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February 10, 2011

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

***Via:* Electronic Mail**
MLRAdjustments@hhs.gov

Dear Madam Secretary:

As you know, Section 2718 of the Patient Protection and Affordable Care Act ("ACA") mandates that insurance carriers meet a federally imposed Medical Loss Ratio ("MLR") standard, presumably to ensure that a greater percentage of premium dollars go to the actual provision of health care. That minimum standard is 80% for individual and small employers, and 85% for large employers.

Section 158.310 of the MLR Interim Final Regulation dated December 1, 2010, provides that a request for an adjustment to the MLR standard for a State must be submitted by that State's insurance commissioner or other applicable State official. State insurance commissioners have valuable local knowledge of their State's insurance market and share a responsibility to protect consumers, which makes them best qualified to attest to the impact of the MLR standard on consumers within their State. State insurance regulators often have considerable power to compel or influence issuers to take steps that may reduce the risk of market destabilization. There are at least three reasons that requests for an adjustment to the MLR standard should come from State insurance commissioners on behalf of the State individual insurance market as a whole:

1. The statute allows such an adjustment only for *all* issuers in the individual market in a State; it does not allow an adjustment for specific issuers.

2. Only the State commissioner has knowledge of all issuers' experience and market conduct in the State and as to any action the State might deem appropriate to address any potential for market destabilization.
3. State insurance commissioners have responsibility for protecting the interests of the general public, policyholders, and enrollees within their respective States.

The State of Nevada, Department of Business and Industry, Division of Insurance ("Division"), is requesting that an MLR of 72% be used for calendar year 2011 instead of the standard 80% for the individual market.[1] This one year adjustment will allow our carriers, agents, and brokers time to adjust their pricing and operations to comply with the new standard. Carriers licensed in Nevada have demonstrated their intent to comply with the MLR. The Division has received rate filings from carriers using the new 80% MLR standard to price their business issued or renewed in 2011.

While Nevada has no statutorily mandated loss ratio, the historical target has been 65%. Premiums currently in place for existing policies were priced using this target MLR of 65%. As you are aware, a rate change effective January 1st of any year will not have its full effect on earned premium until the following year. Therefore, the rates used for policies issued or renewed in calendar year 2010 will have premium earned in calendar year 2011. New rates filed effective January 1, 2011, will not have their full effect until calendar year 2012.

We estimate that, based on the 2009 data and the 80% MLR standard, five of the ten carriers that currently insure at least 1,000 lives each will have to pay a combined rebate of $23,065,233 related to 2011 policies. Using the proposed adjusted MLR of 72%, these five carriers will still have to pay rebates in excess of $11,000,000.

The MLR regulation provides five criteria to determine if a waiver is warranted:

1. The number of carriers reasonably likely to withdraw from the market without an adjustment;
2. The number of enrollees covered by carriers reasonably likely to exit the market without an adjustment;
3. Whether consumers would be able to access agents and brokers without an adjustment;
4. Alternate coverage options in this state (such as a high risk pool); and
5. The impact on premiums charged and cost-sharing provided by the remaining carriers.

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[1] In submitting this request for an MLR adjustment, the State of Nevada is not waiving its right to make a future request for an additional MLR adjustment should it be determined by the Commissioner to be necessary. Additionally, this request does not in any way waive the State of Nevada's right or claim to contest the legality of the ACA.

Our request for an adjustment to the MLR standard is supported by four of the five required criteria.

Criteria 1

As of September 1, 2010, there were 28 carriers providing individual health benefit plans to 87,309 Nevadans. Of these 28 carriers, three – American National Insurance Company, American National Life Insurance Company of Texas, and Standard Life and Accident Insurance Company – have imposed moratoriums on new business[2] while they determine their ultimate market strategy.

It is reasonably likely that the above three carriers may withdraw completely from the marketplace unless there is some relief granted through an adjustment to the medical loss ratio standard. It is unknown, at this time, whether any of the other carriers offering individual health benefit plans in Nevada will choose to exit the market if the statutorily-required MLR standard is not adjusted.

Additionally, Nevada Revised Statute ("NRS") 689A.630 provides that an individual carrier may discontinue offering and renewing all health benefit plans in the State if notice of the discontinuance is provided to the Commissioner and the chief regulatory officer in each state in which the carrier is licensed to transact business at least 60 days before the date on which notice of cancellation or nonrenewal is delivered to the persons covered by the discontinued insurance. The notice to persons covered by the discontinued insurance must be delivered at least 180 days before the nonrenewal of coverage. An individual carrier which discontinues writing health benefit plans is prohibited from writing new individual health benefit plans in the state for five (5) years after the date on which the discontinuation notice was provided to the Commissioner.

The Division's expectation of carrier withdrawal is further supported by recent actions taken by insurers as a result of the ACA's changes to underwriting rules for child only policies. As Health and Human Services ("HHS") is well aware, insurers across the country, including those insurers that prior to the ACA offered child only policies in Nevada, have stopped issuing individual health benefit plans to children. This was the result of ACA provisions which prohibit an insurer from excluding or restricting coverage for preexisting conditions of any applicant who is a child under the age of 19. The Division continues to work with insurance industry representatives in an attempt to reopen this market. Despite our ongoing efforts, which include the adoption of a temporary regulation,[3] there continues to be no carrier in Nevada willing to issue child only policies.

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[2] See three carrier letters in Attachment #3.

[3] See Attachment #4 Regulation T007-11.

Criteria 2

There are 419 enrollees covered by the three carriers that are reasonably likely to exit the Nevada market without an MLR adjustment. While we are concerned with the disruption caused by the departure of these three carriers, we are also apprehensive that other carriers may opt to exit Nevada, further destabilizing this market and adversely affecting Nevadans.

Criteria 3

There are nearly 9,000 licensed resident agents in Nevada generating more than $112,000,000 in annual payroll.[4,5] It is anticipated that agents and brokers will be forced to significantly reduce staff in order for the insurers to meet the mandated 80% MLR and to avoid the rebate penalties imposed by the law in 2011. If this were to occur, it will be considerably more difficult for consumers to obtain assistance in evaluating and purchasing the coverage they need. The imposition of a one year MLR reduction from 80% to 72% will enable carriers, agents, and brokers to transition their businesses to meet the new requirements without negatively impacting consumers' access to agents and brokers.

Criteria 4

Nevada does not have alternative coverage options, such as a state high risk pool, for uninsured individuals with preexisting conditions. The Preexisting Condition Insurance Plan ("PCIP") is federally run and requires a policyholder to be without creditable coverage for a minimum of six months to qualify. Some of the 419 persons insured by those carriers reasonably likely to discontinue renewing coverage may have preexisting conditions which preclude them from procuring coverage in the individual market. The only option for these high risk individuals would to be uninsured for six months and then apply for coverage in the PCIP. Increasing the number of uninsured Nevadans, even by one, is not desirous.

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[4] Las Vegas Review-Journal, December 19, 2010, "Obama Care's cost: 8,500 Nevada jobs."

[5] At 14.4%, Nevada's unemployment rate is the highest in the nation. (Bureau of Labor Statistics 1/25/11 news release.)

NRS 689A.515(2)[6] does provide an alternative for individuals insured under a basic or standard plan whose coverage is not renewed by a carrier that exits the market. However, as of September 1, 2010, none of the three carriers mentioned above had any basic or standard plans in force; therefore, none of those 419 Nevadans are eligible for guaranteed coverage provided by this statute.

The financial analysis supporting this request and the transcript from the MLR public meeting are included as Attachments 1 and 2. These data were collected by conducting individual and group data calls in the fourth quarter of 2010. It is being reported in the aggregate because, while collecting this information, carriers were assured that their information would remain confidential.

Because our insurance market is relatively small, presenting this data in detailed form would violate our agreement with the carriers as it would be possible to determine which data was associated with a particular carrier.

NRS 679B.122[7] allows the Commissioner to release such confidential information to another governmental agency, if that agency agrees to keep the information confidential. I hope HHS takes advantage of this provision if it determines disaggregated information is necessary.

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[6] NRS 689A.515 (2) provides:
Eligible person means a person:
2. A person whose most recent prior creditable coverage was under a basic or standard health benefit plan and was not renewed by a carrier who discontinued offering and renewing individual health benefit plans in this state pursuant to NRS 689A.630.

[7] NRS 679B.122 provides:
1. The Commissioner may:
(b) Share any document, material or other information, including any document, material or information that is confidential or privileged, with any state, federal or international regulatory, law enforcement or legislative agency, and the National Association of Insurance Commissioners and any of its affiliates or subsidiaries, if the recipient of the document, material or other information agrees:
(1) To ensure that the document, material or other information remains confidential and privileged; and
(2) To submit to the jurisdiction of the courts of this state if the recipient violates a provision of subparagraph (1); and
(c) Receive any document, material or other information from any agency, association, affiliate or subsidiary specified in paragraph (b). The Commissioner shall ensure that any document, material or information received pursuant to this paragraph remains confidential if the document, material or information is provided to the Commissioner with a notice or the understanding that it is confidential or privileged under the laws of the jurisdiction from which it is submitted.
2. The sharing or receipt of any document, material or other information by the Commissioner pursuant to this section does not waive any applicable privilege or claim of confidentiality in the document, material or other information.

I appreciate your consideration of our request and supporting documentation. The Division has made this request to ensure that:

- carriers comply with the required provisions of the ACA;
- carriers remain in the Nevada market;
- carriers are solvent and able to meet their obligations in the Nevada market; and
- consumers receive the necessary agent and broker support to evaluate and purchase the best insurance product possible for their premium dollar.

Please feel free to contact me directly by phone at (775) 687-0771 or by electronic mail at icommish@doi.state.nv.us. if you have any questions or require additional information.

Respectfully,

Brett J. Barratt
Commissioner of Insurance

Attachments

c: Brian Sandoval, Governor, State of Nevada
Senator Harry Reid
Senator John Ensign
Congresswoman Shelley Berkley
Congressman Joe Heck
Congressman Dean Heller
Terry Johnson, Director, Department of Business and Industry