North Dakota
Insurance Department
Adam W. Hamm, Commissioner

March 18, 2011

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

Dear Madam Secretary:

The Patient Protection and Affordable Care Act (PPACA) requires that as of January 1, 2011 health insurance issuers offering individual health insurance coverage (including grandfathered plans) shall provide annual rebates to each enrollee if medical loss ratio (MLR) as defined by regulation is less than 80 percent. PPACA also states that you may adjust this rate if you determine it is appropriate on account of the volatility of the individual market.

I have had many discussions with insurance carriers, the producer community and other stakeholders on the MLR percentage. I have also requested specific information from carriers based on 45 C.F.R. sections 158.320-158.323 as well as information related to the assessment criteria defined in 45 C.F.R. Section 158.330.

In January 2011, the Insurance Department conducted a survey of health insurance companies offering individual products in North Dakota. The purpose of the survey was to gather input in determining whether to request an MLR adjustment. Eight companies were contacted; six responded.

Two companies supported a full waiver until 2014, and secondarily supported an incremental transition (65 percent in 2011, 70 percent in 2012, 75 percent in 2013 and 80 percent in 2014). The two companies stated that a waiver would provide them the appropriate time to adjust pricing, products and policies to meet the new requirement.

Two other companies supported the incremental approach, allowing for a smoother transition to 2014. The two companies stated that the absence of an MLR waiver may cause carriers to terminate existing blocks of business and leave the market, leaving North Dakota customers without coverage.

One company, new to the market, said a waiver would not impact its business since membership is limited and it already planned to meet 80 percent MLR in 2011. Another company saw no need for a phased-in approach, anticipating it would meet the requirement throughout 2011–2013.

The following is additional information describing the North Dakota individual insurance market and the carriers selling within the market.

Current Status of North Dakota's Individual Insurance Market
North Dakota currently has nine companies selling individual health insurance policies. Two of these companies were not selling in the state two years ago. Six new individual policies have been filed and approved with the Department in the last two years.

This indicates a strengthening in the individual market over the past several years reflecting that even though the state's small population creates a limited market opportunity there is enough room to attract new companies and new products. This has been very advantageous for consumers in North Dakota at a time when health insurance expenditures are economically more important than ever.

The North Dakota Insurance Department has worked diligently to improve the market conditions for companies and has been pleased with the resulting expansion of the market. The Department is extremely concerned that a severe increase in the MLR for the individual market may not only inhibit the current expansion of this market but might negate the expansion achieved in the recent past altogether.

Details related to the companies offering individual health insurance products in North Dakota are included in attachment A.

Current MLR (Incurred Claims/Earned Premium)
N.D.C.C. § 26.1-36-37.2 states that health insurance companies selling policies in the individual market must have a loss ratio of "… not less than fifty-five percent of premium received." Historically, the individual market in North Dakota has not offered many choices for consumers. In an effort to attract newer and smaller companies, the North Dakota Legislative Assembly lowered the loss ratio in 2007 from 65 percent (2007 Senate Bill No. 2154) to its current level. I believe this has had a positive impact on the number of companies issuing individual policies and the changes in the types of policies offered by existing and newer companies in the market.

Requirements for Withdrawal from the ND Market
If a health insurer discontinues a plan or an individual policy in North Dakota, N.D.C.C. § 26.1-36.4-05(1)(e) requires the insurer to provide advance notice to the commissioner. It also requires an insurer to provide 90 days prior notice to all affected individuals, participants and beneficiaries and to commissioners in other states with affected policyholders. The insurer must offer policyholders the option to purchase other plans currently offered by the insurer in the market and "… must act uniformly without regard to claims experience or any health status-related factor relating to any affected individuals, participants, or beneficiaries covered or new individuals, participants, or beneficiaries who may become eligible for such coverage."

N.D.C.C. § 26.1-36.4-05(1)(f) details the process an insurer must follow if it chooses to withdraw from the health insurance market in North Dakota. A company must provide advance notice to the North Dakota Insurance Commissioner and commissioners in other states where they are licensed. Companies must also provide notice of the decision to all affected individuals, participants and beneficiaries at least 180 days prior to the nonrenewal.

Furthermore, N.D.C.C. § 26.1-36.4-05(2) states an insurer that elects not to renew a health benefit plan may not write new business in the applicable market for a period of five years from the date of notice to the commissioner.

Limitations Imposed Regarding Rate Based on Health Status
A health insurance company may decline individual coverage, exclude specific health conditions or apply surcharges to new applicants based on health status. The Department would approve a reasonable range of surcharges as an alternative to having coverage declined. Once insurance is issued, it would be a prohibited practice to use an insured's individual health status or experience to determine renewal rates.

Issuers' Operational Financial Information
In North Dakota, there is a dominant carrier that has approximately 75 percent of the individual market (by premium) in North Dakota. If that carrier chose to leave the individual market in North Dakota, the remaining carriers would have the financial capacity to write the additional business required, but this would take a great deal of time and cause immense disruption in the market. If one of the smaller carriers would choose to leave the individual market in North Dakota, the dominant carrier would have the financial capacity and the resources to write the additional business required.

While there is capacity in the companies to write the abandoned business, should this occur, it would result in fewer choices for North Dakota consumers.

For detailed information on North Dakota health insurance company risk-based capital levels, current medical loss ratios and profitability, see attachment B.

Potential Impact on Benefits and Cost-Sharing of Existing Products
Depending on the impact of including Quality Improvement Expenses in the MLR numerator, deducting taxes in the denominator, and credibility adjustments, the benefits provided under existing products may not need to be changed. However, it is more likely that some companies may need to increase benefits (or decrease premiums) to meet the MLR requirements. Either of these options can have a negative impact on an insurer's ability to continue to operate if done too quickly, ultimately negatively impacting policyholders.

Potential Impact on Consumer Access to Agents and Brokers
I am very concerned that issuers may reduce or eliminate commissions for producers because of the higher MLR standard. I was a signatory to an August 17, 2010 resolution signed by 25 state insurance commissioners emphasizing the importance of agents in the sale of insurance in 2010 and beyond. This resolution demonstrates my belief that agents and brokers play a key role in

matching consumers to appropriate insurance purchases. I don't see that this role is diminished after PPACA. In fact, I believe their expertise will prove to be even more valuable, especially prior to 2014.

I have also received the attached letter from the North Dakota Association of Insurance and Financial Advisors (NDAIFA) (attachment C) expressing great concern with the MLR standards set out in PPACA.

North Dakotans still prefer conducting business one-on-one and buying health insurance is often still a very personal transaction. Many remain uncomfortable with purchasing insurance online or over the phone. The local insurance agent is a friend, neighbor and trusted advisor.

I agree with NDAIFA that a drastic increase in North Dakota from a required minimum MLR of 55 percent to 80 percent will put pressure on companies to restrict, reduce or eliminate commissions for producers. To the extent that this action might lower the level of service provided by producers to individuals purchasing insurance and may cause poor purchasing decisions to take place, real financial harm will occur in our marketplace.

<u>Assessment of the Risk of Destabilization in the Current Individual Market</u>
One carrier has stated that without a transition period, carriers may choose to terminate existing blocks of business to avoid future solvency issues. If this occurs, consumers would be left without coverage and in a particularly disadvantaged position in finding new coverage, especially if they have a health condition.

It was also pointed out that for individual policies that are medically underwritten, MLRs are lower in the early years of issue and increase over time because policyholders usually experience more health problems. If a company issues more and more underwritten policies in the next few years, it might be difficult for it to achieve an overall 80 percent MLR and therefore it may choose to instead not market these products, decreasing availability and competition.

<u>Potential Impact on Premiums</u>
If existing products have been initially priced to satisfy a lower loss ratio requirement, and if in addition to the impacts of quality improvement, taxes and credibility adjustments on the calculation of MLR benefits also need to be increased to satisfy a higher loss ratio requirement (to avoid a rebate situation), premiums for existing policyholders may need to be increased as well. If premiums are not able to be increased, carriers will be forced to decide whether they can afford to continue to offer the products.

Currently, the North Dakota Insurance Department has complete rate approval authority for major medical health insurance products. We carefully consider each rate increase request reviewing a variety of factors important to both the carrier and the consumer. North Dakotans historically have paid health insurance premiums that are among the lowest in the nation while maintaining a quality health care system. A dramatic increase in premiums in a short period of time for benefits that consumers may or may not need does not allow consumers the choice of benefits or plans currently offered.

Other Relevant Information

In summary, I believe there is strong evidence that North Dakota's individual insurance marketplace will be destabilized should the 80 percent minimum MLR standard be enforced without sufficient time for issuers to adjust. The destabilization will likely manifest in the form of a reduced level of growth or a negation of the recent growth experienced in our market.

Given that several of the companies selling individual policies in the state are relatively small and new to our market, the need for sufficient adjustment time is even more critical.

The state has few if any tools to force companies to remain in the market or to offer individual products. Companies must have a reasonable expectation of stability, profitability and growth to justify offering any type of policy within the state. I believe there is still opportunity for increased sales in North Dakota in the individual market and within an MLR standard higher than our current standard. I do not believe that this will occur, however, if the standard is increased by 25 percentage points in one year.

If there is no private market for individual products or no affordable options for people, individuals will forego purchasing insurance. North Dakota does not have a guaranteed issue statute. Its high-risk pool (Comprehensive Health Association of North Dakota, a.k.a. CHAND) is generally only open to people turned down by a carrier for health reasons in the past six months. It is one of the most expensive individual plans offered in the state. It is not an appropriate option for insurable persons of limited income and therefore does not serve as a catchall for the uninsured. As you know, the federal high-risk pool being operated in North Dakota by HHS requires an individual to be uninsured for at least six months, so it would not be immediately available to any individuals that might be declined for health reasons after being abandoned by a carrier not offering a particular product in the market due to an MLR concern.

I have already stated, but will reinforce the importance of considering how the increase in the MLR in North Dakota could negatively impact the producer community. During the transitional period, their knowledge and ability to meet with people in their homes, communities and places of business to make sound decisions on their health insurance needs is more important than ever.

Proposed Adjusted MLR Standard

45 C.F.R. Section 158.311 provides that a request for an adjustment to the MLR standard may be up to three MLR reporting years. To ensure an adequate transition period whereby the health insurance issuers in North Dakota are provided a stable and certain market as well as increased chances of financial stability, I respectfully request a three-year transitional period with an initial percentage of 65 percent for 2011, 70 percent for 2012, 75 percent for 2013 and 80 percent for 2014. I am confident that under North Dakota's requested adjusted MLR no company will be required to pay rebates.

One issuer pointed out that a transition as suggested will allow them an appropriate period to adjust pricing, products and policies to meet increasing MLRs. The issuer also pointed out that a transition period allows adjustments in vendor contracts and administrative contracts that because of contracted dates cannot be modified immediately. These business-type adjustments could be made over a three-year period with less disruption experienced by consumers and producers.

45 C.F.R. section 158.322 requires that an MLR adjustment request also estimate the rebates that would be paid under the 80 percent individual market MLR standard and under the alternate proposal. We are not able to prove without a doubt that North Dakota's market will be negatively affected by an 80 percent MLR minimum. However, it certainly puts our state at a greater risk for market disruption and loss of choices for consumers for the reasons explained above.

Thank you for your consideration. My staff and I are available at anytime to answer any further questions you may have.

Sincerely,

Adam Hamm
Insurance Commissioner

Enclosures

cc: Senator John Hoeven
Senator Kent Conrad
Representative Rick Berg