there is simply no way to build a growing company on that amount of money.”¹⁵ This assertion is made without providing any basis in fact, or quantifying the adjustment necessary to ensure that new entrants can remain viable.
- c. Most importantly, the MLR regulations make express allowance for new entrants into the individual market. Specifically, insurers with 50 percent or more of the total earned premiums for the year attributable to policies newly issued and with less than 12 months of experience in that

¹¹ OIR, Petition Item 34: Financial Information by Issuer – Revised

¹² Section 627.6425, Florida Statutes (F.S.)

¹³ OIR, Petition-Related Item 34: Financial Information by Issuer – Revised

¹⁴ Section 627.6425

¹⁵ Petition, p. 2

MLR reporting year, may exclude the experience of these policies from reporting.¹⁶ The regulations also allow new issuers to accumulate contract reserves against later negative experience.¹⁷

3. OIR fails to substantiate its claim that “[t]he MLR requirements will reduce consumer choice because of a reduction in the availability of products in the individual market.” In fact, the claim cannot be substantiated, and even if it could, it is not clear that this would demonstrate the reasonable likelihood of destabilization.

- a. OIR cites examples of three insurers that have recently discontinued products, but these examples also fail to demonstrate any substantial connection between the imposition of these MLR requirements and the destabilization of the individual market. The specific nature of the discontinuations and the reasons given by the insurers, according to the Petition, are as follows:

Insurer #	Number of Products Discontinued	Reason Cited for Withdrawal
1	3	None cited by OIR
2	16	None given by insurer
3	4	Streamlining its product offering and replacing them with more comprehensive products

- b. OIR presents no data pertaining to the number of new products introduced by insurers in the individual market since the passage of PPACA. Any discussion of the impact of discontinuation of products, the resulting increased likelihood of destabilization of the individual market and the potential for attributing any such increased likelihood to the MLR requirements is compromised by the failure to present that complete picture.
- c. OIR expresses particular concern that the products that may be discontinued are “lesser benefit” (mini-med) plans providing coverage that will meet PPACA standards as of 2014 anyway¹⁸. OIR expresses special concern - not for the consumer, but for the insurer that consequently collects fewer premium dollars “without a corresponding reduction in administrative costs.” Fiven

4. OIR fails to substantiate its claim that “[t]he MLR requirements will eliminate broker involvement in the individual market, and cause a severe problem for consumers.” In fact, the claim cannot be substantiated.

- a. OIR fails to establish a connection between required adherence to an unadjusted MLR standard and reduced involvement by brokers. That claim is in fact not supported by available facts.

¹⁶ §158.121
¹⁷ §158.140
¹⁸ Petition, p.3

Florida insurance commission data submitted by the National Association of Health Underwriters to the NAIC is attached as Appendix A. No insurers reduced commissions between 2010 and 2011. Also attached as Appendix B is information from the Insurance Information Institute indicating that employment for insurance agents and brokers has been steady during the past year.

- b. Moreover, regardless of any concerns OIR may have about the impact of classifying broker services as an administrative expense on consumers, a petition seeking adjustment to the specific 80% MLR standard is not the venue for OIR to voice such concerns.

The MLR regulations do not guarantee that broker and agent compensation will never be reduced, but rather that consumers must have adequate access to brokers and agents. No evidence is provided that implementation of an 80% MLR standard will reduce such access. Moreover, granting an adjustment by no means guarantees that broker and agent compensation would be increased. Indeed, there is no reason to believe that insurers would not simply retain any increased income resulting from an adjustment of the MLR standard as profit rather than passing it on to agents and brokers.

5. The facts presented and input gathered by OIR in preparing the Petition was one-sided, incomplete and driven by OIR's pre-conceived agenda to support an adjustment of the 80% MLR standard. In particular, consumers and their interests were ignored throughout the process.

- a. MLR regulations require HHS to consider the evidentiary record of public hearings held by states on the MLR standard into account when evaluating MLR adjustment requests.¹⁹ Although OIR held two hearings that addressed the issue of MLRs in some fashion prior to submitting the Petition, they cannot be considered legitimately "public" in nature. They were exclusively advertised to and organized around the interests of issuers and brokers.
- b. OIR's Petition states that "the record supports a remarkable unanimity of all interested parties on" the concern that, absent an MLR adjustment, consumer choice would be diminished in the individual market.²⁰ In short, insurers, agents, and brokers were asked if they would prefer a lower minimum MLR, and, not surprisingly, they said yes.

Until it was clear that its request for a complete waiver of the MLR standards in the individual market was a non-starter, OIR had been consistent and transparent in its strong support for such relief since PPACA's passage. The stated purpose of the second hearing was to gather evidence in support of OIR's Petition. Near the start of the hearing the FLOIR made the following statement, "*The focus is on the potential adverse impact of the federal requirements related to medical loss ratio, MLR, on the stability of the Florida health insurance markets, and particularly, the*

¹⁹ §158.343

²⁰ Petition, p. 3

individual health insurance market.”²¹ In fact, OIR prodded the insurance industry witnesses to speak critically of PPACA.

While OIR was within its rights to conduct a public hearing for that purpose, the hearing by design discouraged participation by stakeholders opposed to any adjustment to the MLR standard sought via the Petition.

- c. OIR’s hearings were held in May and September 2010, well in advance of the release of the MLR regulations in December 2010 which explained - for the first time - the process for submitting and the criteria for evaluating a request for adjustment of the MLR standard.
- d. In light of this, HHS should ignore the testimony provided at the hearings and focus rather on the evidence provided in OIR’s Petition. Based on that information, individuals and businesses in Florida will receive rebates of approximately \$76 million in 2011, \$51 million in 2012, and \$47 million in 2013.²² If the requested adjustments are granted, however, rebates will total only \$5 million in 2011, \$5 million in 2012, and \$24 million in 2013. Such an adjustment would transfer more than \$130 million from Florida consumers and businesses to insurance companies Florida, and cost Florida’s economy more than \$100 million in economic activity and almost 1,000 additional jobs per year. Furthermore, Floridians will miss out on the lower premiums that will be driven by companies cutting their administrative expenses to achieve lower medical loss ratios.

6. The Petition fails to meet any of the criteria that could justify approval of an adjustment to the MLR standard.

Under MLR regulations, as you are aware, the Secretary may make a determination that application of the 80 percent MLR standard may destabilize the individual market in a State only if there is a reasonable likelihood that application of the requirement will do so.²³ Furthermore, the Secretary may only consider certain specific criteria in assessing whether application of an 80 percent MLR standard could destabilize the individual market in a State.²⁴

A review of these criteria and their applicability to OIR’s Petition and Florida’s individual market readily shows that no reasonable likelihood of destabilization exists:

- (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.*

²¹ OIR, Petition-Related Item 17: Transcript of Hearing, 7:2-6 (emphasis supplied)

²² OIR, Petition-Related Item 34: Financial Information by Issuer – Revised

²³ § 158.301

²⁴ § 158.330

OIR has offered no evidence that any insurers have exited the state or will exit the state or cease offering coverage absent an adjustment. See Paragraph 1 above.

OIR offers no credible evidence that the 80 percent minimum MLR is limiting competition or choice in the individual market. See Paragraphs 1 and 3 above.

(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 standard.

OIR has offered no evidence that *any* enrollees are covered by insurers that will exit the state absent an adjustment. See Paragraph 2 above. Because Florida has offered no evidence that any insurer will leave the state absent an adjustment, it has also failed to prove that any enrollee will lose coverage because of insurers exiting the state.

(c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers.

OIR has not demonstrated that access to agents and brokers will be disrupted if an adjustment is not granted. See Paragraph 4 above.

(d) The alternate coverage options within the State available to individual market enrollees in the event an issuer exits the market.

Alternate coverage is available to Florida insurance consumers if an insurer exits the state. Every insurer that is active in the individual market must offer individual coverage - without pre-existing condition limitations – to all applicants with at least 18 months prior creditable coverage, where the coverage is terminated due to the former insurer’s withdrawal from the individual market.²⁵ The federal pre-existing condition insurance plan (PCIP) is also available to Floridians who might lose coverage if an insurer leaves 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.

The loss to Florida consumers of granting this adjustment request would be substantial. Florida consumers will lose over \$70 million in rebates for 2011 alone if this Petition is granted.²⁶ They will also lose any effect that the rebate requirement would have on driving down premiums for the next three years. OIR has offered no evidence that premiums or cost-sharing would increase or that benefits would be reduced if the adjustment is not granted.

²⁵ Section 627.6487, F.S.

²⁶ i.e., \$76 million rebate under the 80% MLR standard vs. \$5 million rebate under the MLR standard adjustment proposed by MLR

(f) *Any other relevant information submitted by the State's insurance commissioner, superintendent, or comparable official in the State's request.*

No other relevant information was submitted.

In sum, the Florida adjustment request has not been and cannot be justified under any of the above criteria.

7. The Petition was improperly represented by the Insurance Commissioner as a submission made on behalf of the State of Florida, and HHS should consequently find the Petition to be invalid and ineligible for consideration.

a. Background

- i. Under the MLR regulations, the State of Florida must provide its own proposal as to the adjustment it seeks to the MLR standard.²⁷ The State's proposal must be submitted by the Insurance Commissioner or a comparable official.²⁸
- ii. On March 11, 2011, Florida Insurance Commissioner Kevin McCarty, acting by and through the Florida Office of Insurance Regulation (OIR), submitted the Petition for an adjustment to the MLR standards to HHS, alleging that it was submitted "by the State of Florida."²⁹
- iii. Although the Insurance Commissioner is the appropriate submitter of the Petition, it goes without saying that he may only legitimately file any such petition within the bounds of his authority as specifically prescribed in State law. Submission by the Commissioner is a necessary but not sufficient condition for consideration of the Petition by HHS. Prior to its evaluation of the merits of the Petition, HHS must therefore determine whether the Petition is in fact an actionable request from an authorized representative.
- iv. We recognize that the enforcement of State law is *not* the purview of HHS. Rather, we simply note that HHS is obligated to consider a petition purported to be submitted on behalf of the State of Florida *only* if it is in fact a legitimately State-authorized request for appropriate relief. By contrast, it is incumbent on HHS to reject petitions that have obvious fatal defects in this regard, as we allege is the case with the Petition.

b. The Petition is action taken in furtherance of PPACA implementation.

²⁷ §158.322

²⁸ §158.310

²⁹ Petition, p.6

- i. As explained above, the general MLR requirements are set forth in PPACA, and the regulations set forth at 45 CFR 158 implement those requirements.
- ii. The regulations at 45 CFR 158 were issued in the form of an interim final rule pertaining to MLR requirements for both the group and individual markets. The regulations are in fact fully in effect and are binding on Florida and Florida insurers.
- iii. States may request that the Secretary “adjust the MLR standard for the individual market.” The 80 percent standard is therefore in effect unless it is ultimately adjusted by way of approval of a properly submitted request by the State. Even in that event, however, the adjusted standard would then be binding on the State.

Thus, the Petition to secure an adjustment of applicable PPACA-created standards is clearly an effort taken to implement the PPACA.

c. The Insurance Commissioner lacks authority to unilaterally implement or enforce PPACA.

- i. The question of any adjustment to the MLR standards in the individual market is clearly one of a broad policy-related nature. In 2011 alone, the will directly affect the more than 550,000 covered Florida lives who have coverage through the in-state individual market.³⁰
- ii. OIR is administratively housed within the Department of Financial Services and reports directly to the Financial Services Commission (Commission), which consists of the Governor and Cabinet members. The director of OIR is also known as the Insurance Commissioner.³¹ The Commission and OIR have no legislative (policymaking) authority in and of themselves, but rather only the power to promulgate administrative rules:
Powers.—Commission members shall serve as the agency head for purposes of rulemaking under ss. 120.536-120.565 by the commission and all subunits of the commission...³²
- iii. As Florida's policy governing matters related to insurance, the State Insurance Code is codified in Florida Statutes. Consequently, only the Florida Legislature can modify the Insurance Code; the Insurance Commissioner has no authority to amend or waive the Insurance Code.
- iv. Insurers are universally subject to the provisions of the Insurance Code:
No person shall transact insurance in this state, or relative to a subject of insurance resident, located, or to be performed in this state, without complying with the applicable

³⁰ Based on data from the most recent (2009) Florida Health Insurance Market Report prepared by OIR

³¹ References to the Insurance Commissioner and OIR are interchangeable.

³² Section 20.121(3), F.S.

provisions of this code.³³

In particular, with respect to MLR requirements, the Insurance Code requires that:

For health insurance coverage as described in s. 627.6561(5)(a)2,³⁴ the minimum loss ratio standard of incurred claims to earned premium for the form shall be 65 percent.³⁵

The specific definitions and parameters governing Florida's current MLR standards are found in the Florida Administrative Code.³⁶

- v. An adjustment of the MLR requirements for Florida's individual market therefore requires both State statutory and regulatory changes that have yet to be initiated, and these are the purview of the Legislature or the Financial Services Commission, respectively, not the Insurance Commissioner.
- vi. Finally, the Insurance Commissioner himself, through OIR staff, has on several occasions reiterated his assessment that he lacks the authority to unilaterally implement provisions of PPACA. For example, in the wake of the passage of PPACA, the National Association for Insurance Commissioners surveyed state insurance commissioners to assess their perceptions of their ability to enforce the provisions of PPACA.³⁷ Among OIR's survey responses were the following:

Question: Does your State have [PPACA] enforcement authority?

Answer: No.

Question: Does your State have sufficient legal authority to conduct policy form reforms?

Answer: Yes and no. Carriers are submitting forms and we are reviewing them. But if a carrier does not voluntarily include the PPACA provisions, FL has no legal authority to force them to do so until FL adopts the provisions in statute.

The Insurance Commissioner in fact has no authority himself to enforce or implement the PPACA, which include the MLR requirements. He cannot have it both ways in simultaneously claiming that he lacks the authority to implement while proceeding with implementation in the form of the Petition.

d. The Legislature was emphatic that the Insurance Commissioner lacks authority to unilaterally implement provisions of PPACA.

- i. The most compelling evidence in support of the claim that OIR has submitted the Petition on an unauthorized and improper basis comes from the Florida Legislature itself. In October

³³ Section 624.11(1), F.S.

³⁴ i.e., all forms of creditable coverage

³⁵ Section 627.411(3)(a), F.S.

³⁶ See Rule 69O-149.005, Florida Administrative Code

³⁷ NAIC, Survey on State Authority to Enforce PPACA Immediate Implementation Provisions, August 2010

2010, incoming House Speaker Dean Cannon transmitted a letter to State agencies via then-Governor Charlie Crist, including OIR, for the specific purpose of imposing a moratorium on PPACA implementation activity absent legislative authority:

The executive branch agencies implementing [PPACA] are doing so without waiting for clear and comprehensive guidance from the Legislature, the entity solely responsible for policymaking under Florida's constitution.³⁸

- ii. The Speaker specifically identified efforts by OIR to lay the groundwork for seeking an adjustment of the MLR requirements as an example of dire concern:

Two examples underscore the fact that important policy questions are being relegated to federal and state bureaucrats without the involvement of elected policymakers. First, OIR intends to seek federal permission to exempt Florida insurers from federal medical loss ratio requirements...*(text omitted)*.

- iii. Speaker Cannon clarified that such activity must not proceed absent forthcoming specific legislative authority, and that even pending litigation by no means negates that mandate:

We intend to develop a clear and statutorily-defined framework for Florida agencies' activities in regard to the federal health law. Pending such legislative action, state agencies should examine each anticipated action or function in light of their specific statutory authority. The Legislature will carefully consider agency legislative proposals involving the new federal health care system.

We cannot wait until the courts sort through the many challenges by the states to the federal health law or until a wiser Congress readdresses the law's numerous problems. Many provisions are taking effect now and Florida's response must be deliberate and decided by elected state policymakers rather than by default.

- iv. Despite the Speaker's clarification, no implementation authority has yet been granted in any form, and the Legislature has concluded its annual 60-day regular session. Although the fact that the promised implementation framework and associated authority have not been forthcoming is problematic, that does not change the fact that no policy has been set and no authority has been granted.

Therefore, given that:

- i. the Petition by the Insurance Commissioner is action taken in furtherance of PPACA implementation;
- ii. the Insurance Commissioner lacks authority to unilaterally implement or enforce the PPACA; and
- iii. the Legislature has emphatically insisted that the Insurance Commissioner lacks authority to unilaterally implement provisions of PPACA without legislative sanction, which has not been provided;

³⁸ [Letter from House Speaker-Designate Dean Canon to Governor Charlie Crist](#), October 19, 2010 (*visited 10/23/2011*)

the Petition was not properly submitted and in fact not legitimately authorized by the State of Florida, and thus cannot be afforded further consideration by HHS.

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In conclusion, we submit that OIR has utterly failed to establish that an adjustment to the 80% MLR standard is necessary to avoid destabilization of Florida's individual market. Granting the Petition would cause significant harm to Florida consumers, and it should therefore be summarily denied, pursuant to federal regulations. Thank you in advance for your consideration of the interests of Florida consumers.

Sincerely,

- Doctors for America, Florida Chapter
- Florida Academy of Family Physicians
- Florida Center for Cultural Competence
- Florida Center for Fiscal and Economic Policy
- Florida CHAIN
- Florida College Democrats Women's Caucus
- Florida Consumer Action Network
- Florida Council for Community Mental Health
- Florida Institute for Reform and Empowerment
- Florida Legal Services
- Florida Public Interest Research Group
- National Council of Jewish Women, Florida Public Affairs Committee
- Organize Now
- Center for Independent Living- South Florida
- Northwest Florida Central Labor Council
- Palm Beach Groves
- Quest Ecology, Inc.
- Self Reliance, Inc.
- The Center for Psychological Fitness

Attachment

**Attachment A
Florida Insurance Agent and Broker Commissions: 2011 and 2010**

Florida Insurance Agent and Broker Commissions, 2011

2011						
Carrier	Group Size	Plan Type	Annual Premium	First Year	Renewal	
			(If Available)			
98	Individual	1-11 enrolled eps	4%	4% 1st yr renewal, 3% thereafter		
		12-24 enrolled eps	6%	4% 1st yr renewal, 3% thereafter		
		25-49 enrolled eps	8%	4% 1st yr renewal, 3% thereafter		
		50+ enrolled eps	10%	4% 1st yr renewal, 3% thereafter		
	1-3	Medical	\$1.50 PEPM			
	4-50		Premier = \$32 PEPM / Standard = \$28 PEPM			
	1-3	Medical	\$1.50 PEPM			
	4-50		Premier = \$38 PEPM / Standard = \$32 PEPM			
	*South Florida Includes the following Counties: Brevard, Broward, Dade, Martin, Palm Beach, St. Lucie, and Volusia Counties					
	99	51+	Medical	\$0 - 35,000	3%	
				\$35,001 - \$200,000	3%	
				\$200,001 - 400,000	4%	
\$400,001 - 1,000,000				3%		
\$1,000,000 - 4,000,000				2%		
\$400,001+				1%		
99	1	Individual		15%	10%	
	2-9	Product I	10%			
	10+	Product II	\$0-8000	10%		
			\$8001-20000	\$800 + 6% excess		
			\$20001-50000	\$1520 + 3.5% excess		
			\$50000-150000	\$2570 + 1.25% of excess		
			\$150001-300000	\$3820 + .5 of excess		
	\$300,001+	\$5570 + .25 of excess				
Broker may also negotiate commission, i.e. 5% flat, or 7% 1st year, 4% flat renewal						
100	Individual	Medical	12%	4%		
101	All	All	10% Flat			
102	Individual	Medical	20%	5%		

	4-50		8%		
	51-100		7%		
	101-300		6%		
	301-500		5%		
	500+		Negotiated		
103	4-50	Various Products	Region/Broker Class	New Sales	Renewal
			S. Fl Silver**	\$34	\$30
	Other Silver		\$30	\$26	
	4-50		All FL/All Classifications	\$20	\$20
	51-74		5%		
	75-99		4%		
	100-300		3%		
51+	Negotiated				
104	2-50	Medical	5%		
105	Individual	Medical	10%		4%
		Short-Term Medical	15%		
106	51-250	Medical	6%		
107	Individual	Various Products	10% 1st Year	5% yrs 2, 3, & 4	3% yrs 5+
	2-3		Tier I	\$2 PEPM	\$1 PEPM
	4-10			\$32 PEPM	\$31 PEPM
	11-25			\$28 PEPM	\$27 PEPM
	51-99			\$20 PEPM	\$19 PEPM
	2-3		Tier II	\$2 PEPM	\$2 PEPM
	4-25			\$33 PEPM	\$32 PEPM
	26-50			\$29 PEPM	\$28 PEPM
	51-99			\$21 PEPM	\$20 PEPM
	2-3		Tier III	\$3 PEPM	\$3 PEPM
	4-25			\$34 PEPM	\$33 PEPM
	26-50			\$30 PEPM	\$29 PEPM
	51-99			\$22 PEPM	\$21 PEPM
	2-3		Tier I	\$3 PEPM	\$3 PEPM
	4-10			\$38 PEPM	\$37 PEPM
	11-25			\$36 PEPM	\$35 PEPM
	26-50			\$32 PEPM	\$31 PEPM
	51-99		Tier II	3.85%	3.65%
	2-3			\$3.50 PEPM	\$3.50 PEPM
	4-10			\$39 PEPM	\$38 PEPM
	11-25			\$37 PEPM	\$36 PEPM
	26-50		Tier III	\$33 PEPM	\$32 PEPM
	51-99			4.00%	3.85%
	2-3			\$4 PEPM	\$4 PEPM
	4-10			\$40 PEPM	\$39 PEPM
	11-25		Tier III	\$38 PEPM	\$37 PEPM
	26-50			\$34 PEPM	\$33 PEPM

	51-99			4.25%	4.00%
	100+		Negotiated		
108		Option I	10%		n/a
		Option II	15%		5.00%
109	1-3	Medical	\$3.15 Per Covered Employee		
	4-50		\$32.00 Per Covered Employee		
	51-99		6%		
	4-19	Medical	South Florida Only	\$40 Per Covered Employee	
	20-50		South Florida Only	\$37 Per Covered Employee	
	1-2	Products	1%		
	3-4		2%		
	5+		8%		5%
110	Individual	Medical-Under age 60	10%		1% renew yrs 5+
		Medical-Over age 60	5%	3% renew yrs 2-4	1% renew yrs 5+
		Option III	60%	3% renew yrs 2-4	0% renew yrs 5+

Florida Insurance Agent and Broker Commissions, 2010

2010						
Carrier	Group Size	Plan Type	Annual Premium	First Year	Renewal	
			(If Available)			
98	Individual	1-11 enrolled aps	4%	4% 1st yr renewal, 3% thereafter		
		12-24 enrolled aps	6%	4% 1st yr renewal, 3% thereafter		
		25-49 enrolled aps	8%	4% 1st yr renewal, 3% thereafter		
		50+ enrolled aps	10%	4% 1st yr renewal, 3% thereafter		
	1-3	Medical	\$1.50 PEPM			
	4-50		Premier = \$32 PEPM / Standard = \$28 PEPM			
	1-3	Medical	\$1.50 PEPM			
	4-50		Premier = \$38 PEPM / Standard = \$32 PEPM			
	*South Florida Includes the following Counties: Brevard, Broward, Dade, Martin, Palm Beach, St. Lucie, and Volusia Counties					
	51+	Medical	\$0 - 35,000	3%		
			\$35,001 - 200,000	5%		
\$200,001 - 400,000			4%			
\$400,001 - 1,000,000			3%			
\$1,000,000 - 4,000,000			2%			
\$400,001+			1%			
99	1	Individual		15%	10%	
	2-9	Product I	10%			
	10+	Product II	\$0-8000	10%		
			\$8001-20000	\$800 + 6% excess		
			\$20001-50000	\$1520 + 3.5% excess		
			\$50000-150000	\$2570 + 1.25% of excess		
			\$150001-300000	\$3820 + .5 of excess		
\$300,001+	\$5570 + .25 of excess					
Broker may also negotiate commission, i.e. 5% flat, or 7% 1st year, 4% flat renewal						
100	All	All	See Carrier Commission Grid for levels and percentages			
101	All	All	10% Flat			

102	Individual	Medical	20%		5%
	4-50		8%		
	51-100		7%		
	101-300		6%		
	301-500		5%		
	500+		Negotiated		
103			Region/Broker Class	New Sales	Renewal
	4-50	Medical	S. Fl Silver**	\$34	\$30
			Other Silver	\$30	\$25
	4-50		All FL/All Classifications	\$20	\$20
	51-74	Medical	5%		
	75-99		4%		
	100-300		3%		
51+	Medical	Negotiated			
104	2-50	Medical	5%		
105	Individual	Medical	10%		4%
		Short-Term Medical	15%		
106	51-250	Medical	6%		
107	Individual	Various Products	10% 1st Year	5% yrs 2, 3, & 4	3% yrs 5+
	2-3		Tier I	\$2 PEPM	\$1 PEPM
	4-10			\$32 PEPM	\$31 PEPM
	11-25			\$28 PEPM	\$27 PEPM
	51-99			\$20 PEPM	\$19 PEPM
	2-3		Tier II	\$2 PEPM	\$2 PEPM
	4-25			\$33 PEPM	\$32 PEPM
	26-50			\$29 PEPM	\$28 PEPM
	51-99			\$21 PEPM	\$20 PEPM
	2-3		Tier III	\$3 PEPM	\$3 PEPM
	4-25			\$34 PEPM	\$33 PEPM
	26-50			\$30 PEPM	\$29 PEPM
	51-99			\$22 PEPM	\$21 PEPM
	2-3		Tier I	\$3 PEPM	\$3 PEPM
	4-10			\$38 PEPM	\$37 PEPM
	11-25			\$36 PEPM	\$35 PEPM
	26-50			\$32 PEPM	\$31 PEPM
	51-99			3.85%	3.65%
	2-3		Tier II	\$3.50 PEPM	\$3.50 PEPM
	4-10			\$39 PEPM	\$38 PEPM
	11-25			\$37 PEPM	\$36 PEPM
	26-50			\$33 PEPM	\$32 PEPM
	51-99			4.00%	3.85%
	2-3		Tier III	\$4 PEPM	\$4 PEPM
	4-10			\$40 PEPM	\$39 PEPM
	11-25			\$38 PEPM	\$37 PEPM

	26-30			\$34 PEPM	\$33 PEPM
	31-99			4.25%	4.00%
	100+		Negotiated		
109	1-3	Medical	\$3.15 Per Covered Employee		
	4-50		\$32.00 Per Covered Employee		
	51-99		6%		
	4-19	Medical	South Florida Only	\$40 Per Covered Employee	
	20-50		South Florida Only	\$37 Per Covered Employee	
	1-2	Products	1%		
	3-4		2%		
	5+		8%	5%	
110	Individual	Medical-Under age 60	10%		1% renew yrs 3+
		Medical-Over age 60	5%	3% renew yrs 2-4	1% renew yrs 3+
		Enhanced Term Life	60%	3% renew yrs 2-4	0% renew yrs 3+
		Standalone Dental	12%		