DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

May 13, 2011

Brett J. Barratt
Commissioner of Insurance
Division of Insurance
State of Nevada Department of Business and Industry
1818 East College Pkwy, Suite 103
Carson City, NV 89706

Re: State of Nevada's Request for Adjustment to Medical Loss Ratio Standard

Dear Commissioner Barratt:

This letter responds to the request by the Nevada Division of Insurance ("DOI"), pursuant to section 2718 of the Public Health Service ("PHS") Act, 42 U.S.C. §300gg-18, for an adjustment to the medical loss ratio ("MLR") standard applicable to the individual health insurance market in Nevada.

Section 2718 was added to the PHS Act by section 1001 of the Affordable Care Act ("ACA") and requires issuers in the individual market to spend at least 80 percent of premium dollars on reimbursement for clinical services and for activities that improve health care quality for enrollees. Beginning in 2011, if an issuer does not satisfy the MLR standards, it is required to provide rebates to enrollees.

Section 2718 permits an adjustment to the 80 percent MLR standard for a State's individual health insurance market if it is determined that applying this standard "may destabilize the individual market in such State." The regulation implementing section 2718, 45 CFR Part 158, 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). 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). These criteria are discussed in Part III of this letter. The DOI has requested an adjustment of the 80 percent MLR standard to 72 percent for the reporting year 2011.

The Center for Consumer Information and Insurance Oversight ("CCIIO") within the Centers for Medicare and Medicaid Services ("CMS") has reviewed the DOI's application, as well as the supplemental information that the DOI provided to CCIIO in response to questions raised by the application.[1] After a careful examination of the application and consideration of the criteria set forth in the statute and implementing regulation, we have determined that although immediate application of the 80 percent MLR standard in Nevada may lead to the destabilization of the individual market, the adjustment sought by the DOI exceeds that which is necessary to avoid the likelihood that the market may be destabilized and, therefore, would deny consumers an excessive amount of the benefit of section 2718. Consequently, we have determined to adjust the MLR standard in Nevada's individual market to 75 percent in 2011. This letter explains the basis of our decision.

I. Summary of the Nevada Application

CCIIO received the DOI's request for an adjustment to the MLR standard on February 9, 2010. The DOI requested an adjustment of the 80 percent MLR standard to 72 percent for the reporting year 2011. Among the information that the DOI included in support of its request were estimates of the average MLR across all issuers with individual health insurance business in Nevada, as well as combined 2009 earned premium and commissions for all issuers with individual health insurance business in Nevada.

On March 14, 2011, CCIIO requested from the DOI information needed in order for Nevada's application to be deemed complete. CCIIO concurrently sent the DOI a letter requesting additional information in relation to information the DOI had previously submitted. After the DOI responded only to the latter request, CCIIO sent a follow-up request for the missing information on April 8, 2011. CCIIO received the DOI's response on April 15, 2011, and advised the DOI that its application was deemed complete on April 25, 2011. The 30-day application processing period provided for in 45 CFR §158.345(a) began as of April 25, 2011.

In addition, on April 25, 2011, CCIIO posted notice on its website that any public comments regarding Nevada's application were due by May 5, 2011, as provided in 45 CFR §158.342. CCIIO received two public comments, which are addressed in this letter.

II. Overview of the Nevada Individual Health Insurance Market

According to the DOI's application, over 87,000 Nevada residents obtained health insurance coverage through Nevada's individual health insurance market as of December 1, 2010. There are 28 issuers currently writing individual coverage in Nevada, of which only 10 provide coverage to at least 1,000 enrollees.[2] These 10 issuers are: (1) Anthem Blue Cross Blue Shield of Nevada ("Anthem"); (2) Golden Rule Insurance Company ("Golden Rule"); (3) Sierra Health and Life Ins. Co. ("Sierra"); (4) Health Plan of Nevada ("HPN"); (5) Aetna Life

[1] Unless otherwise noted, all documents and information described in this letter are posted on CCIIO's website at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_nevada.html.
[2] Issuers with fewer than 1,000 enrollees are not subject to rebate payments for the first reporting year.

Insurance Company ("Aetna"); (6) Time Insurance Company ("Time"); (7) Humana Insurance Company ("Humana"); (8) Coventry Health and Life Ins. Co. ("Coventry"); (9) John Alden Life Ins. Co. ("John Alden"); and (10) MEGA Life & Health Insurance Company ("MEGA").

According to the DOI's application, the number of enrollees and market shares of these issuers as of December 31, 2010 are as follows:

Table 1: Nevada Individual Market Issuers' 2010 Enrollees and Market Share

	Issuer	Enrollees	Market Share
1.	Anthem	30,043	34%
2.	Golden Rule	14,282	16%
3.	Sierra	13,459	15%
4.	HPN	7,924	9%
5.	Aetna	7,370	8%
6.	Time	4,331	5%
7.	Humana	3,097	4%
8.	Coventry	1,785	2%
9.	John Alden	1,240	1%
10.	MEGA	1,203	1%
	TOTAL TOP 10	84,873	97%
	TOTAL MARKET	87,780	100%

According to the DOI's application, Nevada does not require a specific loss ratio for individual health insurance. However, the DOI indicates that the "historical target has been 65%," and that "premiums currently in place for existing policies were priced using this target MLR of 65%." The DOI's initial application asserts that "carriers licensed in Nevada have demonstrated their intent to comply with the [80 percent] MLR." In its March 21, 2011 letter responding to CCIIO's request for clarification, the DOI clarifies that "the carriers that have submitted rate filings priced to an 80% MLR are Health Plan of Nevada, Inc., and Sierra Health and Life Insurance Company." The DOI notes that these rate filings will not have a full effect on earned premium until calendar year 2012.

Pursuant to NRS 689A.630, cited in the DOI's application, the DOI does not have the authority to deny or condition an issuer's plan to withdraw from the Nevada individual market. Issuers that wish to withdraw from the Nevada individual health insurance market must provide notice "to the Commissioner and the chief regulatory officer in each State in which the carrier is licensed to transact business" at least 60 days prior to when notice is sent to enrollees. Notice to enrollees must be delivered at least 180 days prior to the nonrenewal of coverage. An issuer that withdraws from the individual market is prohibited from writing new business in that market for five years from the date the issuer gave notice to the Commissioner.

If an issuer withdraws from the individual market, the DOI's application suggests that Nevada has limited mechanisms to provide options to consumers left without health insurance coverage. NRS 689A.630 does not require a withdrawing or non-renewing issuer to arrange for another issuer to assume its existing policies. Nevada does not have a high risk pool or an issuer of last resort, and does not limit rating based on health status. The DOI explains that for high risk policyholders that lose coverage, the only option would be "to be uninsured for six months, and then apply for coverage in the PCIP."[3] Nevada requires guaranteed issue only to individuals who were enrolled in a Basic or Standard HIPAA plan that has not been renewed by an issuer exiting the market. The DOI's application indicates that as of September 1, 2010, there were 909 enrollees in Basic and Standard plans.

III. Application of Regulatory Criteria to the Nevada Individual Market

Title 45 CFR §158.330 lists six criteria that the Secretary may consider "in assessing whether application of an 80 percent MLR … may destabilize the individual market in a State." They are:

a) The number of issuers reasonably likely to exit the State or to cease offering coverage in the State absent an adjustment to the 80 percent MLR and the resulting impact on competition in the State;

b) The number of individual market enrollees covered by issuers that are reasonably likely to exit the State absent an adjustment to the 80 percent MLR;

c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers;

d) The alternate coverage options within the State available to individual market enrollees in the event an issuer exits the market;

e) The impact on premiums charged, and on benefits and cost-sharing provided, to consumers by issuers remaining in the market in the event one or more issuers were to withdraw from the market; and

f) Any other relevant information submitted by the State's insurance commissioner, superintendent, or comparable official in the State's request.

The preamble to the regulation provides that 45 CFR §158.330 "does not set forth a single test" for determining whether application of an 80 percent MLR standard may destabilize the individual market in a State, but rather lists the "main criteria" to be considered in assessing such risk. 75 Fed. Reg. 74887 (Dec. 1, 2010).

A. Number of issuers reasonably likely to exit the State

The DOI identifies three issuers that it believes are reasonably likely to "withdraw completely from the marketplace unless there is some relief granted through an adjustment to the medical loss ratio standard." They are American National Insurance Company ("ANICO"), American National Life Insurance Company of Texas ("ANTEX"), and Standard Life and Accident Insurance Company ("SLAICO"). According to the DOI, these issuers had, as of

[3] The Preexisting Condition Insurance Plan ("PCIP") is a federally-operated high risk pool open only to individuals that have been uninsured for at least six months.

September 1, 2010, "imposed moratoriums on new business while they determine[d] their ultimate market strategy." We note that both ANTEX and SLAICO are subsidiaries of ANICO.

According to the DOI's application, these three issuers insure a combined total of 419 enrollees. Thus, all three issuers insure fewer than 1,000 enrollees each, and all three would therefore likely be exempt from the MLR rebate requirement in 2011, the year for which the DOI seeks an adjustment. Therefore, HHS does not believe that its determination to grant or not to grant an adjustment to the MLR standard in the Nevada individual market for 2011 would have any real bearing on whether these three issuers remain in the market. However, the fact that some issuers have begun to limit their participation in the individual market supports the DOI's concern that other issuers may be reevaluating their market strategy with regard to the impact of an 80 percent MLR standard.

The DOI's application also mentions that the "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." Specifically, the DOI explains that issuers have stopped issuing new child-only policies. While we acknowledge the DOI's concern regarding the child-only market, the circumstances surrounding issuers' intent to refrain from participating in the child-only market do not appear to be related to the implementation of the 80 percent MLR standard.

Aside from the three issuers mentioned above, the DOI states that "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." However, the DOI expresses a concern that "other carriers may opt to exit Nevada."

Under 45 CFR §158.321(d)(2)(iii), applicants requesting an adjustment to the MLR standard are asked to calculate the estimated MLR for issuers in the State using the methodology set out in the ACA and implementing regulation. The DOI's application calculates the estimated MLRs using data from the calendar years 2010 and 2009. These data will have a one to two year lag relative to each issuer's 2011 results, the reporting year for which the DOI is requesting an adjustment to the 80 percent MLR standard.

The 2010 and 2009 data are an imperfect proxy for the actual results issuers may generate if held to the 80 percent standard in 2011. One reason for this is that the 2009 results pre-date the passage of the ACA in March 2010, and issuers therefore did not have the opportunity to make operational adjustments to accommodate the new law. The 2010 results also suffer from this limitation to some degree as the law was enacted at the close of the first quarter of 2010, presumably after pricing and other business decisions impacting MLRs had largely been made and implemented. Another reason historical data may constitute an imperfect proxy is that there can be year-to-year variability in issuers' claims experience, financial performance, and reported MLRs. Notwithstanding these limitations, the historical data remain the best available basis upon which to estimate the impact of the 80 percent standard in 2011.

As required by 45 CFR §158.321(d)(2)(iii), the DOI calculates the estimated MLRs of each issuer in the Nevada individual market that insures more than 1,000 enrollees, based on the MLR definition in the ACA and implementing regulations. These estimates are shown in the chart below. Because all ten of these issuers provide coverage to at least 1,000, but fewer than 75,000, enrollees in the Nevada individual market, all are partially credible (as defined in 45 CFR §158.230(c)(2)). Therefore, these issuers would be subject to rebate payments if their MLRs fall below the statutorily mandated 80 percent standard.

Table 2: Estimated 2010 Federal Medical Loss Ratios[4]

Issuer	MLR Before Credibility	Credibility Adjustment[5]	MLR After Credibility
Anthem	76%	2%	77%
Golden Rule	65%	2%	68%
Sierra Health	61%	2%	63%
HPN	74%	3%	77%
Aetna	67%	3%	70%
Time	76%	4%	80%
Humana	74%	5%	79%
Coventry	66%	7%	73%
John Alden	104%	8%	112%
MEGA	49%	8%	57%

According to the 2010 MLR data shown above, it appears that only two issuers in the Nevada individual market, Time and John Alden, meet the 80 percent MLR standard. At MLRs after credibility of 77 and 79 percent, respectively, Anthem and Humana are also very close to meeting the 80 percent MLR standard. As noted in Part II above, Sierra and HPN have submitted rate filings for their business issued or renewed in 2011 priced to meet an 80 percent MLR. These two issuers, both of which had 2010 MLRs below 80 percent, have clearly taken steps to adjust their operations to comply with an 80 percent MLR standard, presumably so that they can remain in the market and mitigate their risk of paying rebates. Nonetheless, there remain four issuers with MLRs expected to be considerably below the 80 percent standard in 2011 that have yet to indicate to the DOI that they are adjusting their business models: Golden Rule; Aetna; Coventry; and MEGA.

The chart below shows, for each issuer insuring more than 1,000 enrollees, the issuer's estimated rebate based on 2010 MLRs, estimated 2010 pre-tax net gain in the individual market before payment of rebates, and estimated 2010 pre-tax net gain in the individual market if the issuer would have had to pay rebates in 2010.[6]

[4] All percentages are rounded.
[5] We note that the DOI's credibility adjustment estimates are not interpolated as required under 45 CFR §158.232(b)(2). However, the differences between interpolated credibility adjustments shown in Table 2 and the DOI's estimates are not material. The estimates shown in Table 2, as well as the DOI's estimates, do not include deductible factors provided under 45 CFR §158.232(c), and therefore likely understate the credibility adjustments available to issuers.
[6] "Pre-tax net gain" is the net gain or loss as reported in the Supplemental Health Care Exhibit plus any Federal or State taxes and fees paid.

Table 3: Estimated 2010 Rebate Requirement and Pre-Tax Net Gain ($ in millions)

Issuer	Estimated Rebates[7]	Pre-Tax Net Gain Before Rebates	Pre-Tax Net Gain After Rebates
Anthem	$2.4	$7.3	$4.8
Golden Rule	$2.3	$4.6	$2.3
Sierra	$3.7	$4.9	$1.2
HPN	$0.8	($1.1)	($1.9)
Aetna	$1.3	$3.8	$2.5
Time	--	($4.0)	($4.0)
Humana	$0.1	$0.0	($0.0)
Coventry	$0.1	($0.1)	($0.2)
John Alden	--	($1.7)	($1.7)
MEGA	$0.9	$1.8	$0.9
TOTAL	$11.6	$15.5	$4.0

Of the four issuers with MLRs considerably below the 80 percent standard, Golden Rule, Aetna, Coventry and MEGA, only Coventry would be expected to be unprofitable after payment of rebates (Coventry was already unprofitable before subtracting the amount of rebates from net gains). However, for these issuers, rebates could reduce pre-tax net gains in the Nevada individual market by as much as 50 percent, a factor which could contribute to a decision to withdraw from the market. This analysis presumes certain facts, most notably the continuation of current financial performance; that may change in 2011. In fact, Sierra and HPN have already taken steps to satisfy the 80 percent standard required under the PHS Act. Nonetheless, the impact on the profitability of the four issuers with low MLRs supports the DOI's concern that an immediate implementation of the 80 percent standard could lead to market destabilization.

B. *Number of enrollees covered by issuers that are reasonably likely to exit the State*

As stated above, the DOI does not identify any specific issuer insuring more than 1,000 enrollees, and therefore subject to the MLR rebate requirement in 2011, as reasonably likely to exit the State.

As described in Part A above, of the ten issuers that each insure more than 1,000 enrollees, five are close to or already exceed the 80 percent MLR standard based on 2010 data. One of these issuers already had a relatively high MLR in 2010 but has re-priced its products to meet the 80 percent standard in 2011. Additionally, one issuer that had an MLR substantially below 80 percent in 2010 has also begun pricing products to meet the 80 percent standard in 2011. In light of these circumstances, we assume that these six issuers would remain in the market even with an 80 percent MLR standard.

The four issuers that would likely pay significant rebates because they would not meet the 80 percent standard, Golden Rule, Aetna, Coventry, and MEGA, had combined enrollment of

[7] The DOI estimates rebates using MLRs with credibility adjustments that are not interpolated as required under 45 CFR §158.232(b)(2). The rebate estimates shown in Table 3 correct for this error. CCIIO's total rebate estimate of $11.6 million is consequently $0.6 million higher than the DOI's estimate.

24,640 as of 2010. According to the DOI's application, this constitutes 28 percent of the Nevada individual market.

C. Consumers' ability to access agents and brokers

According to the DOI's application, there are nearly 9,000 licensed resident agents in Nevada generating $112 million in annual payroll. The DOI claims that "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." The DOI asserts that "the loss of agent resources eliminates one-stop shopping, assistance with policy underwriting, and ongoing consumer support."

The transcript to the DOI's January 4 Advisory Committee public meeting, which is included in the DOI's application, notes that some issuers have already implemented structural commission changes to raise their 2011 MLRs. The DOI identifies these issuers as HPN and Sierra. According to the DOI, "these issuers have reduced commissions on new and renewal business from 15% and 10% to 8% and 5%, respectively, effective January 1, 2011."

The DOI provides no specifics regarding the impact the ACA's 80 percent MLR standard would have upon consumers' ability to access agents and brokers in Nevada, or explanation of how reductions to commission rates would per se eliminate access to "one-stop shopping, assistance with policy underwriting, and ongoing consumer support." CCIIO received two public comments asserting that the DOI has provided no evidence that implementation of the 80 percent MLR standard in the Nevada individual market would impact consumers' ability to access agents and brokers.

D. Alternate coverage options

The DOI's application states that it is "apprehensive that other carriers may opt to exit Nevada." If issuers do exit the Nevada individual market, policyholders would have to obtain replacement coverage or forego coverage altogether.

As discussed in Part A above, we expect that at least six of Nevada's top ten individual coverage issuers are likely to remain in the market subsequent to the implementation of an 80 percent MLR standard because they would not experience a major impact on their profitability. Based on information provided in the DOI's application, the six issuers most likely to remain in the market offer HMO, PPO, POS, and FFS products. Thus, the Nevada individual market should continue to offer a wide range of individual coverage options even if some issuers were to exit the market.

The DOI does express a concern that in the event issuers do exit the Nevada individual market, policyholders with pre-existing conditions may have difficulty obtaining new coverage. The DOI indicates that "Nevada does not have alternative coverage options, such as a state high risk pool, for uninsured individuals with pre-existing conditions." As described in Part II above, Nevada does not have guaranteed issue (except for HIPAA-eligible individuals), limits on health status rating, or an issuer of last resort. The DOI states that for high risk policyholders losing coverage, the only option would be "to be uninsured for six months, and then apply for coverage in the PCIP." As the DOI observes, this would impose a significant hardship on high risk individuals in the event of market exits.

Finally, in considering alternate coverage options for policyholders of exiting issuers, it should be noted that, pursuant to NRS 689.630(1)(d), the Commissioner may contact other issuers to "encourage and facilitate their voluntary assumption of the exiting carrier's book of business." As the DOI explains, this authority pertains to an issuer that "ceases operations as a result of a regulatory action initiated by the Commissioner related to the insurer's solvency," and is customarily done with the prior approval of the exiting issuer. The application states that "the Commissioner could take a similar course of action should a carrier decide to voluntarily exit the Nevada market." However, the DOI clarifies that this authority "does not extend to mandating such an assumption," and therefore does not guarantee replacement coverage to policyholders of exiting issuers.

E. Impact on premiums, benefits, and cost-sharing of remaining issuers

The DOI did not present any evidence regarding the potential impact on premiums in the market in the event that any of the issuers exit, and did not express any concern regarding this. Based on this, we do not consider this to be a factor in making our determination.

F. Other relevant information submitted by the State

Nevada's initial application for a 72 percent MLR estimated that five issuers would owe rebates based on 2009 data. The DOI did not submit a revised estimate of the total amount of rebates that would be paid under a 72 percent standard when it provided the 2010 data. However, CCIIO's calculations suggest that, based on the 2010 data, the total amount of rebates would be lower than what Nevada initially estimated. Taking into account the pricing adjustments made by Sierra and HPN, if an adjustment were granted to a 72 percent MLR standard, consumers would receive $5.4 million less in rebates than if no adjustment were granted.

According to the DOI's application, the DOI's proposed adjusted MLR standard of 72 percent was derived by adding together the 65 percent historical target pricing MLR, a 3 percent average credibility adjustment, a 3 percent average ratio of taxes and fees to premium, and a 1 percent average ratio of quality improvement expenses to premium. An updated application of the DOI's assumptions regarding the expenses used to derive a proposed adjusted MLR standard would add together the actual average 2010 MLR in the Nevada individual market (69 percent, rather than the historical target of 65 percent), the average credibility adjustment (3 percent), and the average effect on the MLR of taxes and fees (2 percent) and quality improvement expenses (1 percent), rather than the ratio of these expenses to premium. This calculation would yield an average adjusted MLR standard of 75 percent. Thus, the updated average MLR in the Nevada individual market is 3 percent higher than the adjusted MLR standard proposed by the DOI.

IV. Summary of Public Comments

CCIIO received two public comments, one from a consumer organization and the other from 11 consumer organizations and a union, in connection with the DOI's request for an adjustment to the MLR standard. These public comments are posted on the CCIIO website at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_Nevada.html. The commenters oppose the DOI's request, asserting that no disruption to the Nevada individual market is likely.

The commenters highlight the fact that, according to the DOI's application, the three issuers that have suspended sales of individual products in Nevada are too small to be subject to MLR rebate requirements, and that other issuers have demonstrated their ability to comply with the 80 percent MLR standard. As discussed in Part III.A above, we agree with the commenters that the three issuers would not be subject to MLR rebate requirements in 2011, and that Anthem, which has the largest market share in the Nevada individual market, and had a 77 percent MLR in 2010, is unlikely to withdraw from that market. However, as discussed in Part III.A, there remains a concern that four of the top ten issuers in Nevada may decide to exit the State.

The commenters also suggest that reductions in agents' and brokers' commissions may be an overdue market correction unrelated to the MLR requirements. The commenters further point out that the DOI has not presented any evidence that reductions in commissions have caused any actual agency staff reductions or have impaired consumers' access to agents and brokers. As noted in Part III.C above, we agree with the commenters in this regard.

The commenters further point out that the DOI initially estimated that the total amount of rebates under the 72 percent MLR standard requested by the DOI would be $11 million, and that presumably the DOI believed an $11 million total rebate amount to be reasonable. The commenters next point to the fact that the DOI's updated estimate would result in $11 million in total rebates under an 80 percent MLR standard. The commenters thus conclude that the DOI should consider the total rebates under an 80 percent standard to be reasonable, since this amount is the same as the total rebate amount that the DOI initially estimated would be paid under a 72 percent standard. As noted in Part III.F above, we agree with the commenters' observation; however, as described in more detail in Part V below, we do not base our decision on the DOI's initial estimate of the total rebate amount.

The commenters assert that the sole impact of granting an MLR adjustment below 80 percent would be to deny consumers millions of dollars in rebates in 2011.

In addition, the groups that joined in a single comment letter draw our attention to the fact that issuers must give the Commissioner at least an eight month notice prior to withdrawal, and therefore could not withdraw until 2012. However, the fact that issuers chose to remain in the market in 2011, while it was still uncertain whether an adjustment would be granted, does not imply that issuers would have chosen to remain in the market if they had known with certainty that no adjustment would be granted. Therefore, despite the fact that all issuers must remain in the Nevada individual market until 2012, if any issuers were counting on using an adjustment to the MLR standard to adjust their business models during 2011 but will not receive an opportunity to do so, such issuers could still choose to withdraw in 2012.

Additionally, this group of commenters notes that, according to the DOI, the average target MLR in the Nevada individual market (before adjustments for taxes and fees, quality improvement activities, and credibility) is 70 percent, whereas the average target MLR needed to meet the Federal standard is 74 percent. The commenters argue that issuers should be able to make up this four percent differential in 2011. However, as mentioned in Part III.F, the average MLR in the Nevada individual market is 5 percentage points below the Federal standard, and the actual differential for individual issuers with low MLRs would be as high as 23 percentage points.

The commenters suggest that the 419 enrollees of the three issuers identified by the DOI as reasonably likely to exit the Nevada individual market may be able to obtain comparable coverage in the event these three issuers withdraw. However, as discussed in Part III.B, our concern that Nevada's individual policyholders may lose coverage extends beyond these three issuers and to a potentially much larger number of enrollees.

Lastly, the commenters express a concern that granting an adjustment to a 72 percent MLR standard would remove the incentive for low-value plans to improve and would encourage high-value plans to lower their MLRs. As discussed in Part V below, we do not share the commenters' concern that granting an adjustment for one year would create perverse incentives for plans with high MLRs to lower their MLRs, and we believe that a transitional MLR standard would provide the opportunity for plans with low MLRs to adjust their business models to reach an 80 percent MLR.

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 implementing section 2718, 45 CFR Part 158, 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 (§158.301).

The preamble to 45 CFR Part 158 describes a guiding principle for making a determination on the DOI's request:

> This interim final regulation does not require the Secretary to find that adherence to the 80 percent MLR standard is certain to result in market destabilization in order to grant an adjustment from it. Nor does it allow the Secretary to grant an adjustment in the case where market destabilization is a remote possibility. Rather, this interim final regulation both allows and <u>requires an adjustment to a State's MLR to be granted when there is a reasonable likelihood that market destabilization, and thus harm to consumers, will occur</u>. (75 FR 74886 (December 1, 2010).) (Emphasis added).

In this case, we agree with the DOI and conclude that, based on the application of the criteria and standard set out in section 2718, there is a reasonable likelihood that immediate implementation of an 80 percent MLR standard may destabilize the Nevada individual market. We reach this conclusion for many of the reasons outlined in the analysis under the criteria set out above, and based on several specific characteristics of the Nevada market addressed in that analysis.

As noted in Part III. A, while no issuer insuring more than 1,000 enrollees in the Nevada individual market has provided notice of withdrawal, some issuers have suspended writing new business while they reevaluate their market strategy in Nevada. This fact supports the DOI's concern that other issuers may also suspend writing new business. Furthermore, based on the information submitted in the DOI's application, payment of rebates under an 80 percent MLR standard could impose significant negative changes to the financial performance of these issuers. Of particular concern are Golden Rule and Aetna, with a combined total market share of 24 percent; their withdrawal would adversely affect the Nevada individual market, potentially leaving their policyholders without coverage.

As stated in Part III. B, Golden Rule and Aetna provide coverage to a combined total of 21,652 enrollees. As noted in Part II, Nevada has no high risk pool, and thus virtually no alternative options for individuals with pre-existing conditions who lose coverage. The Commissioner does not have the ability to require assumption of non-renewed policies by other issuers. Therefore, due to their relatively large market share and limited alternative coverage options for individuals with pre-existing conditions for whom new coverage might be difficult to obtain, a withdrawal of Golden Rule and Aetna would present a sufficiently high risk that immediate implementation of an 80 percent MLR standard would cause harm to a significant number of consumers.

Having reached the conclusion that an adjustment to the Nevada MLR is appropriate, the remaining issue is whether to adopt the proposal from the DOI. The DOI proposes an adjusted MLR standard of 72 percent for one year. As noted in Part III. F, while the average MLR in the Nevada individual market is 75 percent based on 2010 data, four of Nevada's ten issuers that each insure more than 1,000 enrollees have MLRs below 75 percent. A one year adjustment to the MLR standard of 75 percent would allow the issuers with low MLRs to adjust their business models to increase the portion of premium revenue spent on medical care and quality improvement activities, without impairing their financial performance. Additionally, under an MLR standard of 75 percent, consumers would receive $1.1 million more in rebates than under the DOI's proposed 72 percent standard.

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 Nevada individual health insurance market for the MLR reporting year 2011 is 75 percent.

Pursuant to 45 CFR §158.346, the DOI may request reconsideration of the determination issued in this letter. A request for reconsideration 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. A determination on a request for reconsideration will be issued within 20 days of the receipt of the request.

Please contact me should you have any questions.

Sincerely,

/Signed, SBL, May 13, 2011/

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