

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

Submitted Via Electronic Mail:
MLRAdjustments@hhs.gov -- IOWA

Dear Secretary Sebelius:

On behalf of Iowa consumers, the organizations listed below submit these comments to oppose the application of the Iowa Insurance Commissioner for an adjustment to the 80 percent minimum medical loss ratio in the non-group market required under the Affordable Care Act (ACA). Iowa seeks to reduce the minimum medical loss ratio to 60% for calendar year 2011, 70% for 2012, and 75% for 2011.

The medical loss ratio (MLR) gives consumers a straightforward calculation of how their premium dollars are spent and sets a minimum level of spending on medical benefits and quality improvement at 80 percent in the individual and small group markets. Congress, with the support of the Congressional Budget Office, concluded that an 80 percent minimum MLR in the non-group market was attainable by efficiently operated insurers.

Adjustments to the MLR may be granted only if “the Secretary determines that the application of such 80 percent may destabilize the individual market” in a state. PHSA ' 2718(b)(1)(A)(ii). HHS regulations implementing this provision of the law further define this determination being made only “if there is a reasonable likelihood that application of the requirement will do so.” 42 C.F.R. ' 158.301.

In our view, Iowa has failed to make the case that there is any “reasonable likelihood” that the individual insurance market will be destabilized if HHS fails to grant the adjustment it requests. The request for a waiver submitted by Iowa stated only that, “... absent a waiver, I believe that the federal MLR standard *may* disrupt our individual health insurance market.”¹ No supporting analysis of the information that was included in the waiver request was given to suggest why there was “reasonable likelihood” of such disruption..

In fact, Iowa submitted very minimal information regarding the individual health insurance market and did not hold any public hearings on the issue that might have gathered such information.

¹ March 21, 2011 letter from Commissioner Susan A. Voss to The Honorable Kathleen Sebelius (emphasis supplied)

HHS regulations set out information that states must submit and criteria that HHS must apply in determining whether or not to grant a state an adjustment. 42 C.F.R. §§ 158.321, 158.330. The criteria HHS must consider include:

- (a) The number of issuers reasonably likely to exit the State or to cease offering coverage in the State absent an adjustment to the 80 percent MLR and the resulting impact on competition in the State.
- (b) The number of individual market enrollees covered by issuers that are reasonably likely to exit the State absent an adjustment to the 80 percent MLR.
- (c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers.
- (d) The alternate coverage options within the State available to individual market enrollees in the event an issuer exits the market.
- (e) The impact on premiums charged, and on benefits and cost-sharing provided, to consumers by issuers remaining in the market in the event one or more issuers were to withdraw from the market.
- (f) Any other relevant information.

The Iowa adjustment request cannot be justified under any of these criteria. HHS, therefore, should deny the request.

Iowa has offered no evidence that any insurers will exit the state or cease offering coverage absent an adjustment.

To enable the Secretary to determine the likelihood of insurers exiting the state, the regulations require a state requesting an adjustment to provide information regarding every insurer in the state that offers coverage in the individual market and further detailed information on every insurer that covers more than 1,000 lives. Iowa initially declined to provide most of this information to HHS, claiming confidentiality. When HHS pointed out that the information was already publicly available, Iowa provided that required information on insurers that cover more than 1,000 lives, but continued to decline even to provide the names of carriers that covered fewer than 1,000 lives.

Iowa admits in information that it provided to HHS that no insurer has given notice that it will withdraw from the Iowa market absent an adjustment.² The Commissioner also admits that the Department “has not conducted an analysis specific to the ability of insurers to meet an 80 percent MLR standard or to provide rebates to enrollees.”³ The Commissioner speculates that some smaller insurers may exit the market absent an adjustment but does not identify specific insurers who might do so, or provide evidence that they might. Of course, under the credibility adjustments in the MLR rule, insurers

² May 6, 2011 letter from Assistant Commissioner Angela Burke Boston to Acting Director Gary Cohen, Item 3

³ May 6, 2011 letter from Assistant Commissioner Angela Burke Boston to Acting Director Gary Cohen, Item 2

with fewer than 1,000 enrollees in the rebate experience period would be exempt from the rebate requirement.

In short, Iowa has provided no evidence at all that any insurer will exit the state absent an adjustment and has failed to provide concrete evidence to support its speculation.

Iowa has offered no evidence that any enrollees are covered by insurers that will exit the state absent an adjustment.

Because Iowa has offered no evidence that any insurer will leave the state absent an adjustment, it has also failed to prove that any enrollee will lose coverage because of insurers exiting the state.

Iowa does not demonstrate, or even allege, that access to agents and brokers will be disrupted if an adjustment is not granted.

Iowa claims that insurers are bound by multi-year contracts that will keep them from cutting agent and broker commissions, although it does not identify insurers bound by such contracts. Data recently provided by the National Association of Insurance Underwriters to the NAIC demonstrates that agent and broker percentage commissions have not been cut in the individual market in Iowa, but that at least one carrier has moved from a percentage commission to a per member per month compensation formula, suggesting that access to agents and brokers should not be an issue, but also that carriers have flexibility in adjusting compensation.

Alternative coverage is available to Iowa insurance consumers if an insurer exits the state.

Iowa does not allege, and it certainly has not proved, that existing insurers within the state cannot take up additional business if an insurer does exit the state. Moreover, Iowa's high risk pool and the ACA Pre-existing Condition Insurance Plan which Iowa administers can cover enrollees who are unable to purchase coverage because of preexisting conditions.

The loss to Iowa consumers of granting this adjustment request would be substantial.

The commissioner offers no evidence that premiums or cost-sharing would increase for Iowa consumers or that benefits would decrease if this adjustment request is denied. HHS calculations establish, however, that absent an adjustment, insurers would pay Iowa consumers rebates of \$6,482,615; and that with the adjustment rebates would be reduced to \$1,868,000. The adjustment therefore would deprive Iowa consumers of \$4,614,615 in rebates otherwise due them under federal law.

Iowa has held no public forums to gather information on this adjustment request. This is the first opportunity that Iowa consumers have had to respond to this proposal and to

examine filed proposals and responses. The Commissioner has not established that this adjustment request is necessary. Granting it could cause serious harm to Iowa consumers. We request that this adjustment proposal be denied.

We further recommend that any consideration of any subsequent waiver request from Iowa require much more public information be presented about Iowa's individual insurance market which ties that information to specific requests being made. Even if there do exist some grounds for a waiver that would set the MLR below 80%, we do not see that going to 60% is justified even on the limited information that has been provided.

First, Iowa's current proposal for a 60% ACA MLR for 2011 could actually be a step backwards from current Iowa requirements. Iowa Administrative Code 191-36.10 prescribes a loss ratio of 55 to 60 percent. The formula is calculated by dividing incurred claims by earned premium."⁴ The ACA MLR includes additional costs in the numerator of the calculation, excludes a portion of premium revenue from the denominator of the calculation, and also allows for a credibility adjustment. The combined impact of these three items can easily have the impact of increasing the ACA MLR by 5% or more compared to the loss ratio calculated by dividing incurred claims by earned premium. Therefore, the 60% PPACA MLR being proposed by Iowa could effectively be lower than the current range of 55% to 60%. The Iowa proposal, instead of moving from the current position to something closer to the 80% ACA MLR, could actually make the difference larger.

Second, the limited information that has been provided regarding MLR's indicates that at least three of the smaller Iowa carriers (American Family Mutual, Time Insurance Company, Golden Rule) already have loss ratios well in excess of 60% and currently serve 8.9% of the market, over half that not served by Wellmark. Even if the state wanted to argue that smaller insurers be granted some time to get up to 80% to maintain market competition, there is no information the Commissioner has provided that would suggest that starting at 60% and moving to 70% and then 75% is justified. At the outside, Iowa's data might be used as information for setting loss ratios at 70% or 75% and then 80% to allow transitioning that maintains that competition.

We appreciate the opportunity to submit these comments.

Charles Bruner, Child and Family Policy Center
Sue Dinsdale, Iowa Citizen Action Network
Hugh Espey, Iowa Citizens for Community Improvement
Sam Blair, Iowa Main Street Alliance
Cathy Glasson, SEIU IA
Brian Depew, Center for Rural Affairs

⁴ March 21, 2011 letter from Commissioner Susan A. Voss to The Honorable Kathleen Sebelius