Kansas Insurance Department
Sandy Praeger, Commissioner of Insurance

April 29, 2011

TRANSMITTED BY E-MAIL **MLRAdjustments@hhs.gov**

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
2000 Independence Avenue, S.W.
Washington, DC 20201

RE: Request for Adjustment of Individual Market Medical Loss Ratio

Dear Madam Secretary:

Under Section 2718 of the Public Health Service Act, the State of Kansas hereby submits a request for a waiver of the 80% minimum loss ratio (MLR) requirement for individual health insurance market policies issued in Kansas until 2014. The current MLR requirement for individual health insurance in Kansas is 55%.

Kansas is proposing a rule modification that would permit a gradual implementation of the 80% requirement over a three year period in order to (1) provide the insurance companies in the Kansas individual market with time to adjust the business practices that impact their administrative costs, (2) ensure that insurance companies and Kansas consumers have well qualified, fairly compensated health insurance agents and brokers to assist them in the marketing and servicing of policies sold in Kansas; and (3) maximize the opportunity for new entrants into the Kansas market and new options for Kansans.

We appreciate your consideration of this request and look forward to receiving your approval. My staff and I are available to provide additional information or answer any questions.

Sincerely,

Sandy Praeger

Sandy Praeger
Commissioner of Insurance

Information regarding the State's individual health insurance market.

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

Under K.A.R. 40-4-1, Kansas's MLR standard has been 55% since 1981.

> Benefits shall be deemed reasonable in relation to premiums provided the anticipated loss ratio is at least as great as 55%.
>
> The lifetime anticipated loss ratio is derived by dividing (i) by (ii) where
>
> (i) is the sum of the accumulated benefits from the original effective date of the form to the effective date of the revision, and the present value of future benefits, and
>
> (ii) is the sum of the accumulated premiums from the original effective date of the form to the effective date of the revision, and the present value of future premiums, such present values to be taken over the entire period for which the revised rates are computed to provide coverage, and the accumulated benefits and premiums to include an explicit estimate of the actual benefits and premiums from the last date as of which an accounting has been made to the effective date of the revision. Interest shall be used in the calculation of these accumulated benefits and premiums and present values only if it is a significant factor in the calculation of this loss ratio.

(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 existing issuer have continuing coverage, as well as any penalties or sanctions that may be levied upon exit or limitations on re-entry.

Under K.S.A. 40-2257 an accident and sickness insurer who elects to discontinue offering any individual policies in Kansas:

(1) Must provide notice to the commissioner and to each individual policyholder of such discontinuation at least 180 days prior to the date of the expiration of the coverage; and

(2) is prohibited from issuing any individual policies providing such coverage in the state for a period of five (5) years beginning on the date of the discontinuance of the last individual policy

(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.

In describing each mechanism, include detail on the issuers participating in and products available under such mechanism, as well as any limitations with respect to eligibility, enrollment period, total enrollment, and coverage for pre-existing conditions.

Kansas has an alternative mechanism approved pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Kansas Health Insurance Association (KHIA), a non-profit legal entity created by the Kansas Legislature in 1992, operates a high risk pool that provides guaranteed issue access to Kansas residents who have been denied coverage in the individual market or who have been quoted a premium rate that is in excess of the rate that would be charged in the KHIA plan.

Any net loss of the KHIA pool is assessed by the KHIA Board of Directors to all members (insurers and insurance arrangements) in proportion to their respective shares of the total health insurance premiums received in Kansas during the calendar year coinciding with the ending of the KHIA plan year.

KHIA offers four (4) plans with deductibles between $1,500 and $10,000/year. A detailed description of the plan benefits can be viewed at

http://www.khiastatepool.com/docs/Policy%20Highlights%20and%20Comparison.pdf

Individuals eligible for coverage in the KHIA pool must meet the following criteria:

- Resident of Kansas for at least six (6) months,
- A legal resident of Kansas who was previously covered under the high risk pool of another state, provided they apply for coverage within 63 days of losing such other coverage for reasons other than fraud or nonpayment of premiums; or
- A federally defined eligible individual who is a legal resident of Kansas, and

    * Such person has had health insurance coverage involuntarily terminated for any reason other than nonpayment of premium;

* Such person has applied for health insurance and been rejected by two (2) carriers because of health conditions;

* Such person has applied for health insurance and has been quoted a premium rate which is in excess of the KHIA plan rate;

* Such person has been accepted for health insurance subject to a permanent exclusion of a preexisting disease or medical condition; or

* Such person is a federally defined eligible individual.

Total KHIA enrollment as of March 31, 2010 was 1,670.

Coverage under the KHIA plan excludes charges or expenses incurred during the first ninety (90) days following the effective date of coverage as to any condition that (1) manifested itself during the six (6) month period immediately prior to the application for coverage, or (2) for which medical advice, care or treatment was recommended or received in the 6 month period immediately prior to the application for coverage.

(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 attached Excel spreadsheet entitled "Issuers in Kansas Individual Market".

(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 businesses 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 attached Excel spreadsheet entitled "Kansas Issuers With More Than 1,000 Enrollees".

Proposal for adjusted medical loss ratio

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

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

Kansas proposes the following gradual transition to the 80% MLR requirement over three years leading up to 2014 to allow all Kansas issuers to make the necessary adjustments to their business practices and contracts and to ensure the continuation of the competitive environment that exists in the Kansas individual market.

2011 - 70%
2012 - 73%
2013 - 76%
2014 - 80%

On March 14, 2011, the Kansas Insurance Department (KID) held a Public Fact Finding Hearing to solicit testimony and data regarding the impact of the new 80% MLR requirement on the Kansas individual market. During the Hearing one issuer suggested the concept of a gradual transition to the new requirement. Included in the notice of hearing issued on January 14, 2011, KID also requested certain data from all issuers in the individual market. After reviewing the data received in response to this request KID determined that the gradual transition schedule stated above will minimize disruption in the Kansas individual market.

(b) An explanation of how an adjustment 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 MLR adjustment proposed will allow Kansas issuers to generally adjust their business practices over a period of three years to eventually meet the 80% requirement, which is 25 percentage points higher than the current Kansas MLR requirement. For issuers with existing multi-year contracts with outside vendors for services related to claims administration, marketing, and servicing of their policies, which may not be adjusted retroactively, this phase-in of the 80% requirement will provide them with sufficient time to identify and secure new financial arrangements for these services. In the absence of this adjustment period issuers will not have an opportunity to make the adjustments in their administrative costs needed to ensure compliance with the new MLR requirement.

During the hearing held on March 14, 2011, we heard testimony from Kansas agents and brokers that some Kansas issuers that currently use an agent model for the marketing of their products are making significant adjustments to their compensation models. Both issuers and consumers rely on agents and brokers to identify and obtain the best possible coverage options for the needs of consumers and to advise and assist them throughout the life of their policies. These services are valuable to both issuers and Kansas's current and future insureds and agents and brokers should be fairly compensated for providing these services. With a gradual phase-in of the new MLR requirement Kansas issuers will have time to develop and implement new compensation models that will ensure appropriate compensation for Kansas agents and brokers.

A gradual MLR adjustment, rather than an abrupt shift to an 80% MLR, will allow the Kansas market to make a smooth and efficient transition to the new requirement.

(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; and

For the 2011 plan year, our data indicates that Kansas issuers would pay in excess of $6.3 million for rebates.

(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.

Under the adjustment being proposed by Kansas we estimate that for the 2011 plan year Kansas issuers would pay less than $750,000 in rebates.

State contact information

Please provide contact information for the person the HHS may contact regarding the request for an adjustment to the MLR standard.

Linda J. Sheppard
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PPACA Project Manager
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Additional Information: If a state holds a public hearing, the report from that hearing should be attached to the request.

The transcript from the Public Fact Finding Hearing held on March 14, 2011 is attached.