December 8, 2011

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201
Via e-mail: MLRAdjustments@HHS.gov
Re: Oklahoma

Dear Secretary Sebelius,

The fact that Oklahoma is legally challenging the Affordable Care Act does not exempt the state from implementing its mandates. While the state's application argues a waiver from medical loss ratio rules is necessary to safeguard the viability of its individual insurance market, Oklahoma provides no evidence that the market is in significant danger if the medical spending mandate is implemented.

Thus we ask that you reject Oklahoma's request for an MLR waiver, particularly for any year after 2011.

Creating greater value for consumers' health care premiums was the purpose of the ACA's 80% to 85% MLR rule, which clearly intended that insurers become more efficient.

The statute states that waivers to the MLR standard are intended only for circumstances in which the rule would disrupt the individual insurance market and thus consumers' access to insurance. Oklahoma has not met that bar with its request that the MLR rule be phased in at 65% for 2011, 70% for 2012 and 75% f2or 2013.

Two companies have PPACA MLR rates above the required 80%, and no insurance companies have voiced the intention to leave the state should the rule take effect. In fact, as verified by Oklahoma, all insurance companies within the state have created plans to comply with the new regulations by such that they will not need to be required to give rebates in 2013. A waiver would remove the incentive to implement these plans sooner and increase efficiency faster.

Health Care Service Corp (HCSC), which holds the majority of the insurance market (58.06%), will be able to pay the $3.8 million rebate HHS estimates it will owe consumers for 2011, based on 2010 financials, and still retain $1.72 million in profits. The company itself reports no expected rebates in 2012 because it will have adjusted business practices to meet the 80% minimum MLR. Oklahoma would have you set the MLR requirement below HCSC's current 77.5% for three years, giving

the company the perverse incentive to cut its own MLR to reap maximum profits while it still can.

Time, Golden Rule and Coventry Health together hold 23.36% of the insurance market. Time is only 8% from the 80% mandated MLR thus they are estimated to owe $1.8 million to $2.million in rebates in 2011, still remaining profitable. Time also expects to meet the 80% MLR during 2012 and will not continue to have to issue rebates.

Golden Rule's reported MLR before adjustment is 45%, meaning it spent less than half of its premium dollars on medical care. The company pays its sales agents a rich average yearly commission of more than 10% of the premium cost, and still made a substantial profit in the Oklahoma individual market. Golden Rule will also benefit in its ACA MLR calculations from large tax deductions, and can well afford to pay rebates if it declines to make its business model more efficient.

Instead of lowering the bar for Golden Rule the state and HHS should be ringing alarm bells to warn its customers that very little of their premiums pay for actual health benefits. Golden Rule also had the highest proportional profit, compared to other insurance companies, with an after-tax profit in Oklahoma's individual market of nearly 20%.

Golden Rule is the type of insurer the MLR rule was written for, an insurance company with high profit, high administrative expenses and very little paid for health care.

Time and Golden Rule are also both paying more than 10% of premiums on sales commissions. Since this statistic is an average, including both initial commissions and recurring payments, it suggests the companies are paying extraordinarily high amounts, in the range of 20% on signup and 7% or 8% for renewals.

More evidence was provided that Time is actively adjusting its business practices to meet the 80% MLR in the HHS letter rejecting Louisiana's request for a waiver. Deputy Administrator and Director Larsen wrote: "Indeed, in its Q3-2011 Form 10-Q, Assurant (Time's parent company) states that 'Assurant Health Third Quarter 2011 results reflect progress as [Assurant and its subsidiaries] continue to adapt to the Affordable Care Act,' and that '[s]elling, underwriting and general expenses decreased $79,084,000, or 18%' in the first nine months of 2011 versus the comparable period in 2010.[1] Time's parent company's statements suggest that Time has been able to successfully streamline its expense structure during 2011." This will lead to increased MLR rates for the company in Louisiana, and a reduction in the amount of money that they must rebate to consumers. There is no reason to believe the result would be different in Oklahoma.

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[1] Assurant, Inc., Quarterly Report (Form 10-Q), at 42 and 52 (Nov. 2, 2011).

Coventry is paying even more on commissions, about 14% of premium per year. It is also within striking distance of the mandated MLR with a PPACA MLR at 69.0%. The company is expected to have to refund only $0.41 million to consumers in 2011, and even less at $0.37 million in 2012.

Coventry, as a national business, also has a business plan to move into profitability in other states under ACA rules, as noted during your Louisiana investigation. Again quoting Deputy Administrator and Director Larsen: "2010 Form 10-K, Coventry Health Care (Coventry's parent company) indicates that Coventry Health Care and its subsidiaries 'continue to focus on selling, general and administrative expense efficiencies and on maintaining medical loss ratios across [their] business lines at levels that [Coventry Health Care and its subsidiaries] believe will contribute to continued profitability.'[2] Therefore, Coventry's parent company's statements suggest that it expects its subsidiaries to achieve individual market Affordable Care Act MLRs of 80 percent or close to 80 percent, while continuing to be profitable."

Oklahoma has failed to show that its insurance companies would be unable to either pay rebates to consumers or make their business models more efficient. Indeed, the state's insurers report that they are well on that path, with every company expected to comply with MLR regulations by 2013. We ask that you deny Oklahoma's request. If you do grant a waiver, it should be minimal and limited to one year only.

Sincerely,

Carmen Balber

[2] Coventry Health Care, Inc., Annual Report (Form 10-K), at 12 (Feb. 25, 2011).