Consumer Watchdog

March 24, 2011

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201
Via e-mail: MLRAdjustments@HHS.gov

Re: New Hampshire

Dear Secretary Sebelius:

Waivers to health reform's medical spending requirement should not be the rule, but the exception, and should only be granted in extraordinary circumstances if a serious disruption to consumers' access to health insurance is likely.

Will health insurance companies leave the market, and what will be the impact on consumers of that departure? Will alternative coverage be available?

New Hampshire's application does not show that the state's primary insurance company is likely to leave the state or that consumers' access to insurance will be harmed. We urge you to deny the state's application for waiver of the medical loss ratio standard.

For the last decade, health insurance companies have siphoned money from ever-increasing consumer premiums to line the pockets of shareholders and build massive reserves. Premiums increased 138% in a decade, at four times the rate of inflation, even as insurers reduced the portion of those premiums that was actually spent on making patients well.

As you well know, the Affordable Care Act said there was a better way. It requires health insurance companies to spend at least 80 percent of consumer premiums on health care instead of administration and profit. It is the only provision in the law that takes a concrete step toward making health insurance more affordable, by requiring health insurance companies to operate more efficiently by eliminating wasteful overhead and excessive profits.

It is not your job to preserve the status quo for companies as they operate in the market today. The standard for granting a state waiver should be whether consumers will be able to access insurance when the rules are implemented, not whether they will cause a shift in the market as more efficient insurers increase their business and more wasteful insurers clean up their act. The fact that some insurers will have to reduce administrative spending and profits to reach a minimum level of efficiency was the reason Congress enacted the medical loss ratio standard.

New Hampshire's waiver application notes that four companies offer individual insurance policies in the state. One of these, Anthem, dominates the market with 72% of enrollees. Of the three smaller insurers, two met the medical spending requirements in 2009 and would not need to make changes under the new rule. The third company, junk insurer Chesapeake Life, reports a shockingly low medical loss ratio of just 43.6%, as adjusted under the federal formula.

Although the application provides no details of the insurance policies sold by Chesapeake in New Hampshire, we can gain insight into its policies from its sister company, Mega Life and Health. Both are subsidiaries of HealthMarkets, Inc, which sells through different insurers state by state, but offers similar products across these companies.

Mega Life and Health sells low-benefit plans with no coverage for many benefits that are standard on comprehensive policies – including prescription drugs, maternity care, and even doctor visits unless the customer purchases a rider. The company's deductibles and out of pocket maximums, which on the surface seem similar to those in other policies, are also misleading because consumers are required to pay all costs that exceed daily or yearly caps on specific benefits. The story of Dana Christensen illustrates how such policies fail to protect their policyholders. Dana was left with $450,000 in medical bills when her husband Doug died of bone cancer. The couple had purchased a special chemotherapy rider with their Mega insurance policy, but the rider capped payments at $1,000 a day, while Doug's treatments were as much as $18,000 a day. (More on Dana Christensen and HealthMarkets' history of deception here: http://www.consumerwatchdog.org/blog/dana-christensens-battle-junk-health-insurance)

Consumers would probably be better off purchasing coverage from another company in the market if Chesapeake were to leave New Hampshire. (The company's extremely low medical loss ratio suggests it might, although the state's application doesn't provide any data to make the case.)

The New Hampshire waiver application comes down to Anthem: Is Anthem so incapable of providing better health coverage to consumers that it will quit selling insurance or increase premiums to the point that consumers can no longer afford it?

The application does not show that either scenario is likely.

Anthem's loss ratio would have been 70% under the federal formula in 2009. The application does not indicate that Anthem told state regulators that it intends to leave the market if a waiver is not granted, and the insurer has little incentive to leave a market in which it enjoys a near monopoly. In fact, the state noted it anticipates that carriers may reduce premiums in the individual market in order to meet the loss ratio. This is exactly the result the health reform law intended.

How could Anthem be reducing administrative spending and profits to move closer to the required loss ratio? Has the company made any efforts to do so? It doesn't appear that these basic questions were asked. We do not know what the company's medical spending was in 2010, but it should have spent the past year preparing to meet the medical loss ratio rule that the entire industry knew would take effect in 2011.

New Hampshire’s proposed solution, to preserve the status quo by setting medical loss ratios at 70% for three years, raises another question. What is the incentive for Anthem to move closer to the 80% target if they are allowed to continue business as usual for the next three years?

We understand that under limited circumstances state waivers may be necessary to protect consumers from the worse fate of losing all access to insurance. However, New Hampshire’s application has not provided evidence this would occur.

Granting a waiver in this case, where the only real argument for it is that Anthem currently does not meet the rules, could start an avalanche of medical spending waivers. The end result would be an insurance industry that need not reduce wasteful overhead or excess profits for the next three years.

We urge you to deny New Hampshire’s request for a waiver. Thank you for considering our views.

Sincerely,

Carmen Balber

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