



August 5, 2011

By Email and Regular Mail

Artemio R. Ilagan
Acting Banking and Insurance Commissioner
Guam Department of Revenue and Taxation
Post Office Box 23607
Guam Main Facility
Guam 96921

Re: Guam's Request for Adjustment to Medical Loss Ratio Standard

Dear Commissioner Ilagan:

This letter responds to the request of the Guam Department of Revenue and Taxation ("GDRT") for an adjustment to the medical loss ratio ("MLR") standard applicable to Guam's individual, small group and large group health insurance markets.¹ The GDRT requested an MLR standard for 2011-2013 of 65 percent for Guam's individual market, 70 percent for Guam's small group market, and 80 percent for Guam's large group market. As discussed more fully below, we have determined not to act on the GDRT's request because with respect to group markets, there is no authority to grant such a request, and in the case of Guam's individual market, there is no issuer with a sufficient number of covered life-years to be subject to paying rebates under the 80 percent standard. Therefore, under the MLR regulation, issuers in Guam's individual market are presumed to meet the statutory standard and no adjustment is currently necessary to prevent destabilization in that market.

Section 2718 of the Public Health Service ("PHS") Act, 42 U.S.C. §300gg-18, requires issuers in the individual and small group markets to spend at least 80 percent of premium dollars on reimbursement for clinical services provided to enrollees and for activities that improve health care quality. Issuers in the large group market must spend at least 85 percent of premium dollars in such a manner. Beginning in 2011, an issuer must provide rebates to its enrollees if it does not satisfy these MLR standards.

Section 2718 permits an adjustment to the 80 percent MLR standard for a State's individual health insurance market if the Secretary determines that applying this standard "may destabilize the individual market in such State." Title 45 CFR Part 158 provides that an

¹ All of the documents and information described in this letter are posted on CCIIO's website at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_guam.html.

adjustment should be granted “only if there is a reasonable likelihood” that application of the 80 percent MLR standard will destabilize the particular State’s individual health insurance market. (45 CFR §158.301.) The regulation also provides the criteria the Secretary may consider “in assessing whether application of an 80 percent MLR . . . may destabilize the individual market in a State that has requested an adjustment.” (45 CFR §158.330.) However, the regulation implementing section 2718 makes clear that the Secretary’s authority to adjust the MLR standard does not extend to the small and large group markets. (45 CFR §158.301.)

CCIIO has reviewed the GDRT’s application, as well as the supplemental information that the GDRT provided to CCIIO in response to questions raised by the application and the public comments filed with respect to the GDRT’s application. Based on this review, we have determined that because the issuers in Guam’s individual market are non-credible due to the small number of enrollees, under the regulation the issuers are presumed to meet or exceed the current 80 percent statutory MLR standard, and thus would not have to pay rebates. (45 CFR §§158.230(b), (c), and (d) and 158.240(a).) Our review also suggests that this is very likely to continue to be true for the foreseeable future. We believe that the GDRT’s concern about its individual market is rendered moot by this fact, and there thus is no need for us to act on the GDRT’s request with respect to the individual market. As noted above, with respect to group markets, we have no authority to act on the GDRT’s request for an adjustment, and thus are not acting on that request either. Our analysis is set forth below.

I. Summary of the GDRT’s Application

CCIIO received the GDRT’s MLR adjustment application on April 15, 2011. The GDRT’s application provided data aggregated across all of Guam’s health insurance markets and did not provide separate data for the Guam individual health insurance market. In support of its application, the GDRT also attached letters from the Guam Health Insurance Association and Guam Association of Health Plans.

On April 26, CCIIO sent the GDRT letters seeking further information regarding, among other things, the composition of Guam’s individual health insurance market and the size of issuers in that market. Those letters also informed the GDRT that the MLR regulation does not grant the Secretary the authority to adjust the MLR standards applicable to Guam’s small and large group markets.

CCIIO received the GDRT’s responses to those letters on June 14. CCIIO advised the GDRT that its application was deemed complete on July 6, 2011. Accordingly, the 30-day application processing period provided for in 45 CFR §158.345(a) began on that date.

In addition, on July 6, 2011, CCIIO posted notice on its website that any public comments regarding the GDRT’s application were due by July 16, 2011, as provided in 45 CFR §158.342. CCIIO received two public comments and discusses them in this letter.

II. Overview of the Guam Individual Health Insurance Market

The GDRT's responses are unequivocal that there are only two issuers offering coverage in Guam's individual market: Island Home Insurance Company ("Island Home"); and Takecare Insurance Company ("Takecare"). Significantly, the information the GDRT provided indicates that in 2010 Island Home covered 272 life-years and Takecare provided coverage for 54 life-years in the Guam individual health insurance market. Thus, in 2010 the whole Guam individual health insurance market, according to the GDRT's figures, had fewer than 350 life-years.²

III. Summary of Public Comments

CCIO received one public comment shortly after the GDRT submitted its application, which does not specifically address the GDRT's MLR adjustment request. CCIO received an additional submission during the public comment period, from Senator Pangelinan, a member of the 31st Guam Legislature and Chairman of the Committee on Appropriations, Taxation, Public Debt, Banking, Insurance, Retirement, and Land. He observes that the GDRT's application does not offer empirical data to back up its request for an adjustment and that the individual market is serviced by two insurers who cover fewer than 300 lives.

IV. Application of MLR Regulation to the Guam Individual Market

An issuer with fewer than 1,000 life-years in the relevant market – in this instance Guam's individual market – is considered "non-credible" and is "presumed to meet or exceed" the relevant MLR standard. (45 CFR §158.230(b),(c) and (d).) Rebates are only required if an issuer does not meet or exceed the relevant MLR standard. (45 CFR §158.240(a).) As stated above, there are only two issuers in the individual market. In 2010, Island Home and Takecare had 272 life-years and 54 life-years of experience, respectively. Based upon their 2010 enrollment, they would be presumed to meet or exceed the statutory MLR standard of 80 percent and would not be required to pay rebates. Furthermore, we think it is extremely likely, based upon these enrollment figures, that both Island Home and Takecare will continue to be considered non-credible and presumed to meet or exceed an 80 percent MLR for the next several years. Assuming this is correct, neither Island Home nor Takecare will have any obligation to pay rebates for the next several years, thus making the issue of the MLR standard in Guam irrelevant, and obviating the need to act on the GDRT's application for an adjustment to the 80 percent statutory standard.

V. Conclusion

As described at the outset of this letter, section 2718 of the PHS Act permits the Secretary to adjust the 80 percent standard in the individual market if it is determined that applying this standard "may destabilize the individual market in [the] . . . State." The regulation

² "Life-years" means the total number of months of coverage for enrollees during the year, divided by 12. 45 CFR §158.230(b).

implementing section 2718 provides that an adjustment should be granted “only if there is a reasonable likelihood” that application of the 80 percent MLR standard will destabilize the particular State’s individual health insurance market. (45 CFR §158.301.)

Based upon the information provided by the GDRT, we determine that the only two issuers offering coverage in Guam’s individual market will be presumed to meet or exceed the 80 percent statutory MLR standard and are likely to continue to do so for the next several years. We therefore conclude that we do not need to determine whether a reduction in the 80 percent MLR standard is needed in order to reduce the likelihood of destabilization in Guam’s individual market.

If, in the future, Guam’s individual market undergoes significant growth such that an issuer is expected to have at least 1,000 life-years of experience, the GDRT may apply for an adjustment to the MLR standard if it deems appropriate to do so.

Accordingly, pursuant to section 2718(b)(1)(A)(ii) of the PHS Act (42 U.S.C. §300gg-18(b)(1)(A)(ii)), the MLR standard applicable to the Guam individual health insurance market remains at 80 percent and any issuer covering fewer than 1,000 life-years is deemed to meet or exceed that standard. (45 CFR §158.230(b), (c) and (d).)

The GDRT may request reconsideration of our decision that there is no need to act on its request for an adjustment to the MLR standard under the reconsideration process that applies to an adverse decision on the merits. A request for reconsideration under this process must be submitted in writing within ten days of the date of this letter to MLRAdjustments@hhs.gov, and may include any additional information in support of such request. Reconsideration would be limited to the issue of whether we erred in declining to proceed with consideration of your request.

Please contact me should you have any questions.

Sincerely,

/Signed, SBL, August 5, 2011/

Steven B. Larsen
Deputy Administrator and Director,
Center for Consumer Information
and Insurance Oversight