



## OFFICE OF INSURANCE REGULATION

**KEVIN M. McCARTY**  
COMMISSIONER

December 30, 2011

Mr. Steven B. Larsen  
Deputy Administrator and Director  
Center for Consumer Information and Insurance Oversight  
United States Department of Health and Human Services  
200 Independent Avenue SW  
Washington, D.C. 20201

Dear Mr. Larsen:

I am in receipt of your December 15, 2011 letter denying the Florida Office of Insurance Regulation's (Office) request for an adjustment to the medical loss ratio (MLR) on behalf of the state of Florida. This letter is to request reconsideration of this denial pursuant to 45 CFR 158.346. Failure to obtain the requested adjustment will cause permanent, irreparable harm to our market and the distribution channel for health products and services.

The Office contends that competent, substantial evidence has been presented to demonstrate that the sudden implementation of the 80% MLR will destabilize Florida's individual health market. In point of fact, significant damage to our marketplace has already occurred. In the testimony that the Office submitted based on the public hearing conducted September 24, 2010<sup>1</sup>, some of our companies announced their impending withdrawal from the individual market. The Department of Health and Human Services (HHS) is dismissive of this development, and instead implies these were due to "business reasons" unrelated to MLR. A close reading of the testimony, and information submitted by the Office contradicts this assertion, and shows that uncertainty in how the MLR will affect companies' business practices was indeed one of the business considerations companies made prior to announcing their exit from the marketplace. In a letter from American Enterprise to the Office dated October 24, 2011, the company provides in relevant part:

"You've asked if health care reform or other regulatory actions had an impact on our decision to have World Insurance Company and American Republic Insurance Company exit the state for the purpose of individually underwritten comprehensive major medical business and have requested we express in writing some of the reasons. The reasons stem from the change in the regulatory

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environment and the corresponding changes in the competitive environment.

...

Although several states were successful in applying for an MLR waiver, a large number of states did not apply. And in states where waivers were granted, the requirements were different which increased the complexity of administering the business. The requirement for a waiver to be granted was 'sufficient' market disruption, rather than 'any' disruption, putting some small carriers and their customers at risk. (Emphasis added.)

Although HHS notes that these six carriers represent a relatively small portion of the marketplace, issuers are leaving the market, which translates into fewer products and less competition. The abrupt increase in MLR for the individual market creates a barrier to entry. Since the passage of the Affordable Care Act, Florida has not received any applications for new entrants into the individual market, and no new issuers appear to be interested in expanding into this market.

Finally, perhaps our most important concern is the impact the Affordable Care Act and the MLR ratios will have on the agency workforce. Contrary to the quote from the National Association of Health Underwriters (NAHU) report that was taken out of context – the National Association of Insurance Commissioners (NAIC) conducted a public hearing in March 2011 and found overwhelming evidence that agent and brokerage compensation has compressed over time, and that this trend is escalating following the passage of federal legislation.

While the HHS report refers to companies that “reduce their administrative expenses” or that are “adapting their business model” – the practical implication is that this often means a reduction in agent commissions. These agents are a critical part of our consumer protection framework, a fact which was not carefully considered in HHS’ analysis. Agents are small business owners that have a connection to their clients that issuers often do not have. One of the most interesting findings during the NAIC’s March 2011 hearings was to learn the full scope of agents’ roles as consumer advocates. Agents not only provide valuable information to consumers when purchasing the initial products, but following purchase, they assist consumers in gaining pre-certifications for different procedures, find ways for the consumers to save money, and help consumers gain access to the best facilities and doctors.

In addition, we have conducted an informal survey of agents operating in the Florida market and learned there has been a dramatic impact on our agent workforce as a result of the new MLR requirements. Agents have presented us evidence of:

- Reduced Agent Commissions
- Changing Methodologies for Compensating Agents
- A Negative Impact on New Agent Recruitment
- Agents Leaving the Insurance Industry
- Agency Lay-offs; and
- Producer Contract Terminations Due to Lack of New Business

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<sup>1</sup>Contrary to what was asserted in the letter of denial, Florida law is quite specific that public hearings must be noticed and the information published in the Florida Administrative Weekly 21 days before the hearing. Public testimony is always welcomed.

Given the logistics of receiving your denial letter prior to the Christmas holiday, we could not send notarized letters to you along with this letter. However, we intend to send you notarized letters that clearly document the MLR's impact on the agent community by January 6, 2012.

I want to thank you and your colleagues for your reconsideration of our application. The request is a culmination of a very long and exhaustive process that started March 11, 2011 and included hundreds of pages of testimony, exhibits, data and follow-up questions. The Office understands that obtaining a waiver in a complex market such as Florida might be challenging, but it is the Office's concern that failure to transition the loss ratio will cause irreversible damage to the individual marketplace.

The Office would appreciate further time to augment and amplify its application for your reconsideration.

Sincerely,



Kevin M. McCarty  
Florida Insurance Commissioner