PUBLIC PROTECTION CABINET

Steven L. Beshear
Governor

Department of Insurance
P.O. Box 517
Frankfort, Kentucky 40602-0517
1-800-595-6053
http://insurance.ky.gov

Robert D. Vance
Secretary

Sharon P. Clark
Commissioner

May 16, 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. We hope that with the addition of this information our application will be complete.

The Department is concerned regarding confidentiality issues surrounding data necessary to complete our application under 45 CFR 158.321(d)(1) and (d)2. The Department sent out a data call to insurers asking for information regarding premiums and enrollment by product, profit and profit margin for the individual and consolidated market, and rebate projections. Several insurers cited confidentiality concerns with providing certain data as they are publically traded companies and the disclosure of such confidential information would give other entities an unfair commercial advantage. See KRS 61.878(1)(c). More troubling, concerns were raised that such information was subject to the Kentucky Uniform Trade Secret Act, KRS 365.880 to 365.900. As such, the Department cannot disclose this information and risk the potential lawsuits and monetary penalties associated with a violation of the Kentucky Uniform Trade Secret Act. The disclosure of this data creates an unduly burdensome risk to the Department.

Furthermore, it would create an unfair competitive advantage to redact information for some carriers and disclose full data on other carriers. Therefore, all information will be redacted and be disclosed in a similar format.

However, the Department is in possession of each carrier's Supplemental Health Care Exhibit ("SHCE") and has used the data supplied in the SHCE to provide most of the data required under 45 CFR 158.321(d)(2).

It is my belief that a further breakdown of information regarding premium and enrollment under 45 CFR 158.321(d)(1) is not material to the Commonwealth of Kentucky's application for an adjustment of the

MLR standard. I respectfully request that our application be considered using the attached data. However, I would also request that the Department be contacted with a request for more detailed information should CCIIO determine that this information is material to the determination of whether or not to grant the Commonwealth of Kentucky a waiver.

1. Please see attached revised Chart d1 (d1 revised.xls).

2. Premium amounts for Kentucky access (rate schedule)
   https://www.kentuckyaccess.com/content/html/acs/35/KY_Prem_Rate_table_2011.pdf

   Cost-sharing for Kentucky access plans:
   Traditional FFS
   https://www.kentuckyaccess.com/index.cfm?xnode=1003000&sel_emp=c&action=showfile&showfile=Traditional_20103.doc
   Premier PPO
   https://www.kentuckyaccess.com/index.cfm?xnode=1003000&sel_emp=c&action=showfile&showfile=Premier_20102.doc
   Preferred PPO
   https://www.kentuckyaccess.com/index.cfm?xnode=1003000&sel_emp=c&action=showfile&showfile=Preferred_20102.doc

   The budget for Kentucky Access for 2010 and the projected budget for 2011 is attached. (KY Access 10-11 budget.xlsx). The budget for future years is approved by our legislature on a biennial basis and, therefore, is not yet available. The Department is currently unaware of any future events that will affect the availability of coverage through Kentucky Access between now and 2013.

   The enrollment in Kentucky Access for Fiscal Year 2010 was 4717 lives. The most recent enrollment data for Kentucky Access for 2011 is 4951 lives.

3. The data supplied on the previously filed "d1" was taken from annual reporting from the carriers in our individual market and was taken from policy year 2009. The data supplied on "d2" was taken from a data call as of mid-December 2010. The discrepancy is simply because the data in "d1" is a year older than the data in "d2". Both charts have been updated using information from a recent data call and using each carrier's Supplemental Health Care Exhibit – Part 1 (part of the Annual Statement). This data is as of year-end 2010. (d1 revised.xls and d2 revised.xlsx).

4. The Department used each carrier's Supplemental Health Care Exhibit – Part 1 to check and report the Federal MLR. See attached d2 revised.xlsx.

5. The Department performed an additional data call to attempt to collect this information. However, not all data can be released due to confidentiality concerns and the assertion that this data is protected by the Kentucky Uniform Trade Secret Act. See attached d2 revised.xlsx.

6. Pursuant to 806 KAR 3:190§8, and 806 KAR 38:100 §8, a carrier's RBC reports are confidential and cannot be disclosed by the Department. The Department can disclose that the RBC figures are above actionable levels for all carriers with more than 1,000 covered lives in the individual market: Aetna Life Insurance Company, Time Insurance Company, Humana Health Plan, Inc., Anthem Health Plans of Kentucky, Inc., and Golden Rule Insurance Company.

7. The Department queried issuers with regard to MLR rebate projections. In reviewing their responses, it is clear that the data is extremely speculative and fluid. For example, the MLR reported for policy year 2010 is the product of the implementation of the rule late in the year for which business models that had not yet been adjusted. Carriers are in the process of adjusting their business models, therefore the current MLR is not a good indicator of true MLR or potential rebates in future years. Also, projections for MLR and rebates as far out as 2013 simply have too many variables to be reliable. To disclose such speculative data on publically traded companies could further destabilize our marketplace. For these reasons, many carriers did not disclose data on potential refunds owed in the future. Other carriers simply explained that regardless of the MLR standard, through either creditability adjustments or adjustments to their models, they would not foresee paying refunds under either MLR standard (the federal standard or Kentucky's proposed standards).

Lastly, the Department has asked for clarification regarding Anthem's agent compensation model. For a period in the mid-1990s (beginning March 1, 1997 and ending June 30, 1998), Anthem imposed a commissions schedule in the individual market that was based on a flat, five dollar commission paid for new sales and at renewal for those same policies. The "flat fee" schedule was not imposed on renewals for policies issued prior to March 1, 1997 and instead the commission structure in place at the time of the sale was imposed.

Following the enactment of HB 315 in 1998 and the beginning of a return to a more stable and competitive health insurance market in Kentucky, Anthem reverted back to a commissions schedule based on percentages of premium. For new or renewal business effective on or after June 30, 1998, Anthem implemented a commissions schedule that compensated agents at eight percent (8%) on new sales and four (4%) percent on renewals. The framework (percentage-based) of this commissions schedule remains in place today. The current commissions schedule (of percentages of original premium of ten percent (10%) for new sales and four percent (4%) for policy years two through ten and two percent (2%) for policies beginning at year 11 and thereafter) was effective January 1, 2011.

Thank you for your attention to this request.

Very truly yours,

Sharon P. Clark

Sharon P. Clark
Commissioner of Insurance

Attachments