Steven B. Larsen
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Center for Consumer Information and Insurance Oversight
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Submitted Via Electronic Mail:
MLRAdjustments@hhs.gov

January 17, 2012

Re: Florida's Request for Reconsideration of MLR Adjustment Denial

Dear Mr. Larsen:

We are writing to oppose the request by the Florida Insurance Commissioner for a reconsideration of the state's application for an MLR adjustment. HHS's denial of this adjustment request on December 15, 2011, will preserve approximately $145 million in rebates for consumers in the next three years.

The Florida Office of Insurance Regulation (FLOIR) offered several reasons for the reconsideration. First, FLOIR reiterates unsubstantiated concerns that insurers are leaving Florida's individual insurance market because of the MLR, and it implied that granting the adjustment would alter their decisions. The departure of the two affiliated insurers cited by Commissioner McCarty – World Insurance Co. and American Republic Insurance Co. – was known to HHS at the time of its decision and are only partly related to the MLR, according to the companies' own communication with FLOIR.[1] Each company operated at an underwriting loss and appeared to be losing money on business in the state before the ACA took effect. In 2010, according to Supplemental Health Care Exhibits data, American Republic had a loss ratio of about 50 percent and spent an unsustainable 30 percent of total premium income on commissions to agents and brokers; the company announced on October 21, 2011, that it is withdrawing from the individual market nationwide. World Insurance was not projected to owe a rebate, so it is unclear how an MLR adjustment would have keep them in the market. The earned premium for both of these companies combined is roughly one-half of one percent of the Florida market ($7 million of $1.9 billion) and their customer base can be easily absorbed in the marketplace.

The second concern raised by FLOIR is the MLR's purported effect on agent and broker commissions. In his letter, Commissioner Kevin McCarty notes that the National Association of Insurance Commissioners found that "agent and brokerage compensation has compressed over time" and that the passage of the Affordable Care Act (ACA) "escalated" this trend.[2] We agree with this reading of the trend. Some insurers have used the ACA as a convenient excuse to

[1] Communication to FLOIR from Health Markets, Oct. 24, 2011, http://www.floir.com/siteDocuments/HCReformWICARIC10242011.pdf.
[2] Letter from FLOIR to CCIIO, December 30, 2011, http://cciio.cms.gov/programs/marketreforms/mlr/states/Florida/fl_reconsideration_request.pdf.

reduce broker commissions and to change their commission structures from a percentage of premium to a flat-dollar fee so commissions will no longer escalate with the cost of insurance. FLOIR presented a collection of anecdotes from agents and brokers in Florida describing the commission reductions they have faced.

The application of the MLR – in Florida or anywhere else – cannot adequately explain these cuts. For instance, the cut in commission from $75 to $3 per month from a small-group Aetna policy comes at a time when Aetna had by the third quarter of 2011 already exceeded its entire 2010 profit by nearly 25 percent. (Furthermore, the small-group market MLR is not subject to adjustment.) For many of the private insurers that operate in Florida, agent and broker compensation is not being reduced to lower administrative expenses in compliance with the MLR calculation but to accommodate the excessive profits that insurers continue to enjoy. Another account shows relatively large commissions returning to the norm; four insurers – Golden Rule (a subsidiary of UnitedHealth), Aetna, Cigna, Humana – reportedly cut commissions in half, from 18-20 percent of premium to 8-10 percent, which brought commissions closer to the national average in the individual market (roughly 5.7%).[3]

The federal rule does not guarantee that brokers and agents' compensation will never be reduced, but rather that consumers must have adequate access to brokers and agents. Moreover, granting an adjustment would not guarantee that broker and agent compensation would be increased. It is evident from the long-term trend in compensation and insurers' behavior since the law's passage that, given the opportunity to increase administrative expenses, insurers will retain increased income as profit rather than passing it on to agents and brokers.

In sum, it is clear that the robust Florida individual insurance market will continue to provide options to consumers and, with the MLR in place, consumers will be able to measure and compare their plan options, contain premium costs, and get rebates of $145 million from insurers that fail to provide a good value. We oppose moving backward on consumer protections and urge HHS to reject Florida's reconsideration request.

Sincerely,

Ethan Rome
Executive Director

[3] Kaiser Family Foundation, State Health Facts, *Health Insurance Broker Compensation, 2010*, http://www.statehealthfacts.org/comparemapreport.jsp?rep=108&cat=17.