



# OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

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March 17, 2011

The Honorable Kathleen Sebelius  
The Secretary of Health and Human Services  
The U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

In accordance with Section 2718 of the Public Health Service Act (“PHS”) the State of Georgia hereby submits a request for a waiver to the federally imposed Medical Loss Ratio (“MLR”) standard for the years 2011, 2012, and 2013. The data and explanations required by Section 158.310 of the MLR Interim Final Regulation dated December 1, 2010 are attached herewith.

As the Commissioner of Insurance for the State of Georgia, I am the only person who can seek a waiver to the MLR standard on behalf of the State of Georgia. Although I believe that the Patient Protection and Affordable Care Act (“ACA”) is unconstitutional and fully support the various legal challenges to its constitutionality, it is my duty as Commissioner to do everything possible to protect the interests of Georgia citizens and the viability of the Georgia insurance market. It is for that reason that I am requesting a waiver to the MLR standard, and not because I believe that the ACA should or will be upheld by the court.

The purpose of Georgia’s request for a MLR waiver is three-fold. First, we should do no harm to Georgians with health issues who are currently insured in the individual market. For these individuals, it is imperative that their current insurer remain in the Georgia individual health market. Second, the phase-in period will give insurers, that have less ability to adapt to this sudden change, time to adjust business models to compete. Third, access to an agent to explain and facilitate the purchase of an individual health policy will be preserved.

Madam Secretary, the waiver that Georgia is requesting amounts to a phase-in period for the MLR standard. The adjustment is reasonably tailored to the purposes enumerated above. Unless the MLR waiver is granted, it is my opinion that Georgia’s individual health market will

become less competitive. Moreover, many thousands of Georgian's could lose their current insurance coverage as smaller insurers may make difficult decisions to exit the individual market rather than to persist in it at a loss.

I appreciate your consideration of our request and supporting documentation. This waiver is a top priority for me, so please do not hesitate to contact me or my staff if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "R. T. Hudgens". The signature is fluid and cursive, with a large initial "R" and a distinct "Hudgens" at the end.

Ralph T. Hudgens  
Insurance and Safety Fire Commissioner  
State of Georgia

Attachments

cc: 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

Waiver of Individual Market Medical Loss Ratio

State: Georgia

**45 C.F.R. § 158.321 - Information regarding the State's individual health insurance market.**

**a) Current MLR standard in the individual market, including formula used to assess compliance.**

Georgia does not have a MLR requirement that applies to the Georgia individual market.

**b) Market withdrawal requirements - Describe any requirements with respect to withdrawals from the individual health insurance market. Such requirements include, but are not limited to, any notice that must be provided and any authority the State regulator may have to approve a withdrawal plan or ensure that enrollees of the exiting issuer have continuing coverage, as well as any penalties or sanctions that may be levied upon exit or limitations on re-entry.**

Georgia's withdrawal requirements for the individual market are set forth in Ga. Comp. R. & Regs. r. 120-2-67-.10(b)(5), to wit:

*(5) An insurer discontinues offering and terminates, cancels, or does not renew all coverage under all policy forms in the individual market, provided that:*

*(A) the insurer provides at least 180 days notice prior to the discontinuance or nonrenewal of a policy or contract to all insured under that policy or contract;*

*(B) the insurer provides at least 180 days notice to the Commissioner prior to the earliest date of termination or non-renewal related to the discontinuation in the market and indicates in such notice the date described in subparagraph (5) (C);*

*(C) the insurer does not issue coverage in such market for 5 years beginning with the date of the last health insurance policy or contract in that market not renewed; and*

*(D) the insurer acts uniformly without regard to the claims experience or any health status related factor of individuals insured or eligible to be insured.*

c) Mechanisms to provide options to consumers

Describe the mechanisms available to the State to provide consumers with options in the event an issuer withdraws from the individual market. Such mechanisms include, but are not limited to, a guaranteed issue requirement, limits on health status rating, an issuer of last resort, or a State-operated high-risk pool.

Georgia does not have a guaranteed issue requirement, limits on health status rating, an issuer of last resort, or a State-operated high-risk pool.

d) Issuers in the State's individual market

1) For every issuer who offers coverage in the individual market, please provide its number of individual enrollees by product, available individual premium data by product, and individual health insurance market share within the state.

See Exhibit 1.

2) For each issuer who offers coverage in the individual market with more than 1,000 enrollees, please provide the following additional information:

i) Total earned premium on individual market health insurance products in the State;

ii) Reported MLR pursuant to State law for the individual market business in the State;

iii) Estimated MLR for the individual market business in the State, as determined in accordance with §158.221 of this part;

iv) Total agents' and brokers' commission expenses on individual health insurance products;

v) Estimated rebate for the individual market business in the State, as determined in accordance with §158.221 and §158.240 of this part;

- vi) Net underwriting profit for the individual market business and consolidated business in the State;
- vii) After-tax profit and profit margin for the individual market business and consolidated business in the State;
- viii) Risk-based capital level; and
- ix) Whether the issuer has provided notice of exit to the State's insurance commissioner, superintendent, or comparable State authority.

See Exhibit 2.

Proposal for adjusted medical loss ratio

A State must provide its own proposal as to the waiver it seeks to the MLR standard. This proposal must include:

- (a) An explanation and justification of how the proposed waiver to the MLR was determined;

Georgia requests a waiver to the MLR standard to ensure that the Georgia individual market is not destabilized by what amounts to an abrupt change for all insurers participating in Georgia's individual market. 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%

In addition, Georgia requests that the calculation for MLR for the 2013, 2014, and 2015 reporting years be adjusted to reflect the waiver to the MLR standard, if granted. Specifically, the inclusion of three years of data, which begins in the 2013 reporting year, should be paired with a three-year average of the applicable MLR standard, as adjusted. For example, assume that the calculated MLR for an insurer is 68% in 2014. Georgia requests that the effective MLR standard be based upon an average of the MLR standards that correspond to the years of the data. In this example, the effective MLR standard would be

equal to 75% and the rebate would be 7%. Georgia requests that the effective MLR standard apply as follows:

Year	MLR standard	Effective MLR
2013	75%	70%
2014	80%	75%
2015	80%	78.3%

In addition, for insurers that are required to include 2011 data in the 2012 MLR reporting year Georgia requests that the effective MLR for 2012 be 67.5%. For years subsequent to 2015 the effective MLR will be 80%.

Deference to State Insurance Commissioners

When it comes to deference to the States' Insurance Commissioners HHS adopted the most appropriate standard, *to wit*:

The NAIC also suggested that HHS give deference to [State Insurance Commissioners'] analysis and recommendations. HHS agrees with the NAIC that, just as a State commissioner is best qualified to request adjustment to the MLR standard, a State commissioner seeking an MLR adjustment is also best qualified to suggest an appropriate alternative MLR standard for each the reporting years for which a State is requesting an adjustment.

See, 75 Fed. Reg. 74887 (December 1, 2010). State Insurance Commissioners are in the best position to know how the MLR standard will affect the individual market in their State. Raw data can be informative, but there is much that is not captured by the data requested by HHS.

Current Market Conditions

Over the past fifteen years Georgia has worked diligently to encourage competition in the individual market. A competitive individual market requires more than a few large insurers. Like many similarly situated states, Georgia's individual market is constituted by one very large insurer, a few insurers with significant shares of the individual market, and smaller ones attempting to penetrate the market. I believe that an immediate

application of the 80% MLR standard would likely encourage further concentration of Georgia's individual market.

Purpose of MLR Waiver Request

The purpose of Georgia's request for an MLR waiver is three-fold. First, we should do no harm to Georgians with health issues (*i.e.*, pre-existing conditions) who are currently insured in the individual market. For these individuals it is imperative that their current insurer remain in the Georgia individual health market. Second, the phase-in period will give insurers with less capacity to absorb the impacts of the 80% MLR standard time to adjust business models to compete. Third, access to an agent or broker to explain and facilitate the purchase of an individual health policy will be preserved.

Withdrawal of Insurers from Georgia's Individual Market -  
(45 C.F.R. § 158.330(d))

The implications of an insurer's exiting the individual market in Georgia are dramatic. The primary impact of the withdrawal falls upon policyholders with pre-existing conditions who lose their coverage. Consequently, these individuals will have a difficult time purchasing insurance, unless they opt for the federally administered Pre-Existing Condition Insurance Plan, which requires a wait of at least six months. For six months, these Georgians could be put at substantial financial risk and medical care risk in all but emergency health care situations. The financial risk is magnified by the fact that any health care service the uninsured Georgian receives will cost him or her the full billed amount of that service. I believe the requested relief is imperative because for these Georgians, there will effectively be a very limited individual health market for six months if they lose their coverage, and that is certainly a market disruption for them.

The only legal option I have to avoid this result is the avenue provided by 45 C.F.R. § 158.310. I do not have authority as Commissioner to require other insurers to pick up blocks of business from exiting insurers. Nor do I have any authority under Georgia law to "stabilize" the individual market insofar as it requires the denial of an insurer's request to exit the individual market. Finally, Georgia is not a guaranteed issue

state, and it does not have a high risk pool or issuer of last resort.

#### The Risk of Market Exit - (45 C.F.R. § 158.330(a))

As of December 31, 2009, there were approximately 344,241 enrollees in the individual market in Georgia.<sup>1</sup> Of that number, 97,377, or 28.29%, of the enrollees are covered by insurers that have indicated that an exit from the Georgia individual market was possible.

During 2010 two of the insurers that were active in 2009 (approximately 3% of enrollees) stopped writing new business in Georgia. While neither these insurers nor any others have yet submitted notice of exit from the Georgia individual market as a direct consequence of the 80% MLR standard, I expect that without a waiver to the MLR standard in Georgia that several insurers will be unable to operate the individual line profitably. As a consequence, some insurers have indicated that they may exit the individual market.

#### Five-Year Ban on Re-Entry

In addition to the immediate impact on policyholders, the insurer is also impacted by its decision to withdraw from the individual market. Georgia law prohibits an insurer that withdraws from the individual market from participating in that market for five years, beginning from the date of the last renewal. See, Ga. Comp. R. & Regs. r. 120-2-67-.10(b)(5). Choice and competition would be diminished if some insurers are forced to withdraw and then are banned for five years from participation in the Georgia market.

#### Paradigm Shift in Health Care

On January 1, 2014, if the law is upheld, there will be a paradigm shift in health care, particularly with respect to the individual health market. Individual health insurance policies are to be commoditized as far as is possible; medical underwriting will largely be a perfunctory task for machines to

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<sup>1</sup> This number includes enrollees for insurers that were active in the Georgia individual market during 2009. We will supplement the data with information of one more insurer that had about 980 enrollees in 2009 and is still active in the Georgia individual market. See the Insurer Selection Criteria for more detail.

perform, and the benefits of policies will largely be standardized. The proponents of the ACA claim that this will allow individual health care policies, in conjunction with Exchange, to be priced competitively. I do not think this will ultimately be the case. Regardless, we need as many insurers competing in the market place as possible.

#### Let the Exchange Market Sort Things Out

The interim MLR requirement should not be used, intentionally or otherwise, to knock out the smaller insurers. The individual market and the various economic forces therein will be dramatically different if the Exchange comes online. The private market place should be allowed to pick the winners and losers based upon the efficiency and quality of the insurer.

#### Access to Agents and Brokers - (45 C.F.R. § 158.330(c))

Perhaps the most disruptive aspect of an immediate application of the 80% MLR standard is to the agent and broker community. It is self-evident that the number of agents that will continue to facilitate the functioning of the individual health market between now and January 1, 2014 will decrease if commissions are reduced. As a consequence of the 80% MLR standard insurers are decreasing agent commissions.<sup>2</sup> The natural consequence is that the insuring public in Georgia will find it far more difficult to find an agent to help them through the process of understanding and then purchasing an individual health policy. The way that an individual health insurance policy is purchased in Georgia is through a licensed agent. That is how our citizens understand the process and that is how the health care industry, regulated and regulator alike, have developed in Georgia.

I am including with the Georgia submission letters that the Department received from the Georgia Association of Health Underwriters, dated December 14, 2010, and the Georgia Agent and Consumer Advocacy Network, dated December 29, 2010, regarding the severely negative impact the 80% MLR standard will have on agents. These letters illustrate the frustrations and concerns

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<sup>2</sup> 15 of the 16 insurers that are still actively writing in Georgia indicated that commissions have already been or would soon be decreased.

of the agent community in Georgia. Without a waiver to the 80% MLR standard in Georgia, our citizens will find it far more difficult to access the agents and brokers on whom they rely and trust in our individual health market. This circumstance can be significantly mitigated.

It is my understanding that the idea here is to "change" the way things are done, for better or for worse, without "destabilizing the individual market." If this is the goal, then it is imperative that the MLR waiver be granted.

**(b) An explanation of how a waiver to the MLR standard for the State's individual market will permit issuers to adjust current business models and practices in order to meet an 80 percent MLR as soon as is practicable;**

The reality is that some insurers with a small share of the individual market will not be able to make sufficient adjustments to business models and practices to meet an 80% MLR with or without a phase-in period. The objective for these insurers should be to keep them from withdrawing from the individual market. This will minimize the market disruptions for those who are currently insured by those insurers and have health issues.

For the insurers who are currently attempting to penetrate the Georgia individual market or to scale up operations a MLR waiver is necessary. The effect of an 80% MLR is that insurers will either need to grow quickly (which can be a solvency concern) or be part of a holding company that is willing to commit significant capital for returns that are inherently capped or both.

The MLR waiver proposed herein allows for a phase-in period during which insurers can change business models and practices to meet the 80% MLR standard.

#### The Purpose of the MLR Standard

The purpose of the MLR standard is to measure underlying premium pricing issues, rather than chance variation in claims experience. To that end the MLR standard includes a credibility adjustment for insurers with a smaller piece of the individual market. See, 45 C.F.R. §§ 158.230 through .232. Nevertheless,

by design the application of the MLR standard (adjusted or otherwise) to insurers that do not have credible data (*i.e.*, small market share) will result in a 25% chance that an insurer pays a rebate even if the insurer targeted the effective MLR standard in good faith. See, 75 Fed. Reg. 74881 (December 1, 2010). The waiver requested herein does not disturb this aspect of the MLR standard. Failure to meet the adjusted MLR standard will result in a rebate.

#### Less Mature Blocks of Business

Some of the smaller insurers in the Georgia individual health market have newer blocks of business. These insurers are attempting to penetrate a fairly consolidated individual health market in Georgia. In general, the newer blocks of individual business tend to have healthier enrollees than more established and mature blocks of individual business. This naturally follows from more recent underwriting, and while the calculated MLR for this business may be fairly low, the acquisition costs are relatively high. For these insurers, the immediate application of the 80% MLR standard is not sustainable during the transitional period.

#### Conclusion

The waiver proposed herein is effectively a phase-in period for the MLR standard. It is my opinion that the individual market in Georgia will be destabilized unless the MLR waiver is granted. The waiver proposed is a reasonable approach to reduce the risk of market destabilization while maintaining the core policy of the MLR.

Madam Secretary, I respectfully ask that you grant the requested MLR waiver.

**(c) An estimate of the rebates that would be paid if the issuers offering coverage in the individual market in the State must meet an 80 percent MLR for the applicable MLR reporting years;**

See Exhibit 3.

and

(d) An estimate of the rebates that would be paid if the issuers offering coverage in the individual market in the State must meet the adjusted MLR proposed by the State for the applicable MLR reporting years.

See Exhibit 3.

**For the Georgia Department of Insurance**

Trey Sivley, *Esq.*  
Assistant Director  
Regulatory Services Division  
2 Martin Luther King, Jr. Drive  
Suite 602, West Tower  
Atlanta, Georgia 30334  
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December 14<sup>th</sup>, 2010

The Honorable John Oxendine  
Georgia Department of Insurance  
Two Martin Luther King, Jr. Drive  
West Tower, Suite 704  
Atlanta, Georgia 30334

Dear Commissioner Oxendine:

On behalf of the Georgia Association of Health Underwriters (GAHU), I am writing to formally request the State seek a waiver from the U.S. Department of Health and Human Services (HHS) on the implementation of the medical loss ratio (MLR) requirements in Georgia.

As you know, one of the provisions of the Affordable Care Act (ACA) requires health insurance carriers to comply with new MLRs that call for 80 percent of individual and small group and 85 percent of large group premium dollars be spent on medical care. The National Association of Insurance Commissioners (NAIC) was charged with the development of the calculation for MLRs in the individual and small group insurance market, specifically the definitions of administrative expenses and quality of care. Throughout its work developing the MLR definitions, the NAIC warned federal regulators that the final regulation would need to be adjusted to account for the impact the MLR requirements would have on insurance agents' involvement in the purchase and servicing of health insurance policies in the future. The NAIC did not believe it had the legal authority to act in this area, but indicated that unless HHS made an accommodation for agents' compensation for those services, the NAIC's MLR definitions alone would likely create substantial market disruption and limit consumers' access to professionally licensed and trained benefit specialists.

HHS released the Interim Final Rule on the MLR regulation on November 22. As currently written, the regulation is likely to diminish the role of agents and reduce the number of insurers willing to write health insurance in the individual and small group markets. The result will be underserved consumers, reduced competition, and disruption of the State's insurance market.

In Georgia, insurance market destabilization has begun to take effect. Principal Life Insurance Company, a well respected, well operated health insurer in the Georgia market has already announced it will leave our market and we would expect additional announcements if a waiver is not granted. Most carriers in the marketplace have reduced commissions by at least 20% with some individual market reductions of as much as 75%. Those reductions alone would cause a substantial reduction in the agent force in Georgia, but that is not the whole story.

Most health insurance in Georgia is not sold by individual agents but by small businesses – insurance agencies with from 2-10 agents and administrative personnel. The agent (or 2 or 3 agents) owning the business rely on the net income of the organization for their salaries. These businesses have overhead

costs, just like other businesses, that range from 50% to 80% of gross income. The gross income of the business just happens to be insurance commissions. When that gross income is cut by 20-30%, as is the case in many of the cuts in agent compensation, it translates into anywhere from a 50% loss of net income to an agency owner to a net loss and cuts to jobs or the business closing. So in most situations, the decrease in agent compensation from the carrier translates into at least twice the decrease in agency net income.

This, in turn, will lead to fewer administrative personnel and agents to help consumers and less help for the average individual or small business. One of the misunderstandings in the passage of the law and issuance of regulations is the idea that agent compensation primarily reimburses agents for sales. In fact, most of the work of agents is in handling billing and claims problems that are always present in such a complicated product.

An additional problem is created for the marketplace when you look at the effect of this provision on smaller and/or new carriers in the marketplace. A new carrier in a market may have a medical loss ratio of 50% but still lose money. New market entries require capital investment to create infrastructure prior to sales. The limitations of the new law make such new entries much less likely since they make a recovery of the investment much harder. The same is true of smaller companies that may lose money in some years due to fluctuations in claims that smaller blocks of business are subject to -- with recovery much harder due to the limitations. Such new/small carriers provide much of the innovation in the marketplace and create a more competitive environment. One way they attract new business is through slightly higher agent compensation which attracts new brokers to their offerings. Such an avenue will be closed to them under the new law.

We would also urge you to ask for the waiver to apply to MLR in both the individual and small group markets. We understand that HHS believes they can only grant waivers for individual market disruption but the two markets are so interlinked that problems in one of the markets leads to disruption of the other. For this reason, we believe a carefully worded request could allow a waiver to be granted in both markets, which are both impacted by all of the situations mentioned above.

As assistance in requesting this waiver, we have provided, as an attachment, a listing of changes in compensation to agents and brokers that have taken place in the last month or so due to carrier reaction to the new MLR Regulation.

A diminished role for insurance agents and brokers would deprive consumers and employers of one of the greatest assets and trusted choices they have available. Agents and Brokers help consumers find the right health plan that fits their needs, and also navigate the complex health care system. They advocate on consumers' behalf when problems arise, identify cost-saving opportunities and keep consumers informed of new products and changes to the industry that may impact them.

HHS has given states the authority to request a waiver on implementation of MLR. GAHU, in coordination with our national organization NAHU, respectfully requests your consideration in seeking a MLR waiver and allow for producer commissions to be removed from the denominator of the calculation for individual and small group policies sold in Georgia. The regulation specifically states that the impact of the MLR standard on agents and brokers will be a factor in considering whether a particular individual market would be destabilized.

GAHU appreciates your time and attention to this important aspect of Affordable Care Act implementation. Working together, we are confident that we can preserve the vital role of the agent/broker profession in our health care delivery system.

Sincerely,

Handwritten signature of Robert Fitzgerald in black ink.

Robert Fitzgerald, President  
Georgia Association of Health Underwriters

Michael A. Wardrip, LUTCF  
Director of Governmental Affairs  
Georgia Agent and Consumer Advocacy Network  
P.O. Box 4997, Canton, GA 30114

Wednesday, December 29, 2010

US Department of Health and Human Service C/O  
The Georgia Department of Insurance  
Two Martin Luther King, Jr. Drive  
West Tower, Suite 704  
Atlanta, Georgia 30334

RE: Minimum Medical Loss Ratios for Health Insurance Plans

To Whom It may Concern,

Thank you for this opportunity to comment on the petition being prepared by the Georgia Department of Insurance for a waiver or moratorium on minimum Medical Loss Ratios promulgated pursuant to the Affordable Care Act. The Georgia Agent and Consumer Advocacy network is a Georgia-based organization of professional benefits advisors defending the right of consumers to continue using the services of competent, unbiased advocates in choosing health plans and dealing with the complex issues that arise in planning for healthcare security needs. MLR requirements have profound impacts on agents' ability to serve the needs of consumers and those impacts lead us to plead for time to deal with the consequences of this regulation if in fact we cannot turn it back altogether considering the damage it does to private health insurance markets.

Some of the comments here will deal with our specific grievances with MLR, but we cannot leave this issue without reference to the broader flaws with the law that threaten its implementation. Our point here is with the drastic financial impacts ACA inflicts on health insurance agents, brokers, counselors, consultants and benefits advisors by whatever term they are called, why should this class of professionals be singled out for maltreatment when the legal foundation of the law itself has not been settled? More time to sort out the legal questions surrounding ACA would prevent needless suffering and financial ruin for thousands of professional benefits advisors in Georgia and around this nation. In addition, the cumulative harms caused by ACA to the market if it is enacted; and that is not at all a certainty now; will either leave many families' needs unmet and place a tremendous burden of cost on taxpayers and health coverage consumers.

**Impact on Agents:** We can point to multiple instances of regulators and policy leaders involved in implementation of ACA lauding health insurance agents as a crucial and vital part of consumers' ability to find affordable and suitable coverage. Looking at the record of government acts since ACA passage with MLR as one of the most egregious, there is absolutely nothing in regulatory actions that sustains the laudatory statements, press releases and other agent praises as truthful. You are about to put thousands of professional benefits advisors out of work with the impacts of MLR. What was it exactly you meant when you praised us?

Well, that's enough of what will be perceived as proprietary ranting and turf protection. Let's talk about how this relates to consumers. Health insurance exchanges will not come into existence until 2014, but the ability of consumers to have their health insurance needs addressed by professional agents is dwindling now. There is no viable mechanism that will fill that void in the meantime and the result will be a vast population of consumers who will not have the kind of direct, personal, local attention they have become accustomed to from their agents.

How do I know this is true? I represent agents and I hear their stories. Let me start. One of the most prolific writers of individual policies in Georgia has told me he will lose \$30-50,000.00 per month in renewal commissions beginning in January 2011 with the new commission schedules that have been promulgated by carriers under the requirements of MLR. Yes, that's a large impact to his income, but let's talk about effects on the market. He states that in July of 2010 he had eight professional writers taking applications in his firm and writing three to four hundred applications per month. On or about the 1<sup>st</sup> of December after he got his new compensation schedules, he reported that he had reduced his staff to three and had plans on January 1, 2011 to reduce to one paid staffer and to cease writing any new individual business. If one large agency ceases writing new business, where will his four thousand customers go for coverage? There are many, many sources for obtaining coverage and many new private agent-run web portals are in operation, but I'm hearing this same type of story repeated over, and over, and over all over the State of Georgia.

Another benefits advisor told me when we first started discussing the impact of ACA on his practice that nationwide, he had 1,100 agents who wrote business through him. He had built a marketing organization that served tens of thousands of insurance purchasers. He was operating as a national marketing broker with a general agency model that provides him compensation in the form of overrides that averaged 3-5%. When he began to explore the impact of ACA on his practice, he ceased hiring any new agents and began letting go of those he had hired. Many of these agents have found other jobs I'm sure, but many are no doubt unemployed.

Let me paint you a word picture to further illustrate my point in general terms for the market. An exodus of agents from the market that began months ago is greatly accelerating with the sudden advent of new compensation schedules from carriers immediately following release of interim final MLR regulations from HHS. In many cases, this is occurring with agents whose production accounts for a large percentage of the total individual market, the population that is most vulnerable without adequate attention and guidance from professional advisors. **Georgia has no safety net** and there are no real prospects in this economy and in the midst of a fiscal crisis at the state level that one will develop. With a precipitous drop-off in the number of applications being written by agents in the individual market, there is no viable mechanism that will stand up in the near term to absorb the shortfall.

One might suppose this is simply going to create a boon for agents who can increase volume, but compensation is drastically decreasing, not increasing. With less incentive to market, are there any reasonable minds saying that agent produced application volume will actually increase?

One example comes from an education event held in the Fall in Atlanta at which agents were being given tools to privately ramp up their volume. While the message and the education for the agents was timely and helpful, the hall that was used for the event was about half the size of the one used for the same event last year due to reduced attendance and the entity sponsoring the event was drastically reducing enrollment costs to avoid the visual of a ballroom with lots of empty seats. Greater efficiencies can help agents deal with decreased compensation with more volume, but most professional agents I work with are straining at the limits of production capacity and have little will to work even harder for less compensation.

Are carriers now ready to up-staff after laying off thousands of workers to absorb the drop in applications taken by agents? Are there any viable mechanisms in Georgia to effectively absorb the shortfall in capacity caused by the departure of agents? Again, the individual exchanges are not scheduled to even begin operations until 2014. It's going to be a very long three years.

In addition, the same process of reduced compensation and attrition is occurring in the small group market and diminished access for employers to competent advice, especially at renewal time will cause many to be unable to maintain affordable employee coverage. Increased concern about excessive cost of coverage will cause many small employers to decide to cease offering employee benefits. This will be an especially critical problem in the part of the market serving employer groups with 2-50 lives since there is no mandate for them to maintain coverage.

As an example, one factor that affects ability of employers in Georgia to obtain and keep affordable coverage has gotten scant attention if any with a potential for disastrous consequences. In Georgia as is the case in many other states, there are statutory or regulatory provisions calling for minimum participation requirements to prevent adverse selection and to serve as a risk adjustment tool. Unfortunately, when individual exchanges open with subsidies available to subscribers, there will be tremendous incentives for individuals to leave what I will call "traditional" small groups (traditional as in common now, but not for long). Loss of predictability will prevent carriers from being able to accurately rate according to risk within limits imposed by federal and state laws. Resulting uncertainty and fear of cost escalation will prompt most small employers to cease offering coverage altogether outside those who are mandated to do so under the law. As a result, the market for coverage for employer groups under 50 lives will dwindle to a shadow of what it is today and virtually vanish altogether on or shortly after January 1, 2014. Employers are leaving this market in increasing numbers. Agents are leaving this market in increasing numbers. Impacts are already disastrous from this new law and could become catastrophic long before the sweeping mandates of 2014 become a reality.

Beyond the impacts of unserved consumer needs where plan selection is concerned, we are amazed at the degree to which the relationship between consumers and benefits advisors is oversimplified or deemed to be one of a mere intermediary. Agents, by whatever term they are called are an accountability check on carriers and all the vendors that serve the health coverage market. They are also often a lifetime resource for their clients' financial and health security needs. You are responsible for implementing a law that is said to help consumers with these same needs while decimating the ranks of professional health insurance advisors. How is this in any way right?

Going back to cumulative impacts, in addition to the preceding affects of uncertainty with regard to future costs of coverage for employers, there is no mechanism for controlling the true root of cost in health plans, which is medical price inflation. There are no promises in ACA relating to affordability that do not rely on mandates, subsidies and other taxpayer or market subsidized incentives. With little is any attention to medical price inflation in a political and economic - environment where few if any subsidies and incentives will be funded; AND a possibility that the individual mandate on which the whole equation of market viability under ACA is based, my colleagues and I believe the market structure contemplated under ACA will be a crushing failure. To this “perfect storm” of failed initiatives; adding a lack of competent independent professional advisors for employers lost from the market as a result of drastic compensation reductions seems to spell disaster.

With the strongest pleadings possible, we are asking you to delay implementation of minimum Medical Loss Ratios in Georgia. The impacts are potentially so vast they cannot be measured. With no safety net in place unmet needs for competent unbiased advice from agents will lead many to make wrong decisions regarding coverage in a way that could lead to many becoming uninsured and uninsurable! Worse yet for many, there is no reasonable hope some mechanism can stand up to meet the shortfall resulting from mass exodus of agents from the market. The threat that one or more carriers may leave the market in combination of a lack of professional licensed agents will attract and incentivize predators who thrive on uncertain consumers.

Thousands unemployed; markets unserved; adverse selection leading to collapse of the small group market; lack of a safety net leading to hundreds if not thousands more uninsured and uninsurable individuals before 2014; attraction of unlicensed predators to fill the gap left by exit of professional licensed agents; and an economic and political reality that little or no new funding for regulatory positions called for in ACA, or for subsidies and incentives required to make health insurance exchanges viable all add up to potentially disastrous outcomes and sound reasons to delay implementation of MLR regulations as enacted by HHS on November 22, 2010.

Once again, I thank you for this opportunity to plead for the waiver/moratorium that is being requested on our behalf by the Georgia Department of Insurance. I am at your service for questions and introductions to my clients who are willing to testify to the impacts of ACA broadly and MLR more specifically on their abilities' to offer affordable coverage to their clients and Georgians as a whole.



Respectfully submitted;  
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