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April 7, 2011

Timothy B. Hill
Acting Deputy Director
Center of Consumer Information and
Insurance Oversight
Attn: MLR Division
Room 737F
200 Independence Ave. SW
Washington, DC 20201.

VIA Electronic Mail to MLRAdjustments@hhs.gov

Dear Deputy Director Hill:

This information is in response to your letter of March 24, 2011 relating to the Commonwealth of Kentucky's request for an adjustment to the Medical Loss Ratio ("MLR") requirements of the Patient Protection and Affordable Care Act of 2010 in order to allow for a transition period in our individual marketplace. We appreciate the opportunity to provide you with the additional information you have requested.

1. Two issuers have notified the Department of Insurance ("The Department") of the discontinuance of sales in the individual market. Those issuers are Physician's Mutual Insurance Company and The MEGA Life and Health Insurance Company. Attached please find letters from these issuers detailing their withdrawal. (Notice Physicians Mutual.pdf and Notice MEGA.pdf)

2. Beyond the satisfaction of the requirements in subparagraphs 1. through 3. of KRS 304.17A-240(3)(a), the commissioner has broad discretion to approve or deny withdrawals from the individual market. In exercising her discretion, the commissioner will consider all relevant factors, especially the availability of other coverage for the impacted consumers.

3. Time (Assurant) provided information to the Department in response to a specific request. The statement cited by your letter was taken from this response, which is attached hereto. There have been no further discussions with Time on this matter pending the resolution of this application. (KY MLR Waiver – Time (Assurant) Response 12-16-10.docx)

4. The Department cannot predict which companies will exit the Kentucky individual market as this is a business decision for each individual carrier to determine. Furthermore, the Department is concerned that speculating on the status of any specific company could further destabilize our already fragile market. As stated in our original application, our historical experience has been that carriers with a small market share cannot afford the costs of entry and continuing operations when abrupt changes are made to the regulatory requirements without sufficient time to adjust their business models.

5. As a result of the health care reform efforts in Kentucky during the 1990s, numerous insurers made a business decision to withdraw from the market. In an effort to rebuild the market, the Kentucky General Assembly passed KRS 304.17A-260 offering amnesty for carriers to reenter the market prior to the five year moratorium. This amnesty statute has since been repealed. A copy of the statute is attached to this response letter. (KRS 304 17A-260.pdf)

6. Kentucky Access, the state high risk pool, has three primary funding mechanisms: member premium, assessments on insurers, and an appropriation from the master tobacco settlement agreement. Additionally, Kentucky Access has received federal grant funds for operational losses and disease management. Please see the attached spreadsheet for funding and enrollment levels over the past three years. (KY Access 08-10 enrollment and revenue.xlsx)

7. "Substantially similar" is defined in the administrative regulation governing Kentucky Access, 806 KAR 17:320 section 1(15), as follows:

   (15) "Substantially similar coverage" means individual coverage that:
   (a) Meets the definition of a health benefit plan as defined in KRS 304.17A-005(22);
   (b) Includes a deductible that is the same as or higher than the deductible in the policy for which the applicant is applying; and
   (c) Does not include policy limits that are more restrictive than the policy for which the applicant is applying.

   With multiple plan options under Kentucky Access and myriad plan options available in the individual market (varying deductibles, co-insurance amounts, and covered services), the department would consider whether a plan offered in the private individual market was substantially similar to a plan offered through Kentucky Access on a case-by-case basis. While all insurers in the individual market offer at least one product that is considered "substantially similar," the Department does not maintain a list of products, by insurer, that are substantially similar to Kentucky Access. However, as a part of HHS's request for information to complete our application, the Department has requested that insurers provide a listing of enrollment, by product. This information will be provided when received. Please be aware that the Department is not able to notate which of those products are substantially similar to Kentucky Access.

8. Attached please find the requested market share information. (market share 2006-2009.xlsx)

9. The Department has asked Anthem to clarify this information in a pending data call.

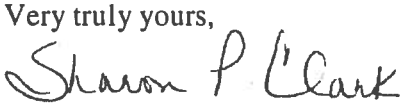
10. In response to a previous request for information, Anthem estimated that the 2010 Kentucky individual MLR is between 77% and 82% based upon the requirements of 45 CFR §155.221. Anthem anticipated 2010 individual premium to be approximately $326 million with approximately 122,000 covered lives. The Department will be submitting an updated attachment "(d)(2)" in light of the receipt of each issuer's annual statements for 2010, including the Supplemental Health Care Exhibit.

11. Please see attached chart for reentry data (Reentrydata.xlsx)

12. The Department cannot project when and at what rate carriers will experience growth. There are too many variables involved (pricing, benefit offerings, discontinued products, agents, marketing, continued provider participation in networks) to be able to make an accurate projection and speculation may further destabilize our marketplace.

Thank you for your attention to this request.

Very truly yours,



Sharon P. Clark
Commissioner of Insurance

Attachments