



OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

RALPH T. HUDGENS
COMMISSIONER OF INSURANCE
SAFETY FIRE COMMISSIONER
INDUSTRIAL LOAN COMMISSIONER
COMPTROLLER GENERAL

SEVENTH FLOOR, WEST TOWER
FLOYD BUILDING
2 MARTIN LUTHER KING, JR. DRIVE
ATLANTA, GEORGIA 30334
(404) 656-2056
www.oci.ga.gov

May 18, 2011

Gary Cohen
Acting Director
Office of Oversight Center for Consumer
Information and Insurance Oversight
Department of Health and Human Services
7500 Security Boulevard, Mail Stop C2-21-15
Baltimore, Maryland 21244-1850

Dear Acting Director Cohen:

Thank you for your letters of April 4th and April 18th regarding the Georgia MLR waiver request. The Georgia Department of Insurance (“Department”) submits in response to your questions the narrative answers in this letter, the spreadsheet attached as Supplemental HHS Exhibits, and the data file labeled Policy Benefit and Rate File.

The Department has worked diligently to provide a thorough response to your follow-up questions. Hopefully, the Georgia package can now be deemed complete and reviewed in accordance with the applicable law.

Below you will find the Department’s responses to the Questions you posed in your letters of April 4th and April 18th:

I. Questions from April 4th Letter

1. See Policy Benefit and Rate File. The data provided is the same or substantially the same as the data submitted by insurers to the web-portal prescribed in the Affordable Care Act.

Further to the Department’s response please note that insurers 3 and 9 informed the Department that each was instructed by HHS that it did not need to submit data to the portal because the health policies offered by the insurers was a limited benefit plan with optional riders; *i.e.*, not a major medical plan. Because neither of these entities remains active in the Georgia

individual market the Department allowed both entities to submit a substantially similar amount of detail respecting plan benefit and rate data as both had submitted to Maine.

- 2. See Exhibit 2.
- 3. See Exhibit 2.
- 4. See Exhibit 2.

5. The Department understands the CCIIO objection to its alternative proposal for the MLR standard to be two-fold, *to wit*: 1) the proposal for an effective MLR standard extends for a five year period and 2) the effective MLR standard alters the MLR calculation method prescribed in the regulation. The Department submits the following proposal in lieu of the proposal in the initial MLR waiver request:

Georgia proposes a three-year phase-in period for the MLR standard. Specifically, Georgia requests that the Secretary grant it a waiver to the MLR standard as follows:

| Year | Adjusted MLR |
|------|--------------|
| 2011 | 65% |
| 2012 | 70% |
| 2013 | 75% |

Although the Department is not proposing an effective MLR standard herein, the Department maintains that the MLR calculation should reflect the granting of an adjustment, if any, to the 80% MLR standard. It is the Department’s position that if the MLR calculation includes data from a period where the applicable MLR was less than 80%, that the MLR calculation should take that circumstance into account. Nevertheless, the Department understands that this issue is beyond the authority of CCIIO to consider in the context of instant MLR waiver request.

II. Questions from April 18th Letter

1. The Department has not had any direct discussions with insurers participating in the individual market regarding the 5 year restriction on reentry prescribed in Ga. Comp. R. & Regs. r. 120-2-67-.10(b)(5). Nor is the Department aware of any instances where an insurer filed for a waiver of the five year restriction. Finally, the Department does not believe that the regulation contemplates waiver of the five year restriction.

2. The Department provided this information in aggregate form to protect the policyholders of the insurers that indicated that a market exit was possible. Inadvertent disclosure of the identity of these insurers could harm the insurers and the policyholders of those insurers. The Department responds that it has concluded that insurer 1, 2, 3, 5, 6, 9, 15, and 18 could exit the individual market. Indeed, insurer 3 and 9 ceased actively writing new business in Georgia in 2010. Insurers indicated that the ability to operate in the individual market profitably from 2011

to 2014 is a primary factor in persisting in the individual market. For smaller insurers continued viability means consistently making new sales, primarily through independent agents.

The Department's take away from its discussions with insurers in this process is that smaller insurers that cannot operate at a profit (or at least without major losses) are high risks for market exit.

3. The rule making authority under O.C.G.A. § 33-29A-8 is coextensive with chapter 29A of Title 33. Article 1 of chapter 29A applies to the assignment systems that are available to certain "eligible individuals"; namely, individuals who were previously covered under a group plan. See, O.C.G.A. § 33-29A-2(a)(1); see also, Ga. Comp. R. & Regs. r. 120-2-81 *et seq.* Put simply, chapter 29A is does not authorize the Commissioner to promulgate a regulation or rule to stabilize the individual market.

Although the Commissioner is not authorized to promulgate regulations to "stabilize the individual market" the Commissioner is exercising the primary avenue he has available to him to avoid destabilization; namely, the instant MLR waiver request.

4. The Department does not have any insurer commission schedules. As set forth in the MLR waiver request 15 of the 16 insurers still actively writing in Georgia indicated that commissions have been or will be changed.

The Georgia Association of Health Underwriters' ("GAHU") letter and exhibit is attached herewith.

The Department does not have any way to accurately estimate the attrition of agents in the individual market. These effects will only be known retrospectively after the damage is done. It is clear, however, that the number of agents that will persist in the individual market will decrease as commissions decrease. Indeed, the operative regulations governing the MLR waiver process assume some attrition, *to wit*:

Third, the Secretary will consider whether, absent an adjustment to the MLR standard, consumers may be unable to access insurance agents or brokers. Access could be restricted if, in order to comply with the MLR standards, issuers reduced compensation to agents or brokers to the point where agents or brokers were not available to assist consumers [...]

See, 75 Fed. Reg. 74888 (December 1, 2010) (emphasis added).

Regarding insurer sales practices, the Department is aware of one insurer that is opting to compensate agents through fees that are paid to the agent by the consumer in lieu of commissions.¹ The Department understands that this program is only for sales of group policies.

Finally, regarding direct-to-consumer models, the web-portal required by ACA, *i.e.* <http://www.healthcare.gov/>, is a direct-to-consumer model in which insurers must participate.

¹ Agents participating in this arrangement may need to be licensed as Counselors. See, O.C.G.A. § 33-23-46.

Other than that web-portal the Department is not specifically aware of alternative marketing methods insurers are deploying.

5. See Exhibit 4.

6. See Notes to Exhibit 2.

7. See Supplemental HHS Exhibits.

8. See Exhibit 5.

9. See Exhibit 3.

10. These insurers did not have *pro forma* data that would allow for estimating rebates. Company 11 was able to estimate supplement its response with estimates, which is included in the Supplemental HHS Exhibits spreadsheet.

11. The Department has not held a public hearing with respect to the instant MLR waiver request. Other than the letters from GAHU and Georgia Agent and Consumer Advocacy Network included with the MLR waiver request, the Department has not received any other correspondence respecting the MLR waiver request. Nevertheless, it is the Commissioner's policy is to accept all written comments from the public and other interested parties. Furthermore, the Department participates in the weekly NAIC healthcare reform calls, including specifically those calls that are forums for public participation and comments. Finally, the public will be given an additional venue through CCIIO for comments once the Georgia MLR waiver application is deemed complete.

12. The Department has no way of accurately estimating the number of Georgians who are currently insured in the individual market and who have pre-existing conditions that would foreclose their ability to purchase replacement coverage in the individual market in the event that their current insurer exited. The Department is confident, however, that a significant number of such people exist.

Included with the data provided by the Department in the Supplemental HHS Exhibits spreadsheet is the data provided by each insurer in the 2010 Supplemental Health Care Exhibit. See, Exhibit 6. As you will see in the data, the smaller insurers² average an MLR of approximately 62.6%.

² Insured lives of between 1,000 and 18,500. This includes insurers 2, 3, 4, 5, 6, 8, 9, 10, 11, 16, 17, and 18. Insurers 3 and 9 are no longer active in the Georgia individual health market.

I appreciate your consideration and please do not hesitate to contact me with questions.

Sincerely,



Trey Sivley, *Esg.*
Assistant Director
Regulatory Services Division

Attachments

cc: Honorable Ralph T. Hudgens, Commissioner of Insurance, State of Georgia
Honorable Nathan Deal, Governor, State of Georgia
Honorable Johnny Isakson, U.S. Senator, State of Georgia
Honorable Saxby Chambliss, U.S. Senator, State of Georgia