

January 31, 2011

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

VIA ELECTRONIC MAIL: MLRAdjustments@hhs.gov

Dear Secretary Sebelius,

We write in opposition to the waiver application submitted by the State of Maine under the Patient Protection and Affordable Care Act and Public Health Service Act (Section 2718). We call your attention to one insurer, HealthMarkets, Inc., which operates in this state and which we believe is a case study in the kind of business practices Congress intended to curtail with Section 2718.

HealthMarkets, Inc. is majority owned by the Blackstone Group LP, with significant minority stakes held by the investment banks Goldman Sachs and Credit Suisse. In its most recent quarterly filing to the Securities and Exchange Commission, HealthMarkets reported a company-wide loss ratio of 49.2% for the first three quarters of 2010, and just 33.1% for the third quarter. During this same nine-month period, the company paid out \$120 million in dividends to its owners, and participated in over \$20 million of related-party transactions with two of its owners – Blackstone & Goldman Sachs.

Additionally, the company has a history of litigation brought by States and by individual policy holders. During the past two years, HealthMarkets has paid out tens of millions of dollars in settlements – including \$20 million over the probe carried out by the National Association of Insurance Commissioners and 36 States, which found “deficiencies and issues with the Company’s oversight, communication, monitoring and training of agents, claims handling practices, complaint handling practices, policyholder treatment and transparency related issues relative to its relationships with the membership associations”.

We believe that, far from causing destabilization and harm to consumers, waivers of this Section would deprive consumers of essential protections Congress intended to provide when it crafted the Patient Protection and Affordable Care Act.

HealthMarkets reports company-wide loss ratios of less than 50%

The Medical Loss Ratio requirements are a signal achievement of Health Care Reform. By requiring insurers to spend at least 80% of every premium dollar on health care services, this provision realizes Congress’ goal of restricting excessive profit-taking, executive compensation, and fees that are

JOHN W. WILHELM, PRESIDENT

GENERAL OFFICERS: Sherri Chiesa, Secretary-Treasurer; Peter Ward, Recording Secretary; D. Taylor, General Vice President; Tho Thi Do, General Vice President for Immigration, Civil Rights and Diversity

passed on to consumers. On introducing The Fairness in Health Insurance Act (S 1730), Senator Al Franken, speaking for himself and Senator Rockefeller, Senator Whitehouse, and Senator Sanders, said: “This bill will hold health insurance companies accountable by requiring that at least 90 percent of your premium dollars go toward health services, not profits or administrative waste.”

During the third quarter of 2010, HealthMarkets’ reported its company-wide loss ratio has fallen to 33.1% (down from 49% for the year-to-date 2010, and 57% during the same period in 2009). HealthMarkets’ low MLR is connected to its high brokerage commissions and the \$37.2 million in compensation paid to its top five executives in 2009 alone. Such a low return on consumers’ premium dollars, coupled with high compensation, comprise exactly the type of spending and profit-making Congress intended to curtail when it included MLR limits in the Patient Protection and Affordable Care Act.

Senator Franken addressed these intentions when he stated: “While millions of Americans struggle to pay for health care, insurance executives continue to make obscene salaries. Last year, three top health insurance executives saw boosts in their total compensation--some of them making almost \$10 million. I believe in fair competition but I do not support companies making obscene profits off of health care. The Fairness in Health Insurance Act will force insurance companies to prioritize health services for beneficiaries over bonus packages for CEOs.” (By comparison, in 2009, HealthMarkets CEO Phillip J. Hildebrand received \$19.7 million in total compensation).

Approving this waiver could cause greater destabilization than HealthMarkets’ withdrawal

In her waiver application, Superintendent Kofman writes that the MLR adjustment is necessary because HealthMarkets has indicated an intention to leave Maine’s individual health insurance market should the new standards be applied. Yet there is evidence that HealthMarkets has already withdrawn from some states, so withdrawal from Maine may happen anyway. Moreover, we believe that in that scenario, approval of this application has the potential to cause greater disruption than the loss of this particular insurer.

MEGA Life and Health (the HealthMarkets subsidiary operating in Maine) has a five-year average MLR of 51%. Maine’s other primary individual insurer, WellPoint Inc.’s Anthem Blue Cross and Blue Shield, has during this same period maintained an 88% MLR. WellPoint’s ability to operate at such a high MLR in the same market suggests that HealthMarkets could compete effectively, and that other insurers could enter the market.

Should HealthMarkets choose to leave Maine’s individual market, it will have to provide three months’ notice that it will stop offering individual plans and six months’ notice that it will not renew existing policies. Since Maine requires guaranteed issue and modified community rating in the individual market, HealthMarkets’ policyholders will be able to purchase any individual policy offered by other insurers without concern for pre-existing conditions.

As of September 30, 2010, HealthMarkets’ covered 13,732 enrollees in Maine -- only 1% of all residents. If HealthMarkets leaves this market, these individuals will have guaranteed access to other health plans. WellPoint’s high MLR suggests that customers switching to this or similar insurers would receive much better value for their premium dollar – just as Congress intended when it included MLR standards in the Affordable Care Act.

HealthMarkets' recent corporate filings suggest the company is already in the process of transitioning out of the business of underwriting health insurance altogether. It states: "After September 23, 2010, the effective date for many aspects of the Health Care Reform Legislation, the Company discontinued marketing its health insurance products in all but a limited number of states in which [HealthMarkets subsidiary] InSphere does not currently have access to third-party health insurance products." Thus the company may withdraw from Maine regardless of the proposed adjustment

In this scenario (where HealthMarkets withdraws from Maine's market, despite the waiver approval), WellPoint would remain the dominant individual insurer in the state, but it would be permitted to drop its MLR to 65%. WellPoint could thus raise its premium prices without fear of rate competition from HealthMarkets or lower its healthcare payouts and still remain in compliance with the 65% MLR. We believe this poses a much greater threat to access to affordable coverage than if WellPoint is the only insurer but is constrained by the 80% MLR.

Maine's residents deserve the benefit of scheduled implementation of health care reform, and should not be asked to continue to accept health insurance that only provides fifty cents of care for every premium dollar. Whether or not HealthMarkets leaves Maine's individual health insurance market, Maine's residents will be better served by a market with an 80% MLR than a 65% MLR

HealthMarkets could easily absorb the cost of complying with Section 2718

Notwithstanding its plans to withdraw from the underwriting business, we believe HealthMarkets could easily absorb the costs of complying with Section 2718 in Maine.

In February 2010, HealthMarkets paid out \$120 million in dividends to investors, on top of \$312 million in dividends it paid out in 2007. This is in addition to over \$12.5 million in "ongoing monitoring, advisory, and consulting services" it pays to its private equity owners. HealthMarkets has also committed \$20 million of its own funds to investment vehicles controlled by its owners – a Blackstone hedge fund and a Goldman Sachs real estate fund.

By comparison, the cost of complying with Section 2718 is small. According to Maine's application for an MLR adjustment, HealthMarkets would be required to pay just \$1.94 million in rebates under the federal MLR standards. By comparison, HealthMarkets paid over five times this amount (\$10.5 million) to hold events at Blackstone-owned hotels during the past three years.

HealthMarkets has adjusted its business plan to comply with MLR standards in the past

Confronted with higher MLR standards in the past, HealthMarkets has redesigned its policies to conform to the new regulatory context. For example, in July 2007, the State of California enacted regulations requiring an MLR of 70% for all new individual health insurance. In the company's 2009 Annual Report, HealthMarkets stated, "In 2009, we filed new products intended to address these California minimum medical loss ratio requirements." We have seen no compelling evidence to suggest that HealthMarkets cannot adjust its business model in Maine to comply with new standards, as it did in California.

HealthMarkets' business practices have generated numerous lawsuits and investigations

HealthMarkets and its subsidiary companies have been the subject of numerous lawsuits and regulatory investigations. In 2008, a landmark three-year, 36-state investigation into HealthMarkets led by the National Association of Insurance Commissioners, the Washington State Insurance Commissioner, and the Alaska Division of Insurance Director culminated with a \$20 million settlement following findings of “multiple problems involving customer disclosure, oversight and training of agents, client handling, and complaint handling practices.” (HealthMarkets did not admit to any of the report’s findings as part of the settlement). The multi-state investigation was initiated because investigations and lawsuits were ongoing in multiple states and because previous fines for violations had not caused HealthMarkets to improve its practices.

In 2008, Maine Superintendent of Insurance Mila Kofman fined MEGA \$1 million and won \$4.6 million in customer refunds when she found that MEGA was charging excessive premiums under Maine’s state law requiring a 65% medical loss ratio.

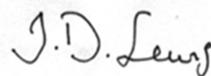
In 2009, Massachusetts Attorney General reached a settlement in which HealthMarkets was required to pay \$17 million in consumer relief and penalties, was banned from selling health plans in Massachusetts for at least five years, was required to exit the Massachusetts health plan business, and was barred from the “unfair and deceptive acts and practices that were subjects of the law suit, including deceptive advertising, predatory sales practices, failing to provide health benefits mandated by law, unfairly disclosing consumers’ personal information to third-parties, and illegally requiring individuals and small business to join associations to gain access to health plans.”

Earlier this year, the State of Texas fined MEGA \$500,000 and Mid-West \$100,000 “for failing to comply with state regulations for prompt payments of claims.” Currently HealthMarkets and two of its private equity owners are subjects of a lawsuit filed by the City Attorney of Los Angeles that charges the company with violating California’s Unfair Competition and False Advertising Laws by engaging in unlawful, unfair, and fraudulent business acts and making false and misleading advertising claims. (To date, the Blackstone Group has filed demurred to this complaint).

We urge you to reject this application

The Patient Protection and Affordable Care Act codifies the idea that all Americans should have access to affordable health insurance. We call on the Department of Health and Human Services to deny the requests for adjustments to the Medical Loss Ratio requirements and ensure that all companies who purport to sell health insurance are held to the eminently achievable standard of actually spending customers’ premium dollars on medical care for those customers. We also request that you initiate a public hearing in Maine so that HealthMarkets’ current and former policy holders can bring additional information before you to underscore the effects of granting this waiver.

Sincerely,



Ian Lewis

cc: Superintendent Mila Kofman, Maine Bureau of Insurance