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OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AFFAIRS

Roger A. Sevigny
Commissioner
State of New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301

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

Dear Commissioner Sevigny:

This letter responds to the request of the New Hampshire Insurance Department ("NHID") 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 New Hampshire.

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 NHID has requested an adjustment of the 80 percent MLR standard to 70 percent for the reporting years 2011, 2012, and 2013.

The Center for Consumer Information and Insurance Oversight ("CCIIO") within the Centers for Medicare and Medicaid Services ("CMS") has reviewed the NHID's application, as

well as the supplemental information that the NHID 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 application in 2011 of the 80 percent MLR standard in New Hampshire may lead to the destabilization of the individual market, the adjustment sought by the NHID exceeds that which is necessary to avoid the likelihood of market destabilization between now and 2014 and, therefore, would deny consumers an excessive amount of the benefit of section 2718. Consequently, we have determined to adjust the MLR standard in New Hampshire to 72 percent in 2011 and 75 percent in 2012; the statutory standard of 80 percent will apply in 2013 and thereafter. This letter explains the basis of our decision.

I. Summary of Application and Process

CCIIO received the NHID's application for an adjustment to the MLR standard for the New Hampshire individual market on January 12, 2011.² The NHID requested an adjustment of the 80 percent MLR standard to 70 percent for the reporting years 2011, 2012, and 2013. Among the information that the NHID included in support of its request was a chart providing market share, enrollment, profitability, and capital level data for each issuer in New Hampshire's individual market, as well as a qualitative description of the relationship between New Hampshire's small group and individual markets.

The NHID did not hold a public hearing with respect to its application, as it had the option to do pursuant to 45 CFR §158.343. It did, however, discuss the application at its Producer Advisory Committee and meet informally with market issuers and other stakeholders, including New Hampshire Voices for Health.³ The issuers in the individual market, according to the NHID's application, "expressed concern over a number of the ACA reforms," "asked the department to take whatever steps it could to allow them to make the changes required by the ACA," and "stated that they were evaluating their business plans in New Hampshire and their interest in continuing to provide individual coverage."

On February 8, 2011, CCIIO asked the NHID to provide nine items necessary for the NHID to complete its application. CCIIO concurrently sent the NHID a letter requesting additional information in relation to information the NHID had previously submitted.

CCIIO received the NHID's responses to these letters on March 1, 2011. On March 14, 2011, CCIIO advised the NHID that it deemed New Hampshire's application complete and that the 30-day processing period set forth in 45 CFR §158.345(a) had begun. On April 13, 2011, CCIIO informed the NHID that it would extend the review period for up to an additional 30 days, as provided in 45 CFR §158.345(b). CCIIO also requested updated 2010 data for issuers in

¹ Unless otherwise noted, all documents and information described in this letter are posted on CCIIO's website, http://cciiio.cms.gov/programs/marketreforms/mlr/mlr_newhampshire.html.

² The NHID's application is dated January 6, 2011.

³ New Hampshire Voices for Health, according to its website, is "a network of consumer and advocacy organizations and individuals allied in their commitment to securing quality, affordable health care for all in New Hampshire" and represents over 200,000 members, consumers and constituents. <http://www.nhvoicesforhealth.org/WEBSITE%2009/09HOME.htm>

the New Hampshire individual market, which the NHID subsequently provided on April 21, 2011.

In addition, on March 14, 2011, CCIIO posted notice on its website that any public comments regarding New Hampshire’s application were due by March 24, 2011, as provided in 45 CFR §158.342. CCIIO received seven public comments, which are addressed later in this letter.

II. Overview of New Hampshire’s Individual Health Insurance Market

More than 33,000 New Hampshire residents obtained health insurance coverage through New Hampshire’s individual health insurance market in 2010. Only five issuers are actively offering coverage in this market: (1) Anthem Health Plans of New Hampshire (“Anthem”); (2) Time Insurance Company (“Time”); (3) Chesapeake Life Insurance Company (“Chesapeake”); (4) John Alden Life Insurance Company (“John Alden”); and (5) Celtic Insurance Company (“Celtic”).⁴ According to the NHID’s application, the number of enrollees and market shares of these issuers in 2009 were as follows:

New Hampshire Active Individual Market Issuers’ 2009 Enrollees and Market Share

	Issuer	Enrollees	Market Share
1.	Anthem	23,382	72%
2.	Time	3,986	12%
3.	Chesapeake ⁵	3,539	11%
4.	John Alden ⁶	1,424	4%
5.	Celtic	0	0%
	TOTAL	32,330	100%

The NHID’s application included information from the 2010 Supplemental Health Care Exhibits (“SHCE”) filed with the NAIC. This information shows that market shares among the smaller New Hampshire issuers have changed considerably since 2009. The following chart provides the number of enrollees and market shares in 2010 of issuers in the New Hampshire individual market based upon SHCEs filed with the National Association Of Insurance Commissioners:

⁴ The file publicly posted as “Issuer Information by Plan Type,” received by CCIIO on March 1, contains data on three additional issuers: Golden Rule; Harvard Pilgrim Health Care; and American Republic Insurance Company. The NHID explains in its March 21 letter that these companies no longer issue policies and are in “run-off” mode.

⁵ Chesapeake data is for 2008; it did not file updated 2009 data.

⁶ John Alden and Time have the same parent company, Assurant, Inc.

New Hampshire Active Individual Market Issuers' 2010 Enrollees and Market Share

	Issuer	Enrollees	Market Share⁷
1.	Anthem	23,752	71%
2.	Time	2,262	7%
3.	Chesapeake	5,294	16%
4.	John Alden	508	2%
5.	Celtic	1,576	5%
	TOTAL	33,392	100%

The NHID's application states that "New Hampshire's individual insurance market is dominated by a single insurance carrier." As shown above, Anthem is the dominant issuer in the New Hampshire individual market, with over 23,000 enrollees and a share of the active market of more than 70 percent.

New Hampshire does not require guaranteed issue in its individual market, and individual market coverage is medically underwritten. However, self-employed New Hampshire residents may purchase guaranteed issue products in the New Hampshire small group market as "groups of one." Rating factors in the small group market are limited to group size, age, and industry. Based on 2009 enrollment data provided by the Department, approximately 6,000 individuals purchase "group of one" policies.

New Hampshire did not require a specific loss ratio for individual health insurance until 2010, when it adopted a 65 percent MLR standard as part of an amendment to NHCAR Part INS 4100.⁸ According to the NHID, the New Hampshire MLR standard is calculated as the ratio of incurred claims to earned premiums and, in contrast to the Affordable Care Act's MLR standard, does not include adjustments for quality improving activities, taxes, or credibility. Additionally, unlike the Affordable Care Act MLR standard that applies to each reporting year and is calculated based on data from up to three reporting years, the New Hampshire standard is a lifetime loss ratio standard. The NHID explains that issuers must demonstrate that "the anticipated experience, over the block's lifetime, is reasonably expected to meet the loss ratio standard."

The NHID noted in its application that New Hampshire is proposing a rule modification to change the State MLR standard to 70 percent, and to define the State MLR in conformance with the Affordable Care Act MLR definition. The NHID explains that because of the differences in how the Affordable Care Act and the NHID define MLR, a 70 percent federally-defined MLR is "functionally" equivalent to New Hampshire's existing 65 percent MLR standard.

Issuers in New Hampshire must seek advance approval of rates, and New Hampshire's Commissioner may disapprove rate filings that do not appear to reasonably meet the State's current 65 percent MLR standard, according to the NHID's application. However, the NHID

⁷ This does not include the 1,345 individual market enrollees covered by the 24 issuers in "run-off" mode, i.e. insured by issuers who are no longer writing new business, or are otherwise not active in New Hampshire.

⁸ http://www.gencourt.state.nh.us/rules/state_agencies/ins4100.html. See INS 4102.05(c)(3) and(4).

states that there are no rebate requirements. The NHID explains that “deviations between actual and expected results are reviewed when the issuer files rates at a subsequent date.”

The NHID maintains that both the 65 percent State MLR standard and its requested 70 percent adjusted Federal standard are “significantly higher than the actual loss ratio that has been reported in the individual market over the past several years.” Reports issued by the NHID indicate that the New Hampshire individual market had an MLR of 66 percent in 2009 and 59 percent in 2008.⁹ The average MLR for the five active insurers in the individual market for 2010 was 68 percent.

The New Hampshire individual market also has, according to the NHID’s application, a high-risk pool and some withdrawal requirements. NHID states that the high-risk pool provides guaranteed issue coverage to New Hampshire residents who have been denied coverage in the individual market. New Hampshire law, the NHID asserts, requires an issuer discontinuing all of its coverage in the individual market to give at least 180 days notice and not to reenter the market for five years, unless the NHID waives that period. These features are discussed in more detail in Section III below.

III. Application of Regulatory Criteria to New Hampshire’s 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.

⁹ See pages 11 and 12 of the Supplemental Report of the 2009 Health Insurance Market in New Hampshire, available at http://www.nh.gov/insurance/lah/documents/suprep_09.pdf.

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 NHID’s application asserts that “the loss of carriers providing individual insurance in New Hampshire will have a destabilizing effect on the market.” However, the NHID’s response to 45 CFR §158.321(d)(2)(ix) indicates that no issuers have provided formal notice of exit, and the NHID’s application materials do not identify any specific issuers as reasonably likely to exit the New Hampshire individual market. The NHID states that the NHID has not done any analysis regarding the ability of issuers to meet an 80 percent MLR standard or provide rebates to enrollees.

The NHID, however, does note in its application that it has met informally with all the issuers in the New Hampshire individual market. The application remarks that “while no issuer stated that it would leave if New Hampshire’s waiver request were not successful, the carriers expressed concerns about their ability to operate in New Hampshire’s market without a waiver.” The NHID also states that carriers are “evaluating their business plans in New Hampshire and their interest in continuing to provide individual coverage.”

Under the MLR regulation, 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 Affordable Care Act and implementing regulation. The NHID’s application utilizes information drawn from the 2010 SHCEs, the 2009 NAIC Annual Statement pages, and the 2009 and 2008 Supplemental Reports filed with the NHID. These data will have a one to three year lag relative to each issuer’s eventual 2011 results, the reporting year for which the 80 percent MLR standard would first apply. Additional detailed financial data for the reporting year 2010 will not be filed with the NHID (via the Supplemental Reports) until July 15, 2011,¹⁰ and therefore will not be available in time to be considered as part of the NHID’s request.

The 2010, 2009, and 2008 data are imperfect proxies for the actual MLR results issuers may generate if held to the 80 percent standard in 2011. One reason for this is that the 2009 and 2008 results pre-date the passage of the Affordable Care Act in March 2010, and issuers therefore did not have the opportunity to make operational adjustments to accommodate the new law. Even 2010 results 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 be imperfect proxies 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.

¹⁰ See the NHID March 3, 2010 Bulletin Re Supplemental Reporting at 2 and 6, http://www.nh.gov/insurance/lah/documents/suprpt_bull2010.pdf.

As requested under 45 CFR §158.321(d)(2)(iii), the NHID calculated the estimated MLRs of each issuer in the New Hampshire individual market based on the MLR definition in the Affordable Care Act and implementing regulations. The results of these estimates are shown in the chart below. All four of these issuers provide coverage to over 1,000, but fewer than 75,000, enrollees in the New Hampshire individual market. Thus, all are partially credible (as defined in 45 CFR §158.230(c)(2)), and would therefore, as 45 CFR §158.210(c) requires, be subject to rebate payments if their MLRs fall below the statutorily mandated 80 percent standard.

Estimated 2009 Federal Medical Loss Ratios

Issuer	MLR Before Credibility	Credibility Adjustment ¹¹	MLR After Credibility
Anthem	68%	2%	70%
Time	90%	4%	94%
Chesapeake ¹²	38%	5%	43%
John Alden	74%	7%	82%

Information provided in the 2010 SHCEs suggests that New Hampshire’s issuers generated the estimated 2010 Federal MLRs shown in the chart below. As noted earlier, there can be year-to-year variability in issuers’ enrollment, premiums, and claims experience, and therefore their reported MLRs. The chart below includes Celtic’s estimated 2010 MLR based on information in the company’s SHCE, whereas the NHID indicated that Celtic generated no premiums in 2009 (and therefore did not have an MLR).

Estimated 2010 Federal Medical Loss Ratios

Issuer	MLR Before Credibility	Credibility Adjustment ¹³	MLR After Credibility
Anthem	71%	2%	72%
Time	60%	6%	65%
Chesapeake	73%	4%	77%
John Alden	76%	NA ¹⁴	76%
Celtic	44%	7%	51%

According to the 2010 and 2009 MLR data shown above, it appears that no issuer in the New Hampshire individual market consistently meets the 80 percent MLR standard. We discuss each issuer’s MLRs, implied rebate obligations, and potential implications of such rebate obligations in the following paragraphs.

¹¹ NHID’s estimated credibility adjustments do not include deductible factors provided under 45 CFR §158.232(c), and therefore are likely underestimated.

¹² Chesapeake data as of 2008; Chesapeake did not file updated data in 2009.

¹³ The 2010 SHCE filings do not include information on the deductible factors provided under 45 CFR §158.232(c). These credibility adjustment estimates therefore exclude deductible factors and are thus likely underestimated.

¹⁴ Because John Alden enrolled fewer than 1,000 lives, John Alden would have been non-credible and would not have been subject to rebate payments in 2010. Therefore, John Alden would not qualify for a credibility adjustment. However, if John Alden’s enrollment increases to more than 1,000 but remains less than 75,000, then it would qualify for a credibility adjustment.

Based on information in the NHID's application, Anthem generated a 2010 estimated MLR of 72 percent after application of credibility adjustment and a 2009 estimated MLR of 70 percent after application of credibility adjustment. Applying the MLR rebate provisions to Anthem's results yields an estimated 2010 rebate of \$5.6 million and an estimated 2009 rebate of \$7.5 million.¹⁵ If Anthem had paid \$5.6 million in rebates in 2010, it would have earned an estimated pre-tax net gain of \$15 million in its individual market business in New Hampshire.¹⁶

Time generated an estimated 2009 MLR of 90 percent even before the application of credibility adjustments. At this MLR, Time would not have been subject to rebate payments under the 80 percent MLR standard. However, Time's 2010 MLR declined to 60 percent excluding credibility adjustments and 65 percent including credibility adjustments. Applying the MLR rebate provisions to Time's results yields an estimated 2010 rebate of \$0.8 million. If Time had paid \$0.8 million in rebates in 2010, it would have earned an estimated pre-tax net gain of \$0.2 million in its individual market business in New Hampshire.

Chesapeake generated a 2008 MLR of 43 percent after the credibility adjustment, according to the NHID's estimates, which is well below the 80 percent MLR standard. The NHID claims that because Chesapeake is a relatively new entrant in the New Hampshire individual market, "it is likely that the issuer assumed lower early duration loss ratios and higher later duration loss ratios." Based on the SHCE data, Chesapeake had a 2010 MLR of 77 percent after credibility, indicating that Chesapeake's MLR has risen considerably.

Applying the MLR rebate provisions to Chesapeake's results yields an estimated 2010 rebate of \$0.3 million and an estimated 2008 rebate of \$5.1 million.¹⁷ If Chesapeake had paid \$0.3 million in rebates in 2010, it would have generated an estimated pre-tax net loss of \$1.6 million in its individual market business in New Hampshire. If a 75 percent MLR standard had been in effect for 2010, Chesapeake's pre-tax loss would have been \$1.2 million. Based on information in the SHCE, Chesapeake generated an underwriting loss of \$1.0 million while spending 74 cents of every premium dollar on medical expenses. The NHID's application does not address the causes of this financial performance or whether it can be sustained through 2014.

As noted before, the NHID indicated that Celtic had no sales, and hence no MLR, in 2009. It had, however, according to the SHCE data, 1,576 enrollees in the New Hampshire individual health insurance market in 2010 and a credibility-adjusted MLR of 51 percent. Under the MLR rebate provisions, this means that Celtic would have paid an estimated rebate of slightly less than \$1 million in 2010. If Celtic had paid approximately \$1 million in rebates in 2010, it would have earned an estimated pre-tax net loss of \$0.3 million in its individual market

¹⁵ The NHID estimates that Anthem would pay rebates of \$7.9 million in 2009, but its calculation does not deduct the taxes and fees that Title 45 CFR Chapter 158 permits to be excluded from premiums. Deducting from premiums the \$4.5 million that the NHID's application indicates Anthem paid in 2009 taxes and fees would reduce Anthem's rebate obligation by \$0.4 million. The CCIIO estimate of \$7.5 million corrects for this error.

¹⁶ "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.

¹⁷ The NHID estimates that Chesapeake would pay rebates of \$5.0 million, but its calculation does not deduct taxes and fees that Title 45 CFR Chapter 158 permits to be excluded from premiums. The CCIIO estimate of \$5.1 million corrects for this error.

business in New Hampshire. If a 75 percent MLR standard had been in effect in 2010, Celtic would have paid a rebate of \$0.8 million and sustained a pre-tax loss of \$0.1 million.

John Alden generated an 82 percent MLR in 2009 after credibility based on the NHID's calculations, and therefore would not have been subject to rebates in 2009 under an 80 percent MLR standard. Although John Alden's MLR in 2010 declined to 76 percent, which is below the 80 percent MLR standard, the company had fewer than 1,000 enrollees and would therefore be exempt from rebate payments. However, all other things being equal and assuming enrollment levels equivalent to 2010, John Alden would be subject to rebate payments in the second and third reporting years.

To calculate John Alden's estimated rebate requirement, we estimate that John Alden would qualify for credibility adjustments of 8.3 percent in the second MLR reporting year and 7.2 percent in the third MLR reporting year due to the manner in which the credibility adjustment is applied across multiple years. Assuming the same MLR of 76 percent before credibility, John Alden's MLRs in the subsequent two reporting years would be 84 percent and 83 percent. Thus, John Alden likely already meets the 80 percent MLR standard, and thus is unlikely to leave the New Hampshire individual market as a result of implementation of this standard.

In sum, these data suggest that if the 80 percent standard were in effect for the 2010 reporting year and issuers were subject to rebate requirements, two of the four issuers subject to rebate requirements would have experienced pre-tax losses on their individual market business, a factor that could contribute to a decision to withdraw from a market. At a 72 percent MLR standard, one of the four issuers subject to rebate requirements would still report pre-tax losses on its individual business.

We recognize that this analysis presumes certain facts, most notably the continuation of current financial performance that may change in 2011. In fact, it is expected that issuers will take steps over time to satisfy the 80 percent that the Affordable Care Act requires. Nonetheless, it can be viewed as some evidence that supports the NHID's concerns regarding the general potential for market destabilization if the 80 percent standard, or even a lower standard, were applied.

Another data point that may provide insight into the likelihood of market exits is the history of the 1998 collapse of the New Hampshire individual market. The NHID explains that in 1997, BlueCross BlueShield of New Hampshire, which had been subject to guaranteed issue and modified community rating requirements, "announced that it was withdrawing from [the New Hampshire individual] market effective January 1, 1998." BlueCross BlueShield of New Hampshire, the precursor of what is currently Anthem,¹⁸ was the "dominant carrier in the market" at that time according to the NHID's application. New Hampshire eliminated guaranteed issue in its individual market as a result. While the circumstances in 1997 are different than those faced today, we note that a dominant market share did not preclude Anthem's corporate

¹⁸ Anthem acquired BlueCross BlueShield of New Hampshire in 1999. We acknowledge that, in addition to the different circumstances surrounding the New Hampshire individual market in 1997, Anthem may have different business priorities and considerations today than its predecessor in deliberating whether to remain in select markets.

predecessor from considering an individual market withdrawal, and we therefore cannot assume that Anthem will remain in the market because of its sizeable current market share.

The NHID's application also mentioned that "several of the smaller carriers stated their intention to refrain from participating in the [individual] market" in response to a recent NHID Bulletin prohibiting issuers in the individual market from refusing to issue child-only individual health insurance. While we acknowledge the NHID's concern regarding these smaller carriers, the circumstances surrounding their intent to refrain from participation in the child-only market do not appear related to the implementation of the 80 percent MLR standard. We therefore believe that the determination on whether to grant an adjustment to the MLR standard is unlikely to alter these issuers' stance.

Finally, we note that the NHID does not have the authority to deny or inhibit an issuers' plan to withdraw from the New Hampshire individual market. The NHID describes the New Hampshire market withdrawal requirements by referring solely to RSA 420-G:6 VII,¹⁹ which only requires an issuer to give all its enrollees and the NHID at least 180 days notice prior to withdrawal. However, RSA 420-G:6 VII also precludes an issuer from reentering the market for five years, unless the NHID waives that bar "for good cause shown." The NHID, according to its supplemental response, "has not issued any guidance with respect to what might constitute 'good cause.'" This five year ban on reentry may deter some issuers from exit by precluding future participation in the individual market, especially subsequent to the implementation of exchanges.

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

Although the NHID does not identify any issuers as reasonably likely to exit the New Hampshire individual market, there may be concerns regarding Anthem's, Time's, Chesapeake's, or Celtic's ability to operate in the individual market under the 80 percent standard. Anthem, Time, Chesapeake, and Celtic insure 23,752; 2,262; 5,294; and 1,576 enrollees as of 2010, respectively. The four companies have a combined 98 percent of the total enrollment in the active New Hampshire individual market based on the 2010 SHCE data.

C. Consumers' ability to access agents and brokers

The NHID noted in its application that "New Hampshire is also concerned about how changing MLR standards may impact the producer community and the services they provide to which New Hampshire consumers are accustomed." The application does not elaborate upon this point, other than to also state that "These proposed MLR adjustments give both the producer community and the issuing carriers the necessary time to adjust their businesses to succeed in the future."

The SHCE data indicate that in 2010, the five active issuers in the New Hampshire individual market paid a total \$6.8 million to brokers and agents for individual products sold. Total commissions paid comprised approximately 7 percent of total premiums earned in the New Hampshire individual market, although this range varies by issuer. The following chart shows

¹⁹ <http://www.gencourt.state.nh.us/rsa/html/XXXVII/420-G/420-G-6.htm>

the commissions the five active New Hampshire individual market issuers paid brokers and agents in 2010 for services rendered in that market:

2010 New Hampshire Individual Market Broker and Agent Commissions Paid

	Issuer	Commissions	Commissions as a % of Premium
1.	Anthem	\$3,106,900	4%
2.	Time	\$639,442	8%
3.	Chesapeake	\$2,648,027	24%
4.	John Alden	\$133,674	6%
5.	Celtic	\$294,752	10%
	Total of Active Issuers	\$6,822,795	7%

In general, the NHID did not provide any commentary regarding the impact the 80 percent MLR standard would have upon consumers' ability to access agents and brokers in New Hampshire. CCIIO received no information or commentary from any other sources touching upon how application of the 80 percent MLR standard in the New Hampshire individual market may impact consumers' ability to access agents and brokers.

D. Alternate coverage options

Since the NHID did not identify specific issuers at risk for withdrawal, evaluating alternative coverage options is speculative. However, based on 2010 MLRs, Anthem, Time, Chesapeake, or Celtic all would have been subject to rebate requirements, and are presumably the issuers of concern to the NHID if the 80 percent standard were applied. If any of these issuers chose to exit the market, policyholders may first turn to the policies offered by remaining issuers in the market. Again, because the NHID did not identify specific issuers at risk for withdrawal, we can also only speculate on what issuers would remain in the market and the types of policies that would be offered.

The NHID did not address the capacity of issuers to take on additional members or the potential impact of withdrawal(s) on remaining issuers' capital requirements. Anthem, Time, Chesapeake, and John Alden have risk-based-capital levels of 506 percent, 465 percent, 2,067 percent, and 440 percent, respectively, which are all above the minimum 200 percent threshold required of issuers.

Because policies in the New Hampshire individual market are medically underwritten, policyholders of withdrawing firms may have more difficulty finding alternate coverage if they have pre-existing conditions. Eligible policyholders of withdrawing issuers may turn to the New Hampshire Health Plan ("NHHP"), New Hampshire's high risk pool, for replacement coverage. As described in the NHID's response to 45 CFR §158.321(c), individuals who have been denied coverage in the individual market may purchase guaranteed issue coverage through the NHHP. Individuals also may be eligible for the NHHP if they have been offered individual health coverage similar to coverage available from the NHHP but at a higher premium, have pre-qualifying medical conditions, or have been offered coverage with a rider excluding coverage for

a specified condition.²⁰ Coverage of pre-existing conditions is excluded for a period of nine months, although prior creditable coverage can offset this exclusion period.²¹

The NHID's application does not discuss how many policyholders of Anthem, Time, Chesapeake, or Celtic would be eligible for coverage under the NHHP. The high risk pool nonetheless provides a "safety net" for the most vulnerable individuals in the event of market withdrawals, namely individuals with pre-existing conditions or individuals that may be offered new coverage but at a much higher price.

The premiums charged for NHHP policies may be comparable to prices currently offered by private issuers in the New Hampshire individual market. For example, the popular Anthem PPO plan with a \$2,000 deductible and 40 percent coinsurance, which has nearly 11,000 enrollees, costs an average of \$275 in monthly premiums. The closest NHHP option, the PPO plan with a \$2,500 deductible and 20 percent coinsurance, can cost \$194-\$477 a month for those age 30 to 50 (\$166-\$729 for the full age range of 18 to 65+). Additional information would be required to gauge whether the NHHP would be an affordable option for all enrollees who were seeking alternate coverage. Additionally, the NHHP offers discounts of 10 to 20 percent of monthly premiums to qualifying individuals under 400 percent of the Federal poverty level, thereby providing some assistance to certain enrollees.²²

The NHHP, according to NHID's application, currently has enrollment of approximately 1,600, and enrollment is not capped or confined to specific enrollment periods. The NHID's application indicates that issuers in the New Hampshire market pay an assessment of 0.5 percent of premiums that, together with premiums paid by NHHP enrollees, funds the NHHP program. It is unclear whether the NHHP would have the capacity to service all of Chesapeake's 5,294 enrollees, Anthem's 23,752 enrollees, Time's 2,262 enrollees, or Celtic's 1,576 enrollees, if one or more of those issuers left the market, assuming that all of those enrollees were eligible for NHHP coverage (which is highly unlikely).

Another alternate coverage option that may appeal to those at risk of being denied coverage is the guaranteed issue small group market. Although only available to those that are self-employed, self-employed policyholders of issuers that exit the individual market can purchase small group policies as "groups of one." These policies are available from nine different issuers, and although enrollment is typically limited to two annual open enrollment periods, self-employed individuals who lose coverage due to an issuer market withdrawal are granted special open enrollment periods. The NHID did not indicate in its application how many policyholders of Anthem, Time, Chesapeake, or Celtic are self-employed and would therefore qualify for this coverage option. Additionally, groups of one policies may be much more expensive than current Anthem, Time, Chesapeake, or Celtic plans. For example, according to information the NHID supplied, the weighted average monthly premium for Anthem's individual market products was \$272 in 2009, whereas the weighted average monthly premium for groups of one policies was \$523.

²⁰ A full list of eligibility requirements can be found at <http://www.nhhp.org/nhhp/eligibility.asp>.

²¹ For example, an individual with nine months of uninterrupted coverage prior to applying for the NHHP would not be subject to a pre-existing condition waiting period.

²² See NHHP Low Income Premium Subsidy Program at http://www.nhhp.org/downloads/LIPS_Info_App.pdf.

As the NHID mentions in its application, some New Hampshire residents may also find alternate coverage options outside of the New Hampshire individual market by purchasing insurance in the neighboring State in which they work. The NHID did not provide further context regarding the number of policyholders for which this alternative is an option or the comparability of individual plans available in neighboring States.

Finally, we note that the NHID advises in its application that it does not have the power to require an issuer, as a condition for leaving the New Hampshire individual market, to arrange for a remaining issuer to assume its block of business. Also, the NHID did not indicate in its application that it had any authority to stabilize the market. CCIIO also independently researched New Hampshire statutes and regulations and did not find any indication that the NHID has such authority.

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

The NHID did not address the impact on premiums charged, or benefits or cost-sharing provided, to consumers by issuers remaining in the New Hampshire individual market if application of the 80 percent individual market MLR standard causes one or more issuers to leave that market. Since the NHID did not raise this issue, we assume that this is not of concern to the NHID.

F. Other relevant information submitted by the State

Additionally, the NHID's application raised two issues that the NHID believes may, as a result of application of the 80 percent MLR standard to the New Hampshire individual insurance market, lead to anti-selection and therefore market destabilization. They are: (1) the permeability between the New Hampshire individual and small group markets, and (2) the potential disparity between the MLR standard applied to New Hampshire versus neighboring States.

1. Permeability between New Hampshire individual and small group markets

As explained earlier in this letter, there is permeability between New Hampshire's small group and individual markets because self-employed New Hampshire residents may purchase guaranteed issue products in the small group market as groups of one. Rating factors for small group policies are limited to group size, age, and industry, while individual market policies are medically underwritten. The NHID explains that this variation in market rules "has helped make New Hampshire's individual market a viable option for many consumers [by making individual policies more affordable], while causing price increases in the small group market."

The NHID's application asserts that, due to anti-selection issues associated with the guaranteed issue small group market, reported MLRs for groups of one are above 100 percent, while reported MLRs for the individual market are approximately 60 percent. The NHID is concerned that if the 80 percent MLR standard is implemented, issuers in the individual market will lower premium rates on individual policies to comply with the new standard. If the pricing

gap between individual policies and small group policies widens, the NHID believes that employees of small group employers may opt to purchase individual policies, which would then prevent employers from meeting participation requirements and create anti-selection issues for employers remaining in the small group market. The NHID's application also suggests that healthier self-employed individuals who currently purchase small group policies may switch to individual policies, which could "accelerate the anti-selection spiral among the self-employed." In short, the NHID believes that implementation of an 80 percent MLR standard in the New Hampshire individual market will create anti-selection issues in the small group market that would result in much higher small group market premiums. Such a situation, the NHID notes, "may not disrupt the individual market, but has the potential for disrupting or destabilizing the small group market."

This argument raises two questions. The first is the extent to which the Secretary, when considering a possible adjustment to the State's individual market MLR standard, can take into account the impact of the individual market MLR standard upon a State's small-group market. The second is the nature and extent of that impact in the present situation, assuming consideration can be given to such impact.

As CCIIO's March 1 letters to the NHID suggested, Section 2718(b)(1)(A)(ii) of the Public Health Service Act does not give the Secretary the authority to adjust the Affordable Care Act's 80 percent individual market MLR standard because its application may destabilize or disrupt a State's small-group market. The Secretary may adjust the Affordable Care Act's 80 percent individual market MLR standard only if its application "may destabilize the individual market in such State." Thus, the only relevant consideration would be what specific disruptions the State foresees in its individual market as a result of possible disruptions to its small-group market. The NHID did not state the specific disruptions it foresees to the New Hampshire individual market as a result of possible disruption to New Hampshire's small-group market.

Even if, however, the Secretary could take into consideration whether the 80 percent individual market MLR standard may destabilize or disrupt a State's small-group market when considering a State's individual market MLR standard adjustment request, the question remains whether the NHID application presents sufficient information to make such a finding. The NHID did not provide any specific information substantiating its anti-selection concern. One of the NHID's concerns is that anti-selection will occur if healthy self-employed individuals leave the small group market to purchase policies in the individual market. However, we note that it is possible, if not likely, that individuals eligible for medically underwritten individual policies have already self-selected into the individual market. This is due to the existing price disparity between the two markets. Based on the data provided by the NHID for 2009, the weighted average cost of a medically underwritten individual policy was \$259 while the weighted average cost of a guaranteed issue group of one policy was \$523.

Even if small group market participants exit the small group market due to the implementation of the 80 percent MLR standard, the question remains to what degree the unfavorable claims experience of the unhealthy groups of one would result in much higher premiums in the small group market. To this point, the NHID's application indicates that in 2009, there were a total of 6,000 enrollees in groups of one policies. Data in the Supplemental

Report of the 2009 Health Insurance Market in New Hampshire show that the New Hampshire small group market had a total of 129,277 enrollees.²³ Groups of one therefore represented 4.6 percent of the New Hampshire small group market in 2009. Because these policies comprise such a small percentage of the small group market, an anti-selection spiral would require a very large percentage of current small group market participants to exit.

2. Disparity between New Hampshire's and its neighbors' MLR standards

The NHID notes in its application that New Hampshire has been in contact with its neighboring states and that "All of New Hampshire's neighboring States are applying for waivers." The NHID is concerned that if MLR standards differ among the New England States, certain States may be at risk for anti-selection. This is because residents may purchase insurance based on where they work rather than where they reside (or vice versa). As we understand the NHID's concern, the NHID believes that if a New England State is subject to a higher MLR standard than its neighbors and the State's issuers consequently offer richer benefit packages, those issuers would be at risk of anti-selection to the extent policyholders can purchase across State lines and the issuers' products appeal to sicker populations.

As of this date, however, only one of New Hampshire's neighboring States, Maine, has applied for an MLR adjustment. New Hampshire's other three neighboring States, Massachusetts, New York, and Vermont, have not submitted applications. Moreover, the NHID states in its supplemental response that it "did not attempt to quantify the degree to which New Hampshire residents would purchase insurance across State lines." The NHID provided no further information to help assess the likelihood of this anti-selection risk.

IV. Summary of Public Comments

CCIIO received seven submissions during the public comment period for the NHID's request for an adjustment to the MLR standard, all of which are posted on the CCIIO website at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_newhampshire.html. Three of those comments are from individual consumers, two of whom identify themselves as New Hampshire residents. The remaining comments are from four organizations: The New Hampshire Hospital Association ("NHHA"); the New Hampshire Alliance for Health Care ("NHAFHC"); Consumer Watchdog ("CW"); and New Hampshire Voices For Health ("Voices"). None of the public comments supported the NHID's application.

One consumer argues against an adjustment because he believes low MLRs in the New Hampshire individual market indicate room for reduced premiums rather than risk of market exits. He further believes that anti-selection in the small group market is not a direct concern for the individual market, and that lower premiums in the individual market as a result of the 80 percent MLR standard will not further the anti-selection among the self-employed. He also believes that lower premiums will attract new enrollees, encouraging competition and spreading risk.

²³ http://www.nh.gov/insurance/lah/documents/suprep_09.pdf

The second commenting individual, who identifies himself as a New Hampshire resident, believes that an adjustment would not place pressure on administrative cost, and requests an expiration date should an adjustment be granted. The third consumer also identifies himself as a New Hampshire resident and believes that the argument that an 80 percent MLR will make it unattractive for the insurance industry to operate in New Hampshire is a better argument for entire health insurance market reforms rather than adjustments to MLR standards.

The NHHA believes the NHID's request would "result in too significant a reduction" in the MLR requirement of 80 percent and would not support the incentives the Affordable Care Act gives issuers "to provide their customers a better value for their premium dollars." The NHHA also believes that "it is unclear that the application of the 80% MLR standard would destabilize the individual market in New Hampshire." NHAA further requests that any MLR adjustment considered for the New Hampshire individual market involve "an incremental phase-in to provide a more measured, but certain, movement to the new standards under the health care reform law."

The NHAFHC notes that the dominant issuer in New Hampshire's individual insurance market "reported over \$11 million in profit last year" and that application of the 80 percent individual market MLR standard would require this issuer "to return over \$7 million to NH consumers." The NHAFH urges that the NHID's application be rejected "without significant modifications such as phasing in the full MLR annually and fully reach 80% by 2013." The NHAFH notes that a modified approach such as this would "both address the Commissioner's concerns of a stable individual insurance market and protecting consumers in the individual insurance market."

CW believes that "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." It also believes that, while "the state's application doesn't provide any data to make the case" that Chesapeake would leave the New Hampshire individual market if the NHID's request were not granted, consumers in any event "would probably be better off" if Chesapeake were to do so. CW also questions the structure of the NHID's proposed solution, observing "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?"

Voices believes that the fact that only one other New England state had requested an adjustment "ensures" that New Hampshire "will not be at any disadvantage in comparison with our neighboring states." Voices further believes that it was "speculative that any individual market carriers will leave New Hampshire," observing that the largest issuer in the market "is earning more than \$11 million in profits" and that "it is not clear that the smaller plans ... would leave the state" if the individual market MLR standard were implemented. Voices also states that "it would be more beneficial" if issuers immediately begin gradually to "improve their efficiency" rather than, as the NHID proposal would do, waiting "to face [the] same increase currently being contemplated in a few years."

We acknowledge the concerns raised in these comments. They are discussed, many in great detail, in the body of this letter. We note, in that regard, that there are many complex

considerations involved in assessing the potential for market destabilization and risk of market withdrawals.

V. Conclusion

As described at the outset of this letter, section 2718 of the Public Health Service 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).

We agree with the NHID that there is reasonable likelihood that, in this case, immediate implementation of the 80 percent MLR standard may destabilize the individual market. We recognize the potential losses that some issuers in the State may incur if the 80 percent standard were applied for 2011 and rebates were required, assuming the 2011 experience mirrors 2010 experience. This is especially the case for what was described as a relatively new entrant to the market, Celtic, which reported a 51 percent MLR in 2010. This is also the case if a 75 percent MLR standard were applied in 2011, again assuming 2011 experience mirrors that of 2010. The possibility of potential losses could lead to issuers exiting the market, leaving consumers temporarily without coverage and reducing options available to consumers. We also note that effective in 2010, issuers in the New Hampshire market became subject to a lifetime loss ratio for individual products of 65 percent, well below the 80 percent standard in the ACA.

While we agree with the NHID that applying an 80 percent or even a 75 percent standard in 2011 may risk destabilizing the individual market, we do not agree that a 70 percent standard should apply each year between now and 2014. In our view, the NHID’s proposal to adjust the MLR for three years at 70 percent overcompensates for the general risk of destabilization asserted by the NHID. This is due in part to the fact that the MLRs of the top two issuers in the State already exceed the 70 percent standard.²⁴ We note that Anthem, the largest issuer with over 70 percent market share, had a 70 percent MLR in 2009, the latest available data at the time the NHID’s application was submitted. Updated 2010 data show that Anthem had a 72 percent MLR in 2010.

Further, we note that if the NHID’s request for a 70 percent MLR standard in 2011 were granted, Celtic and Time would still be required to pay some rebates in 2011, assuming their 2011 experience mirrors their 2010 experience. Thus, the NHID recognized the potential that some issuers with particularly low MLRs would have to pay rebates under the State’s adjustment request. It is this expectation by the NHID, that issuers could tolerate some rebate payments without leading to market destabilization, that supports the conclusion that increasing the MLR standard gradually over a three year period would not substantially increase the likelihood of destabilization.

²⁴ Time had an MLR above 70 percent in 2009 but below 70 percent in 2010.

We believe, based on the information provided and including the 2010 MLR data, that establishing an MLR standard of 72 percent for 2011 and 75 percent for 2012, with the 80 percent standard to apply in 2013, reasonably addresses the risk of destabilization set out in the application. An adjustment to the MLR standard in 2011 and 2012 mitigates the risk of market destabilization while preserving for consumers the intended benefits of section 2718. This approach, which creates a glide path for compliance with the 80 percent standard, balances the interests of consumers, the State, and the issuers in accordance with the principles underlying section 2718.

Accordingly, pursuant to section 2718(b)(1)(A)(ii) of the Public Health Service Act (42 U.S.C. §300gg-18(b)(1)(A)(ii)), the MLR standard applicable to the New Hampshire individual health insurance market is adjusted to 72 percent in 2011, and 75 percent in 2012, and the 80 percent statutory standard shall apply in 2013 and thereafter.

Pursuant to 45 CFR §158.346, the NHID 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,

A handwritten signature in black ink, appearing to read 'S. B. Larsen', written in a cursive style.

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