

COMMONWEALTH OF VIRGINIA

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TO: All Companies Licensed in Virginia to Write Accident and Sickness Insurance, all Health Maintenance Organizations Licensed in Virginia, all Health Services Plans Licensed in Virginia, and Interested Parties

RE: Medical Loss Ratio Adjustment
Accident and Sickness Insurance in the Individual Market

This communication serves to apprise companies and interested parties of the Bureau of Insurance's (Bureau) findings and recommendations relating to a potential request by Virginia for an adjustment to the 80% Medical Loss Ratio (MLR) standard applicable to comprehensive medical products in the Virginia individual market. Background information, aggregated responses to a survey conducted by the Bureau, and the Bureau's recommendation for proceeding are outlined below.

Background:

On December 1, 2010, in accordance with § 2718 of the Public Health Services Act (as amended by § 1001 of the Patient Protection and Affordable Care Act (PPACA)), the U.S. Department of Health and Human Services (HHS) issued an interim final regulation (*45 CFR Part 158*) regarding MLR standards for comprehensive medical insurance. Under the provisions of the PPACA and the interim final regulation, MLR standards of 80% and 85%, (or such higher percentage as the state may by regulation determine), are applicable to the individual and small group markets, and to the large group market, respectively. These MLR standards are effective January 1, 2011. The PPACA also authorizes the Secretary of HHS (Secretary) to "*adjust such percentage with respect to a state if the Secretary determines that the application of such 80 percent may destabilize the individual market in such state*". The regulation, in § 158.310, requires that a request for an adjustment to the MLR standard for a State "*must be submitted by the State's insurance commissioner, superintendent, or comparable official of that State in order to be considered by the Secretary.*"

The regulation, in §158.322, identifies the following information that must be included in a state's adjustment proposal:

1. An explanation and justification for how the proposed adjustment was determined.

2. An explanation of how the proposed adjustment will permit issuers¹ to adjust current business models and practices in order to meet the 80% MLR standard as soon as is practicable (no later than 2014).
3. An estimate of the rebates that would be paid by the issuers currently offering coverage in the state if the adjustment was not granted
4. An estimate of the rebates that would be paid by the issuers currently offering coverage in the state if the adjustment was granted.

The regulation, in §158.330, further describes the criteria the Secretary will use to evaluate the requested adjustment, as follows:

1. The number of issuers reasonably likely to exit the individual market (or at least cease writing new business) absent the adjustment, as well as the resulting impact on competition in the State;
2. The number of enrollees covered by issuers reasonably likely to exit the market absent the adjustment;
3. Whether consumers may be unable to access brokers and agents absent the adjustment;
4. The alternate coverage options within the state available to individual market enrollees if an issuer exits the market;
5. The impact on premiums charged, and on the 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
6. Any other relevant information submitted by the Commissioner.

Recent Bureau Survey:

In an effort to proactively determine whether there were any indicators that destabilization of the Virginia individual market would be a likely result of the imposition of the 80% MLR standard, the Bureau surveyed 401 companies reporting individual accident and sickness premiums in Virginia in 2009. Survey responses were received by the reporting deadline from 297 insurers representing 95% of the premium attributable to the individual market in Virginia. Of these, 33 companies indicated that they wrote comprehensive health products in the individual market in Virginia and were, therefore, subject to the PPACA MLR requirements. The aggregated responses from these 33 companies are summarized in the following table:

¹ Refer to the definition of *health insurance issuer* in Virginia Code § 38.2-3431 and in PHS act 42 USC § 300gg-91

Category	No. of Companies	Percent of Covered Lives Reported
Companies Writing New Business:		
In favor of an adjustment due to market destabilization:	13	5.71%
In favor of an adjustment due to a reason other than market destabilization ² or not in favor of an adjustment:	5	93.48%
Companies Not Writing New Business:		
In favor of an adjustment due to market destabilization:	8	0.26%
In favor of an adjustment due to a reason other than market destabilization or not in favor of an adjustment:	7	0.55%
Summary:		
Total In favor of an adjustment due to market destabilization:	21	5.97%
Total in favor of an adjustment due to a reason other than market destabilization or not in favor of an adjustment:	12	94.03%
Total – all	33	100.00 %

Conclusions and Recommendations:

Only companies writing 5.97% of the covered lives reported in Virginia responded that they were in favor of an adjustment to the MLR due to market destabilization, while companies writing 94.03% responded either that they were not in favor of an adjustment to the 80% MLR standard, or that while they were in favor of an adjustment, it was for reasons other than market destabilization. Further, only 5 companies (writing less than 1% of covered lives reported) indicated that they would consider withdrawing from the market altogether or, after reporting that they were not sure yet what action would be taken, indicated that they were more likely than not to withdraw from the market due

² Companies selected either or both of the following as reasons for requesting an adjustment that were not identified as market destabilization: (1) stress on the company; and/or (2) other reasons as provided by company.

to the MLR requirement. However, in accordance with Virginia Code § 38.2-3430.7 C 2, such market withdrawals require a six-month notice to the Commission.

The criteria that the Secretary will use to judge the merits of a waiver application center on market destabilization. A waiver application would have to clearly establish that there is a reasonable likelihood market destabilization would occur as a result of the 80% MLR requirement in Virginia's individual market. While survey responses indicated that some market disruption may result from the 80% MLR requirement in the individual market, a relatively small percentage of respondents indicated that market destabilization would occur.

Based on the responses received by the Bureau in connection with its survey request, it does not appear that there is sufficient justification at this time to pursue the preparation of a request to the Secretary for an adjustment to the 80% MLR standard applicable to the individual market in Virginia for 2011. However, this decision should not preclude the Bureau from assessing the situation after June 1, 2012, when the MLR reports for 2011 are due. Empirical data will then be available for review and further consideration. The Bureau will also continue to monitor market indicators for evidence of an impending market destabilization and respond accordingly, as appropriate.

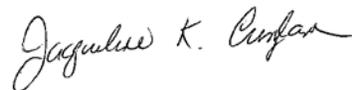
More information concerning survey findings may be found at:

www.scc.virginia.gov/boi/cons/healthreform.aspx

Comments or questions relating to this matter may be directed to:

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Cordially,



Jacqueline K. Cunningham
Commissioner of Insurance