



December 1, 2011

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

Dear Secretary Sebelius,

The fact that most insurance companies do not like the medical loss ratio requirement of the Affordable Care Act does not mean that they are incapable of complying with it. Neither does the fact that some insurance companies will have to reduce overhead and accept reduced profits in order to meet the standard.

Thus we ask that you reject Kansas' request for an MLR waiver, particularly for any year beyond 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. Kansas does not meet that bar for its request that the MLR rule be phased in at 70% for 2011, 73% for 2012 and 76% for 2013.

Kansas lists eight insurers which are both active in the individual market and cover a minimum of 1,000 enrollees.

- The state's two largest insurers (BCBS Kansas and BCBS Kansas City, with a combined market share of more than 65%) would owe no or *de minimis* consumer rebates in any year before 2014.
- Aetna would owe no or minimal rebates in any year;
- Humana appears to have made a math error in projecting a hypothetical \$1 million-plus 2011 rebate: With its actual 2010 MLR of 77.1%, it should not be possible for its revised MLR under the health reform law to drop to 70.8%. If anything, it should rise under the new rules. So its rebate, if any, would be minimal;
- Of the remaining insurers, only Coventry, with 5.4% of the market, has made even a casual and informal statement that it could leave the market in the absence of a waiver. No insurer has submitted a written notice of such intent.

Some insurers that are likely to owe substantial rebates under the 80% rule richly deserve to pay them. Golden Rule, for instance, reports a 2010 MLR of 55.2%, meaning it spent only 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 profit in the Kansas individual market of 14.6%, far above the average of a few percent. 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.

Coventry's sales commissions were also outsized: 10.7% of premium per year paid to brokers and agents.

All of the eight insurers in the 1,000-plus category had more than sufficient surplus funds, near or above three times the statutory minimum. None would risk insolvency from paying rebates while they adjust

their administrative costs and expected profits to meet the 80% required MLR.

When the state conducted a hearing on the medical loss ratio, most of the formal comment came from agents and brokers who argued that consumers would lose access to their professional advice on the purchase of health insurance if the 80% ratio is applied immediately. Yet states that already have MLR requirements near or at ACA levels in the individual market reported last year to the National Association of Insurance Commissioners that they found no market disruption or lack of broker/agent availability in their states.

No consumer groups testified at Kansas' March 14 hearing, perhaps because the Kansas Insurance Department's hearing notice invited "all health insurers and agents, as well as the public..." There was no mention of outreach to consumer groups or patient advocates, and the hearing was an expectable airing of broker and smaller insurance company grievances before state officials fully sympathetic to their industries.

Kansas has failed to show that its insurance companies would be unable to either pay rebates to consumers or make their business models more efficient. It provided no evidence beyond anecdotes to show that the individual market would be disrupted. We ask that you deny Kansas' request, and ask further that if you do grant any waiver, that it be minimal and for one year only.

Sincerely,  
Judy Dugan