



# OFFICE OF INSURANCE AND SAFETY FIRE COMMISSIONER

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March 17, 2011

The Honorable Kathleen Sebelius  
The Secretary of Health and Human Services  
The U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

In accordance with Section 2718 of the Public Health Service Act (“PHS”) the State of Georgia hereby submits a request for a waiver to the federally imposed Medical Loss Ratio (“MLR”) standard for the years 2011, 2012, and 2013. The data and explanations required by Section 158.310 of the MLR Interim Final Regulation dated December 1, 2010 are attached herewith.

As the Commissioner of Insurance for the State of Georgia, I am the only person who can seek a waiver to the MLR standard on behalf of the State of Georgia. Although I believe that the Patient Protection and Affordable Care Act (“ACA”) is unconstitutional and fully support the various legal challenges to its constitutionality, it is my duty as Commissioner to do everything possible to protect the interests of Georgia citizens and the viability of the Georgia insurance market. It is for that reason that I am requesting a waiver to the MLR standard, and not because I believe that the ACA should or will be upheld by the court.

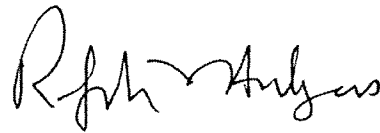
The purpose of Georgia’s request for a MLR waiver is three-fold. First, we should do no harm to Georgians with health issues who are currently insured in the individual market. For these individuals, it is imperative that their current insurer remain in the Georgia individual health market. Second, the phase-in period will give insurers, that have less ability to adapt to this sudden change, time to adjust business models to compete. Third, access to an agent to explain and facilitate the purchase of an individual health policy will be preserved.

Madam Secretary, the waiver that Georgia is requesting amounts to a phase-in period for the MLR standard. The adjustment is reasonably tailored to the purposes enumerated above. Unless the MLR waiver is granted, it is my opinion that Georgia’s individual health market will

become less competitive. Moreover, many thousands of Georgian's could lose their current insurance coverage as smaller insurers may make difficult decisions to exit the individual market rather than to persist in it at a loss.

I appreciate your consideration of our request and supporting documentation. This waiver is a top priority for me, so please do not hesitate to contact me or my staff if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "R. T. Hudgens". The signature is fluid and cursive, with a large initial "R" and a distinct "Hudgens" at the end.

Ralph T. Hudgens  
Insurance and Safety Fire Commissioner  
State of Georgia

Attachments

cc: Honorable Nathan Deal, Governor, State of Georgia  
Honorable Johnny Isakson, U.S. Senator, State of Georgia  
Honorable Saxby Chambliss, U.S. Senator, State of Georgia

Waiver of Individual Market Medical Loss Ratio

State: Georgia

**45 C.F.R. § 158.321 - Information regarding the State's individual health insurance market.**

**a) Current MLR standard in the individual market, including formula used to assess compliance.**

Georgia does not have a MLR requirement that applies to the Georgia individual market.

**b) Market withdrawal requirements - Describe any requirements with respect to withdrawals from the individual health insurance market. Such requirements include, but are not limited to, any notice that must be provided and any authority the State regulator may have to approve a withdrawal plan or ensure that enrollees of the exiting issuer have continuing coverage, as well as any penalties or sanctions that may be levied upon exit or limitations on re-entry.**

Georgia's withdrawal requirements for the individual market are set forth in Ga. Comp. R. & Regs. r. 120-2-67-.10(b)(5), to wit:

*(5) An insurer discontinues offering and terminates, cancels, or does not renew all coverage under all policy forms in the individual market, provided that:*

*(A) the insurer provides at least 180 days notice prior to the discontinuance or nonrenewal of a policy or contract to all insured under that policy or contract;*

*(B) the insurer provides at least 180 days notice to the Commissioner prior to the earliest date of termination or non-renewal related to the discontinuation in the market and indicates in such notice the date described in subparagraph (5) (C);*

*(C) the insurer does not issue coverage in such market for 5 years beginning with the date of the last health insurance policy or contract in that market not renewed; and*

*(D) the insurer acts uniformly without regard to the claims experience or any health status related factor of individuals insured or eligible to be insured.*

c) Mechanisms to provide options to consumers

Describe the mechanisms available to the State to provide consumers with options in the event an issuer withdraws from the individual market. Such mechanisms include, but are not limited to, a guaranteed issue requirement, limits on health status rating, an issuer of last resort, or a State-operated high-risk pool.

Georgia does not have a guaranteed issue requirement, limits on health status rating, an issuer of last resort, or a State-operated high-risk pool.

d) Issuers in the State's individual market

1) For every issuer who offers coverage in the individual market, please provide its number of individual enrollees by product, available individual premium data by product, and individual health insurance market share within the state.

See Exhibit 1.

2) For each issuer who offers coverage in the individual market with more than 1,000 enrollees, please provide the following additional information:

i) Total earned premium on individual market health insurance products in the State;

ii) Reported MLR pursuant to State law for the individual market business in the State;

iii) Estimated MLR for the individual market business in the State, as determined in accordance with §158.221 of this part;

iv) Total agents' and brokers' commission expenses on individual health insurance products;

v) Estimated rebate for the individual market business in the State, as determined in accordance with §158.221 and §158.240 of this part;

- vi) Net underwriting profit for the individual market business and consolidated business in the State;
- vii) After-tax profit and profit margin for the individual market business and consolidated business in the State;
- viii) Risk-based capital level; and
- ix) Whether the issuer has provided notice of exit to the State's insurance commissioner, superintendent, or comparable State authority.

See Exhibit 2.

Proposal for adjusted medical loss ratio

A State must provide its own proposal as to the waiver it seeks to the MLR standard. This proposal must include:

- (a) An explanation and justification of how the proposed waiver to the MLR was determined;

Georgia requests a waiver to the MLR standard to ensure that the Georgia individual market is not destabilized by what amounts to an abrupt change for all insurers participating in Georgia's individual market. Georgia proposes a three-year phase-in period for the MLR standard. Specifically, Georgia requests that the Secretary grant it a waiver to the MLR standard as follows:

Year	Adjusted MLR
2011	65%
2012	70%
2013	75%

In addition, Georgia requests that the calculation for MLR for the 2013, 2014, and 2015 reporting years be adjusted to reflect the waiver to the MLR standard, if granted. Specifically, the inclusion of three years of data, which begins in the 2013 reporting year, should be paired with a three-year average of the applicable MLR standard, as adjusted. For example, assume that the calculated MLR for an insurer is 68% in 2014. Georgia requests that the effective MLR standard be based upon an average of the MLR standards that correspond to the years of the data. In this example, the effective MLR standard would be

equal to 75% and the rebate would be 7%. Georgia requests that the effective MLR standard apply as follows:

Year	MLR standard	Effective MLR
2013	75%	70%
2014	80%	75%
2015	80%	78.3%

In addition, for insurers that are required to include 2011 data in the 2012 MLR reporting year Georgia requests that the effective MLR for 2012 be 67.5%. For years subsequent to 2015 the effective MLR will be 80%.

#### Deference to State Insurance Commissioners

When it comes to deference to the States' Insurance Commissioners HHS adopted the most appropriate standard, *to wit*:

The NAIC also suggested that HHS give deference to [State Insurance Commissioners'] analysis and recommendations. HHS agrees with the NAIC that, just as a State commissioner is best qualified to request adjustment to the MLR standard, a State commissioner seeking an MLR adjustment is also best qualified to suggest an appropriate alternative MLR standard for each the reporting years for which a State is requesting an adjustment.

See, 75 Fed. Reg. 74887 (December 1, 2010). State Insurance Commissioners are in the best position to know how the MLR standard will affect the individual market in their State. Raw data can be informative, but there is much that is not captured by the data requested by HHS.

#### Current Market Conditions

Over the past fifteen years Georgia has worked diligently to encourage competition in the individual market. A competitive individual market requires more than a few large insurers. Like many similarly situated states, Georgia's individual market is constituted by one very large insurer, a few insurers with significant shares of the individual market, and smaller ones attempting to penetrate the market. I believe that an immediate

application of the 80% MLR standard would likely encourage further concentration of Georgia's individual market.

Purpose of MLR Waiver Request

The purpose of Georgia's request for an MLR waiver is three-fold. First, we should do no harm to Georgians with health issues (*i.e.*, pre-existing conditions) who are currently insured in the individual market. For these individuals it is imperative that their current insurer remain in the Georgia individual health market. Second, the phase-in period will give insurers with less capacity to absorb the impacts of the 80% MLR standard time to adjust business models to compete. Third, access to an agent or broker to explain and facilitate the purchase of an individual health policy will be preserved.

Withdrawal of Insurers from Georgia's Individual Market -  
(45 C.F.R. § 158.330(d))

The implications of an insurer's exiting the individual market in Georgia are dramatic. The primary impact of the withdrawal falls upon policyholders with pre-existing conditions who lose their coverage. Consequently, these individuals will have a difficult time purchasing insurance, unless they opt for the federally administered Pre-Existing Condition Insurance Plan, which requires a wait of at least six months. For six months, these Georgians could be put at substantial financial risk and medical care risk in all but emergency health care situations. The financial risk is magnified by the fact that any health care service the uninsured Georgian receives will cost him or her the full billed amount of that service. I believe the requested relief is imperative because for these Georgians, there will effectively be a very limited individual health market for six months if they lose their coverage, and that is certainly a market disruption for them.

The only legal option I have to avoid this result is the avenue provided by 45 C.F.R. § 158.310. I do not have authority as Commissioner to require other insurers to pick up blocks of business from exiting insurers. Nor do I have any authority under Georgia law to "stabilize" the individual market insofar as it requires the denial of an insurer's request to exit the individual market. Finally, Georgia is not a guaranteed issue

state, and it does not have a high risk pool or issuer of last resort.

#### The Risk of Market Exit - (45 C.F.R. § 158.330(a))

As of December 31, 2009, there were approximately 344,241 enrollees in the individual market in Georgia.<sup>1</sup> Of that number, 97,377, or 28.29%, of the enrollees are covered by insurers that have indicated that an exit from the Georgia individual market was possible.

During 2010 two of the insurers that were active in 2009 (approximately 3% of enrollees) stopped writing new business in Georgia. While neither these insurers nor any others have yet submitted notice of exit from the Georgia individual market as a direct consequence of the 80% MLR standard, I expect that without a waiver to the MLR standard in Georgia that several insurers will be unable to operate the individual line profitably. As a consequence, some insurers have indicated that they may exit the individual market.

#### Five-Year Ban on Re-Entry

In addition to the immediate impact on policyholders, the insurer is also impacted by its decision to withdraw from the individual market. Georgia law prohibits an insurer that withdraws from the individual market from participating in that market for five years, beginning from the date of the last renewal. See, Ga. Comp. R. & Regs. r. 120-2-67-.10(b)(5). Choice and competition would be diminished if some insurers are forced to withdraw and then are banned for five years from participation in the Georgia market.

#### Paradigm Shift in Health Care

On January 1, 2014, if the law is upheld, there will be a paradigm shift in health care, particularly with respect to the individual health market. Individual health insurance policies are to be commoditized as far as is possible; medical underwriting will largely be a perfunctory task for machines to

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<sup>1</sup> This number includes enrollees for insurers that were active in the Georgia individual market during 2009. We will supplement the data with information of one more insurer that had about 980 enrollees in 2009 and is still active in the Georgia individual market. See the Insurer Selection Criteria for more detail.

