February 4, 2011

Steven Larsen
Director, Office of Oversight
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services

Via Electronic Mail

Re: Maine Medical Loss Ratio Adjustment Request

Dear Mr. Larsen:

I am writing to comment on Maine's request for an adjustment for the years 2011, 2012, and 2013 to the minimum medical loss ratio (MLR) in the nongroup market from the 80 percent level required by the Affordable Care Act to Maine's current 65 percent minimum MLR. I am submitting these comments as an individual who has followed closely the development of MLR policy, and do not speak for any organization or any other individuals in submitting these comments, although I do believe this is an issue of great moment to health insurance consumers throughout the country. I recognize that state markets vary considerably and some adjustments might be necessary and appropriate in Maine and in other states to facilitate smooth transitions in the market between now and 2014. Congress certainly contemplated this. However, because this is the first request for a state adjustment to the MLR, it is important that HHS apply its standards of review carefully and that its decisions are transparent, equitable, and consistent with the law.

Affordable Care Act and Adjustment Requests

The Maine request, and all other state requests for an adjustment, must be carefully reviewed in the context of the intent of Congress in adopting PHSA section 2718. Congress adopted Section 2718 to drive insurers to greater efficiency. 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. One of the required elements of a state adjustment proposal under the HHS interim final MLR regulations is that the state provide "… 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." 42 C.F.R. 158.322(b).

The situation presented by Maine's adjustment request, in which a key issuer has threatened to leave the market unless an adjustment is granted, is certainly not unique to Maine and raises a stark problem almost certainly faced by other states. Virginia recently sent out a questionnaire to all of its issuers asking if they would leave the nongroup market if required to comply with the 80 percent minimum MLR requirement. If HHS grants Maine's request, there is no reason why many other issuers across the

country would not demand a similar adjustment for their state. In responding to this request, HHS should not just consider the situation of Maine, but also how its response to this request will affect the likelihood of requests from other states and how HHS will address those requests.

Analysis of Request

In responding to this request, HHS should ask the following questions:

- Has a compelling, substantiated case for an adjustment on the basis that the MLR minimums cannot be met been fully demonstrated or explained sufficiently to warrant approval by HHS?

Further data and analysis are in fact warranted. Maine's request is to allow the state to continue to use its current state standard of 65 percent through 2013. The primary reason for this is that one of the state's largest carriers, Mega Life, believes that it cannot achieve the 80 percent Accountable Care Act minimum MLR standard. Mega Life's MLR rate, calculated according to the federal MLR regulations, was 72 percent in 2009. http://www.hhs.gov/ociio/regulations/hhs_mml_adj_req_158_321_d_revised.pdf. The reason why Mega Life's MLR is so low has not been explained. An adjustment request should include the results of a state's examination of its health plans' administrative costs to see if they are out of line and could be reduced to meet federal MLR minimums. The publicly available data show that Mega Life's commissions are 10 percent, while those of its primary competitors in Maine, HPCHC and Anthem are 1.3 percent and 0.5 percent, respectively. Maine also reports that Mega Life spends only 1 percent to 2 percent of its premiums on cost containment expenses and does not use provider networks or other managed care techniques. Its administrative expenses are not otherwise analyzed.

A state's adjustment request should also include the results of a state's examination of its health plans' medical and quality of care expenditures to see if they are out of line and could be enhanced to provide greater consumer value to meet federal MLR minimums. Mega Life sells very low value policies, which, although relatively inexpensive, tend to have very high cost-sharing and do not cover mental health, maternity, pharmaceutical benefits, or even physician visits without riders. The insurer's reserve level appears to be more than sufficient to assuage any solvency concerns while providing the insurer with considerable short-term flexibility with its benefit and premium structure. It reports that its risk-based capital is at 1002 percent. Why cannot Mega Life's expenditures on medical care and quality of care improvement be increased?

- If part of the argument for an adjustment is that without it, a carrier is likely to leave the state and thus cause serious market disruption and access-to-coverage problems, what compelling evidence is there that the carrier will in fact leave and that this will cause serious market problems?

Mega Life, an issuer with a third of Maine's market, has apparently said it will pull out unless the MLR is reduced for three years to a level below the MLR level it currently

meets. If Mega Life leaves, approximately 14,000 people could be uninsured, which clearly would be a significant loss. It is not obvious, however, that Mega Life would abandon the Maine market if the MLR were not lowered to the level requested by the state. Mega Life has been actively marketing non-group policies in Maine in recent years and has dramatically expanded its market share. Mega Life has not given Maine the legally required notice that it intends to leave the Maine market. Furthermore, according to its website, Mega Life is licensed to sell health insurance plans in every state except Texas. At least seven of these states already require issuers to meet a minimum MLR higher than that of Maine. Mega Life appears to be fully capable of achieving an MLR higher than that Maine is requesting elsewhere. It should also be noted that a deterrent to Mega Life leaving the Maine non-group market is that it will not be able to return for five years, and will thus lose the opportunity to market policies to the substantial subsidized market that should appear in 2014.

- Has the applicant clearly demonstrated how it will ensure the "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," as required by federal interim regulations?

The current request would simply delay implementation of the federal MLR minimum standard until 2014. What evidence exists that this is the earliest date for which compliance is possible? What evidence is there that the federal minimum would be achievable in 2014? Is this request merely delaying, rather than addressing, the compliance issue?

Recommendations and Observations

- HHS should require that the administrative and efficiency issues raised above regarding Mega Life's operations be addressed before a decision is made on the adjustment request.

- The most that is warranted at this time, based on the current public record, is a one-year adjustment in the MLR for Maine to the 70 percent level. If this is granted and another adjustment request is submitted for the following year (2012), HHS should require that Maine demonstrate more clearly why Mega Life cannot reach the 80 percent requirement of the Affordable Care Act. If stronger evidence is forthcoming, then further adjustments might be warranted for subsequent years before 2014.

- In the event HHS grants some sort of adjustment, it must seek a solution that moves Mega Life–and any other state receiving an adjustment-- toward the 80 percent standard between now and 2014. An adjustment cannot be a "business as usual" free pass until 2014. By contrast, New Hampshire is requesting an MLR adjustment to 70%, which it claims is "significantly higher" than that attained in the nongroup market in recent years (although New Hampshire should also perhaps raise the bar higher).

- The Maine adjustment request will be the first to be adjudicated by HHS, and therefore, the standards HHS uses will become an important precedent. The kind of market structure that Maine has is common, particularly in the less populated states. Thus, other states and insurers will carefully watch HHS' decision. I urge HHS to carefully apply its standards of review and ensure its decisions are transparent, equitable, and consistent with the law.

Thank you for your consideration of these comments.

Sincerely,

Timothy Stoltzfus Jost