October 8, 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: Indiana MLR waiver application

Dear Secretary Sebelius:

Indiana's waiver application relies upon political arguments against the medical loss ratio standard without providing any concrete evidence that a serious disruption to consumers' access to health insurance is likely.

We are especially troubled by Indiana's effort to exempt a whole category of health plans from the MLR standard – so-called consumer driven health plans that are better known as high-deductible health plans or HDHPs. A similar argument for exempting HDHPs has been repeated by members of Congress and is based on a fundamental misinterpretation of the MLR standard. It is merely another front in opponents' attack on a central consumer protection of the health reform law. We urge you to use this opportunity to publicly dismiss these bogus claims.

HDHPs require consumers to bear more of the cost burden of health care and promise lower premiums in return. Indiana argues that plans with higher cost-sharing and a lower actuarial value and are incapable of spending enough money on medical claims to meet the 80% MLR standard. However, the MLR standard requires a ratio of total premium paid go toward medical expenses, not an absolute dollar amount of medical spending per policyholder. That ratio is achievable for HDHPs if less medical spending goes hand in hand with lower premiums. It is insurance industry misdirection to claim HDHPs cannot meet the efficiency standards required of the rest of the health insurance market. In truth, what they cannot do is meet those standards while maintaining the excessive profits they currently generate for insurers.

Indiana argues that administrative costs remain the same for such plans, and that these costs are therefore greater in proportion to medical spending than non-HDHPs. However, the state provides no evidence to support its claim. It would be logical to expect such plans to have *lower* administrative costs than more robust plans, because plans that are not making payments would presumably have lower claims handling expenses. In any case, if HDHPs spend the same amount of money on administration than more comprehensive plans but provide less health care, Indiana has made a good argument for doing away with less-efficient HDHPs.

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Indiana states that its market is especially vulnerable to instability because it has the nation's 5th highest percentage of HDHP enrollment, per a 2010 survey by America's Health Insurance Plans. According to that survey, the four states with higher HDHP enrollment than Indiana are Arkansas, Colorado, Minnesota and Vermont. None of these states have applied for a waiver. If HDHPs are incapable of meeting the 80% MLR standard, why haven't any of these other states with a high proportion of HDHPs asked for a waiver?

Furthermore, the MLR regulations already take into account the fact that higher deductibles and therefore higher out-of-pocket costs for consumers may result in less up-front spending by health plans. The credibility adjustment takes deductibles into account to compensate for the greater variability in MLR such plans might encounter. The NAIC considered this question, and did not find that further special treatment for HDHPs was necessary.

We find even less substance to Indiana's arguments for an MLR phase-in for the rest of the individual market. Of the six carriers that Indiana says have left the state since the Affordable Care Act was enacted, two would have easily met the MLR standard in 2011, and the other four were so small they would not have had to comply. Indiana does not identify any other insurers that intend to leave the market. Finally, every company that Indiana estimates would owe a rebate in 2011 is operating profitably.

Indiana's application is based on state politicians' ideological opposition to health reform, not the realities of the state's health care market. As the MLR regulations make clear, there must be a credible threat to the stability of the individual marketplace in order to grant a waiver. Indiana has demonstrated no such threat. We urge you to reject Indiana's application.

Sincerely,

Carmen Balber