DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

March 8, 2011

Mila Kofman
Superintendent of Insurance
State of Maine Bureau of Insurance
Department of Professional and Financial Regulation
34 State House Station
Augusta, Maine 04333-0034

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

Dear Superintendent Kofman:

This letter responds to the request of the Maine Bureau of Insurance ("MBI"), 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 Maine.

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 MBI has requested an adjustment of the 80 percent MLR standard to 65 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 MBI application, as well

as the supplemental information provided to us 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 agree with the reasoning that led to the MBI's conclusion that application of the 80 percent MLR standard in Maine has a reasonable likelihood of destabilizing the Maine individual health insurance market. We have determined that an adjustment of the MLR to 65 percent is warranted under the particular circumstances presented in the MBI application. While we conclude that such an adjustment is appropriate for three years, the adjustment to 65 percent for the third year is granted on the condition that the MBI provide CCIIO with updated data in 2012 that indicate a continued need for such an adjustment. This letter explains the basis of our decision, which is rooted in the particular circumstances of the Maine insurance market.

I. Summary of the Maine Application

CCIIO received the MBI request for an adjustment to the MLR standard on December 16, 2010. The MBI's initial request was to adjust the MLR standard for its individual health insurance market to 65 percent using Maine's statutory definition for calculating the MLR. Maine's statutory definition does not include adjustments for quality improving expenses, taxes, or credibility, as required by the Federal MLR law. Among the information that the MBI included in support of its request was a chart providing market share, enrollment, profitability, and capital level data on issuers in Maine's individual market, as well as materials describing and comparing the premiums and benefits of the various products offered in the Maine individual health insurance market.

On January 4, 2011, CCIIO requested from the MBI eleven additional items needed in order for Maine's application to be deemed complete. These items included clarification of the formula to be used to calculate the adjusted MLR standard sought by the MBI, as well as clarification of calculation errors in the application. After additional requests for information were made by CCIIO and responded to by the MBI, the MBI application was deemed complete on January 25, 2011. The 30-day application processing period provided for in 45 CFR §158.345(a) began as of January 25, 2011. In the course of reviewing the completed application, further information was sought by CCIIO and provided by the MBI. These requests and responses were posted on CCIIO's website. On February 24, 2011, CCIIO informed the MBI that it would extend the review period for up to an additional 30 days, as provided in 45 CFR §158.345(b).

In addition, on January 25, 2011, CCIIO noted on its website that any public comments regarding Maine's application were due by February 5, 2011, as provided in 45 CFR §158.342. CCIIO received three public comments, which we address in this letter.

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

II. Overview of the Maine Individual Health Insurance Market

According to September 2010 enrollment data in the MBI application, nearly 37,000 Maine residents obtain health insurance coverage through Maine's individual health insurance market. The September 2010 enrollment figures are the most recent figures provided in the MBI application, although we note that the majority of the financial data provided by MBI are for the 2009 calendar year. There are three major issuers in that market: Anthem Blue Cross Blue Shield of Maine ("Anthem"); MEGA Life & Health Insurance Company ("MEGA"); and HPHC Insurance Company ("HPHC"). These issuers principally offer PPO products. Anthem covers approximately 18,297 enrollees and has a market share of 49 percent. MEGA covers approximately 13,732 enrollees and has a market share of 37 percent. HPHC covers approximately 4,935 enrollees and has a market share of 13 percent. The remaining one percent market share is comprised of closed blocks of business and HMO enrollment.[2]

According to data provided by the MBI in response to 45 CFR §158.321, Anthem, the largest issuer, offers PPO products with deductibles ranging from $2,250 to $15,000, all of which have zero coinsurance.[3] MEGA, the second largest issuer, offers PPO products with deductibles ranging from $3,500 to $10,000 and coinsurance of 20 percent or 50 percent up to an out-of-pocket maximum of between $2,000 and $20,000.[4]

While Anthem and MEGA plans may offer comparable deductible options (or "high-deductible" policies), MEGA's "catastrophic" plans are generally less comprehensive than Anthem's plans. For example, MEGA's plans do not cover maternity expenses, prescription drugs, or skilled nursing care. Optional riders can be purchased for MEGA policies to cover physician office visits, mental health, and substance abuse, all of which are covered under Anthem policies. As a result of their less comprehensive coverage, MEGA policies are typically significantly less expensive than Anthem policies of comparable deductible, as set out below in Part III. D.

HPHC, the smallest of the three major issuers in Maine's individual market, offers PPO products through DirigoChoice ("Dirigo"), a public-private partnership. Dirigo provides subsidies to eligible participants, with the amount of premium and maximum out-of-pocket expense paid by participants determined based on household income and assets. According to the MBI application, the availability of subsidies through Dirigo is subject to resource limitations, with funding for the program primarily generated through fees assessed on Maine health insurance issuers.[5] Enrollment has been closed in the past, but recently reopened on August 1, 2010. Dirigo's proposed budget for the State fiscal years 2012 and 2013 assumes the

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[2] The combined HMO enrollment for the State of Maine is 33 individuals, or 0.1 percent of the market. HMO policies are available through Aetna Health, Anthem, or Harvard Pilgrim Health Care, the parent company of HPHC.

[3] Anthem also offers the eight standardized plans required by all issuers in the Maine individual market. These plans have deductibles ranging from $250 to $1,500 and coinsurance of 20 percent or 40 percent. Anthem covers only 173 individuals under these standardized plans.

[4] MEGA also offers the eight standardized plans required by all issuers in the Maine individual market. MEGA issues only 14 policies under these standardized plans. Because of the small enrollment in these policies compared to MEGA's other individual business discussed in this letter, they were not material to the decision here.

[5] Dirigo access fees are approximately 1.2% of premium according to the MBI's January 11 letter.

maintenance of enrollment levels as of fiscal year 2011 (7,832 standard enrollees as of January 2011[6]), and we therefore assume that Dirigo does not contemplate significant further expansion. However, the Dirigo budget does acknowledge that membership "will depend on the group's experience over the course of [State fiscal years] 2011, 2012, and 2013," which have thus far been favorable.[7]

Maine has implemented various consumer protection provisions in the individual market, including guaranteed issue and modified community rating, which are described in Maine's response to 45 CFR §158.321(c). Consumers can therefore purchase an individual policy from any issuer, and health status cannot impact eligibility or premium rates. Moreover, if an individual had coverage at any time in the 90 days prior to purchasing a new policy, pre-existing conditions cannot be excluded from coverage to the extent the consumer was eligible for coverage under the old policy.

Maine implemented a State MLR standard of 65 percent for the individual market in 1993. According to the MBI, this standard is calculated as the ratio of incurred claims to earned premiums and does not include adjustments for quality improving activities, taxes, or credibility, as provided under the MLR calculation under the ACA. The Maine statute provides that the superintendent "shall disapprove any premium rates filed by any carrier" if the aggregate benefits to be paid under all in force individual health policies of any carrier do not meet the 65 percent standard (24-A M.R.S.A. §2736-C(5)). Thus, as we read the law, Maine's 65 percent standard applies to an issuer's individual health policies in the aggregate, not on a per policy basis. Maine does not have a rebate requirement for issuers that do not satisfy the State MLR requirement.

The MBI explains the State's withdrawal requirements in its response to 45 CFR §158.321(b), and in doing so cites 24-A M.R.S.A. §2736-C(4). Issuers that wish to withdraw from the Maine individual health insurance market must provide notice to the MBI at least three months prior to cessation of business. If existing contracts are not renewed, notice must be provided to policyholders at least six months prior to nonrenewal. Issuers must also file a withdrawal plan at least 60 days prior to the proposed withdrawal date pursuant to 24-A M.R.S.A. §415-A. As the MBI explains, withdrawal plans ensure the performance of ongoing contractual obligations during the runoff of in-force business, but do not require a withdrawing or nonrenewing issuer to arrange for another issuer to assume its existing policies. As discussed below, the MBI indicated in its application that it has not received a formal notice of withdrawal pursuant to 24-A M.R.S.A. §2736-C(4) but believes that one company, MEGA, may exit the market if relief from the 80 percent standard is not granted. The MBI did not indicate that it has the ability to prevent MEGA from withdrawing from Maine's individual market.

An issuer that ceases to write new business in the individual market is prohibited from writing new business in that market for five years from the date the issuer gave notice to the Superintendent. The Superintendent may waive this requirement for "good cause shown." No

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[6] See the Dirigo Monthly Dashboard at http://www.dirigohealth.maine.gov/Documents/Numbers_January2011.pdf.
[7] See Dirigo Health Agency State Fiscal Year 2012-2013 Proposed Budget at: http://www.dirigohealth.maine.gov/Documents/DHA%20SFY%202012%20and%20SFY%202013%20Budget.pdf.

issuer has asked for such a waiver and, according to the MBI application, there is no regulatory guidance regarding what may constitute "good cause."

III. Application of Regulatory Criteria to the Maine 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

Based on the MBI application, MEGA appears to be the only issuer in the State that may be at risk of exit if the 80 percent MLR standard were implemented in the State's individual market.[8] According to the application, MEGA indicated in "preliminary" discussions that it "could continue to operate successfully in the Maine market in compliance with [the] current MLR standard [of 65%], but *would probably need to withdraw* from this market if the minimum loss ratio requirement were increased" (emphasis added). The MBI further explains that the Superintendent's conclusion that MEGA is likely to exit the Maine individual market is predicated on "discussions with the company and past experience." However, in its response to

[8] The other two sizeable issuers in the Maine individual market, Anthem and HPHC, have estimated Federal MLRs of 107 percent and 92 percent, respectively. Anthem's and HPHC's MLRs are well above the Federal 80 percent standard, and therefore neither issuer would likely be subject to rebate payments. Like the MBI, we have therefore focused our evaluation on the likelihood of market withdrawal by MEGA.

"whether the issuer has provided notice of exit to the State's insurance commissioner" (45 CFR §158.321(d)(2)(ix)), the MBI indicated that MEGA has not formally provided notice of exit.

The past experience that the MBI mentions is in reference to MEGA's 2004 withdrawal from the Maine small group market. The MBI explains that after the 2004 implementation of a 75 percent MLR standard in that market, MEGA "stopped offering small group products because they could not meet their profit goals." The MBI's stated concern is that because MEGA exited the small group market apparently due to the implementation of an MLR it found inconsistent with its "profit goals," it may, or will, do so again upon the implementation of an MLR standard in the individual market that is higher than the existing State MLR standard.

Data show that in 2004, MEGA generated an underwriting gain of $1.8 million in the Maine small group market.[9] At the time, MEGA operated at an MLR of 52 percent in the small group market. Applying the 75 percent MLR to the financial results for 2004 and assuming no changes to the company's premiums or expense structure, MEGA would have generated an underwriting loss of -$2.5 million in that year. Further analysis would be required to determine whether, through adjustments to its premiums, expense structure (including administrative expenses), or profit goals, MEGA could have continued to operate in the small group market in Maine, but we know that the company nevertheless chose to exit the small group market.

As set out in the MBI response to 45 CFR §158.321(d)(2)(vi), and unlike the positive underwriting results MEGA generated in the small group market before Maine's small group MLR standard was established, MEGA generated an underwriting loss of -$1.6 million and net after-tax loss of -$1.1 million in the Maine individual market in 2009. MEGA's State filings for 2008 and 2007 show that the company generated underwriting losses of -$2.4 million and -$0.2 million, respectively. Thus, MEGA has a history of reporting underwriting losses in the Maine individual market.[10] The MBI application does not address the causes of this financial performance nor how this will be sustained through 2014. But notably, MEGA appears to have been unprofitable in this market when subject to an MLR standard significantly lower than the 80 percent standard in the ACA that takes effect in 2011.

Under the MLR regulations, 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 the implementing regulation. For the application submitted by the MBI, the most recent statutory filings by issuers are for the year 2009, a two year lag behind 2011 results, the reporting year for which the 80 percent MLR standard would first apply. Data for the reporting year 2010 will not be filed with the NAIC until April 1, 2011 and will not be available in time to be considered as part of the MBI request.

The 2009 data are an imperfect proxy for the actual results MEGA may generate if it were held to the 80 percent standard in 2011. One reason for this is simply that these results pre-

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[9] See MEGA 2004 Rule 945 filing at: http://www.maine.gov/pfr/insurance/consumer/excel/2004_97055-MegaLifeandHealthInsCo_revised3.xls.

[10] See MEGA 2008 and 2007 Rule 945 filing at: http://www.maine.gov/pfr/insurance/consumer/excel/2008_MEGA_Rule945.xls and http://www.maine.gov/pfr/insurance/consumer/excel/2007_97055-Mega_LifeandHealth_Ins_Co-REV_1.xls.

date the passage of the ACA in March 2010, so there would have been no opportunity for MEGA to make any adjustments to its operations to accommodate the new law. Pricing and other business decisions impacting the MLR may have since been made and implemented. Even 2010 results will 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 the MLR had largely been made and implemented. Another limitation in using 2009 data for predicting the impact of the 80 percent MLR standard on 2011 results is that there generally can be variability in issuers' claims experience, financial performance, and reported MLRs from year to year. Notwithstanding these limitations, 2009 data remain the best available basis upon which to estimate the impact of the 80 percent standard, and these historical data are widely used by industry analysts.[11]

As requested under 45 CFR §158.321(d)(2)(iii), the MBI calculates that in 2009, MEGA generated a 68 percent MLR under the MLR definition provided in the ACA and implementing regulations (excluding potential credibility adjustments).[12] MEGA provides coverage to over 1,000 enrollees in the Maine individual health insurance market, and would therefore be subject to rebate payments if its MLR falls below the statutorily mandated 80 percent standard. After the application of the credibility adjustment available to issuers that enroll less than 75,000 enrollees, which the MBI calculates as 3.7 percent, MEGA's adjusted MLR in 2009 for purposes of calculating a rebate would have been 72 percent. Applying the MLR rebate provisions to MEGA's 2009 result yields an estimated rebate of $1.9 million, and an estimated net after-tax loss of -$3.0 million for MEGA's individual market business in Maine.

In order to satisfy an 80 percent MLR standard, it is evident that changes would be required to some combination of MEGA's operations and financial targets. In its basic form under the ACA and implementing regulation, the MLR is the ratio of monies spent on incurred claims and for quality improving activities to premium revenue (as adjusted for certain State and Federal taxes and fees). See 45 CFR §158.221. If, for example, there were no material changes to the amount of MEGA's incurred claims or expenditures for quality improving activities that would increase the reported MLR, then MEGA would either need to lower premiums to meet the 80 percent standard or risk paying rebates to its enrollees. Either of these actions would appear to lead to deterioration of the company's underwriting margin and net income. We note that in calculating MEGA's 2009 MLR using the ACA methodology, the MBI estimates that MEGA spends a very small amount, only 0.1 percent of premiums, on quality improving activities.

In light of this analysis and given MEGA's reaction to the imposition of an MLR standard in Maine's small group market in 2004, which at the time was profitable for MEGA, it is not unreasonable for the MBI to be concerned that MEGA may withdraw from the individual market.

Other data bear on the likelihood that MEGA would withdraw from the individual market. On one hand, as provided in the MBI's response to 45 CFR §158.321(d)(2)(viii), MEGA

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[11] For example, see UBS' August 2010 research report titled "MCOs – MLR Floor Sensitivity Analysis".

[12] We note that based on the MBI's calculations, MEGA's MLR as calculated under the State MLR definition is also 68 percent. Based on historical State filings, MEGA's 2008 and 2007 State MLR were 70 percent and 63 percent, respectively.

has a high risk based capital ("RBC") level of 1002 percent and currently maintains nearly $238 million in total adjusted capital, which is $190 million above the minimum level of capital a company must reserve without triggering required company or regulatory action. The MBI application did not address MEGA's strong RBC levels in light of its reported losses, nor its capacity to weather possible losses between now and 2014.

On the other hand, public documents filed with the Securities and Exchange Commission ("SEC") suggest MEGA has contemplated or will consider withdrawals in other markets and other changes to its overall business strategy. For example, in the State of Washington, MEGA's individually underwritten products are subject to a State MLR standard of 80 percent. MEGA's parent company, HealthMarkets Inc. ("HealthMarkets"), stated in an SEC filing that MEGA had "determined that it might not be in a position to operate on a profitable basis in Washington State," but subsequently chose to remain in the Washington market.[13] As the MBI points out, the same SEC filing for HealthMarkets also contains the statement that "a minimum medical loss ratio at or near the 80% level could ... compel us to discontinue the underwriting and marketing of individual health insurance and/or to non-renew coverage of our existing individual health customers in one or more states."

There is also some indication that HealthMarkets will shift its business strategy away from the issuance of health benefit policies, focusing instead on serving as an insurance producer though Insphere Insurance Solutions, Inc. ("Insphere"), its insurance agent subsidiary. HealthMarkets' SEC filings indicate that Insphere's sale of third party health insurance products has largely replaced the sale of HealthMarkets' own products. HealthMarkets states that "as a result of this trend," it will "significantly reduce the number of states in which the Company will market all of its health insurance products," although no specific States targeted for exit are mentioned.[14] On this point, however, the MBI asserts that it is unlikely that MEGA would leave Maine before 2014 if the MLR standard were adjusted to the requested level. The MBI argues that notwithstanding this change in business strategy, MEGA will remain in the Maine individual market until 2014 because MEGA's share of Maine's market has grown from 5 percent in 2004 to 37 percent in 2010. However, the MBI also predicts that long-term, MEGA is unlikely to "continue, after 2013, to offer individual health insurance products other than supplemental products not subject to the ACA." Therefore, the MBI suggests that, at best, MEGA would remain in the individual health insurance market only until 2014.

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

The MBI reports that, as of September 2010, MEGA has 13,732 individual market enrollees in Maine. This constitutes 37 percent of the Maine individual market. MEGA's market share clearly represents a significant portion of the market, and a MEGA withdrawal would materially impact a large number of enrollees, as well as the other issuers in the individual market if a material number of MEGA insureds sought coverage from them.

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[13] See page 23 of HealthMarkets 10-Q filing for the quarter ended September 30, 2010 at: http://www.sec.gov/Archives/edgar/data/773660/000095012310104139/c08233e10vq.htm.

[14] See page 30 of HealthMarkets' 10-Q filing for the quarter ended September 30, 2010.

C. Consumers' ability to access agents and brokers

The MBI's application does not discuss the impact of the 80 percent MLR individual market standard on access to agents and brokers in Maine. We note that in a letter submitted in support of an adjustment to the MLR standard, Senator Olympia Snowe suggested that MEGA's exit will "limit access to brokers" but does not expand on how such access could be impacted.

D. Alternate coverage options

For the Maine market, the primary concern regarding a MEGA exit is whether MEGA policyholders will have comparable alternate coverage options. As explained in the MBI's response to 45 CFR §158.321(b), the Superintendent does not have the authority, as some State insurance commissioners do, to require MEGA to arrange for its policies to be assumed by another issuer prior to MEGA's exit. MEGA policyholders would therefore have to obtain replacement coverage or forego coverage altogether.

Anthem and HPHC generated MLRs above the 80 percent MLR standard in 2009, and the MBI application does not indicate that either of these issuers is likely to leave the market in the absence of a modification to the MLR standard. In light of these circumstances, we assume that both issuers would remain in the market subsequent to the implementation of an 80 percent standard, and should MEGA exit the Maine market, PPO policies offered by either Anthem or HPHC would constitute coverage alternatives for current MEGA policyholders. These options are discussed in detail below. MEGA policyholders are unlikely to view the HMO options offered by Aetna Health, Anthem, or Harvard Pilgrim as comparable to current MEGA policies. These HMO policies are much more comprehensive and consequently more expensive than MEGA policies, and also have restrictive network requirements typical of HMO products, which suggest that HMO policies may not be comparable in scope or price to MEGA policies.

Maine requires guaranteed issue and modified community rating in the individual health insurance market. Therefore, MEGA policyholders could purchase any individual policy currently offered by another issuer, and health status has no bearing on eligibility or premium rates. Policyholders with pre-existing conditions will have coverage of their pre-existing conditions, provided they have not had any breaks in coverage in the 90 days prior to obtaining a new policy. These consumer protection provisions ensure that if MEGA exits the market, MEGA policyholders can purchase any coverage option that remains in the market and cannot be denied coverage due to health status. However, these protections do not ensure that MEGA policyholders will be able to purchase new policies of comparable price and benefit design to their old MEGA policy.

As previously noted, although Maine residents can purchase high-deductible policies from both Anthem and MEGA, Anthem policies are typically more comprehensive than MEGA policies. All Anthem policies, in addition to having no coinsurance requirements, provide coverage of a wide range of benefits not covered under MEGA policies, including maternity expenses, prescription drugs, and skilled nursing care. Likewise, all Anthem policies cover certain other benefits like physician office visits and mental health care, which must be purchased at an additional cost under a MEGA policy. The consequence of the more

comprehensive benefit package that Anthem plans offer is that Anthem policies typically are significantly more expensive than MEGA policies.

Based on the information provided by the MBI, price appears to be a significant consideration for consumers purchasing coverage in the Maine individual market. Although MEGA policies are less comprehensive than other coverage alternatives, nearly 14,000 Maine residents, comprising 37 percent of the individual market, still opt to purchase MEGA policies.

The following comparison based on data from the MBI displays the monthly premiums a single adult of various ages would pay for either an Anthem or a MEGA policy. This comparison is for policies with a deductible of $10,000. The comparison is not exact for two main reasons. One, as noted above, the Anthem policies have more comprehensive benefits. Additionally, once the $10,000 deductible is met, the Anthem policies have zero coinsurance while the MEGA policies have a coinsurance requirement of 20 percent up to an out-of-pocket maximum of $2,000. However, for a MEGA enrollee seeking alternative, comparable coverage, these may be the "most" comparable based on premiums and deductibles. In these examples, the Anthem policies are nearly twice as expensive as the MEGA policies.

Comparison of the Monthly Rate to Insure a Single Adult[15]

		Anthem Policy	MEGA Policy	Anthem Policy as a % of MEGA Policy Cost
Age	24	$260	$141	184%
	42	$325	$152	214%
	52	$350	$186	188%

The comparison shown below for a family of four shows that the difference between Anthem and MEGA benefit design is such that even for varying deductible levels, an Anthem policy costs nearly twice the monthly rate of a MEGA policy. Similar to the prior comparison, once the deductibles are met, the Anthem policies have no coinsurance obligations while the MEGA policies have a 20 percent coinsurance obligation up to a $2,000 out-of-pocket maximum.

[15] Rates shown are for a $10,000 high deductible policy for a non-smoking, single adult living in Portland, Maine. MEGA rates may vary based on smoking status or geography. Once the $10,000 deductible is met, Anthem policies have no coinsurance requirement, while MEGA policies have 20 percent coinsurance up to a $2,000 out-of-pocket maximum.

Comparison of the Monthly Rate to Insure a Family of Four[16]

		Anthem Policy	MEGA Policy	Anthem Policy as a % of MEGA Policy Cost
Deductible	$5000	$1112	$570	195%
	$10000	$822	$428	192%
	$15000	$523	Not Offered	N/A

We agree with the MBI that, given the difference in benefit design, an Anthem policy with a deductible level comparable to a MEGA policy may be an expensive alternate coverage option for most MEGA enrollees. And, while MEGA policyholders could opt to purchase Anthem policies with even higher deductibles in order to seek lower monthly payments, out-of-pocket costs will increase.

The chart below sheds some light upon this question. It shows the percentage distribution of policies across the eight different deductible and coinsurance structures offered by MEGA, as well as an indicative monthly cost for each type of plan structure for one adult and one dependent child. It also shows the incremental monthly cost to purchase an Anthem policy with either a $10,000 or a $15,000 deductible relative to each type of MEGA policy structure (also for one adult and one dependent child). These data are drawn from the information in the MBI's initial application and January 11 letter with respect to 45 CFR §158.321(d)(1).

As the chart shows, MEGA policyholders across all deductible levels could migrate to an Anthem policy with a $15,000 deductible for approximately the same or even lower monthly premiums. For example, MEGA policyholders in plans with $10,000 deductibles could purchase Anthem plans of comparable price with a $15,000 deductible (and more generous benefits). However, this would expose the policyholder to an additional $5,000 in out-of-pocket expense before the deductible is satisfied. The offsetting advantage of the "richer" Anthem policies (more generous benefits and zero coinsurance relative to coinsurance and out-of-pocket maximums under MEGA policies of either 20 percent up to $2,000 or 50 percent up to $5,000) is realized only after substantially higher out-of-pocket expenditures. In addition, over one-half of the MEGA policies are at deductibles of $5,000 or less. These policyholders would have their deductible levels increase by $10,000 or more if they chose this option.

[16] Rates shown are for two non-smoking adults age 40-42 and two dependent children living in the lowest cost geographic region based on MEGA rating factors. MEGA rates may vary based on smoking status or geography. Once the deductibles are met, Anthem policies have no coinsurance requirement while MEGA policies have 20 percent coinsurance up to a $2,000 out-of-pocket maximum.

Incremental Monthly Cost to Purchase an Anthem Policy Relative to a MEGA Policy[17]

Monthly Cost of MEGA Policies By Plan Structure				Incremental Monthly Cost to Purchase Anthem Policy with Deductible of:	
Deductible	Coinsurance	% Total MEGA Polices	Sample Cost	$10000	$15000
$3500	20%	25%	$369	$52	($102)
$3500	50%	2%	$350	$71	($83)
$5000	20%	27%	$336	$85	($68)
$5000	50%	2%	$320	$100	($53)
$7500	20%	16%	$290	$131	($23)
$7500	50%	3%	$279	$142	($11)
$10000	20%	15%	$270	$152	($1)
$10000	50%	10%	$260	$161	$8

In the absence of a comparable or desirable replacement Anthem policy, MEGA policyholders could also evaluate insurance options available through Dirigo, which is underwritten by HPHC. The Dirigo program determines participants' deductibles, coinsurance, and out-of-pocket maximums based on household income and assets. Deductibles range from $500 to $2,500, which are much lower than the deductibles under popular high-deductible Anthem and MEGA policies (which reach $15,000 and $10,000, respectively). Coinsurance for Dirigo policyholders is 20% until an out-of-pocket maximum, which varies by income and asset level, is reached. Dirigo's coinsurance requirement mirrors the most popular MEGA option, although out-of-pocket maximums under MEGA can be much higher. Dirigo's out-of-pocket maximums range from $1,600 to $5,600, while MEGA's out-of-pocket maximums can range from $2,000 to $10,000.

From a benefits coverage perspective, Dirigo policies are more comprehensive than MEGA policies. Dirigo, much like Anthem, provides coverage of benefits such as maternity expenses, prescription drugs, and skilled nursing care that are not covered under MEGA policies. Certain other benefits, for example physician office visits and mental health care, are also covered under all Dirigo policies but must be purchased at an additional cost under a MEGA policy. As a result of these richer benefits and lower deductibles and out-of-pocket maximums, Dirigo premium rates are much more expensive than "comparable" MEGA premium rates. For a single adult, Dirigo rates range from $548 to $700, while Maine provided sample rates under a MEGA policy for a single adult of $141 to $186.[18]

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[17] Rates shown are for one non-smoking adult age 32 and one dependent child living in the lowest cost geographic region based on MEGA rating factors. These rates include a sample cost for ambulatory care, accident, air ambulance, and emergency room riders, which over 75% of MEGA policyholders purchase. Actual MEGA rates may vary based upon the specific benefits chosen as well as the enrollee's characteristics. Once the deductibles are met, Anthem policies have no coinsurance requirement while MEGA policies have either 20 percent coinsurance up to a $2,000 out-of-pocket maximum or 50 percent coinsurance up to a $5,000 out-of-pocket maximum.

[18] Note that the range of MEGA premium rates is likely wider due to variations in price as a result of age, geography, smoking status, and the optional purchase of benefit riders.

However, because Dirigo premiums and out-of-pocket expenses are subsidized through the Dirigo program, the amount Dirigo policyholders actually pay may be lower than the full rates noted above. Discounts of 20 percent to 80 percent of the full Dirigo monthly rate are available to individuals and families that qualify under the income and "countable asset" tests. However, only MEGA policyholders with low household income may qualify for high enough discounts to mitigate the higher cost of Dirigo policies.

The MBI provided a distribution of MEGA policies by income levels. For the seven percent of MEGA policyholders with reported household incomes of below $14,000, Dirigo discounts of 80 percent may make Dirigo plans an affordable alternative source of coverage. Another seven percent of MEGA policyholders have household incomes of between $15,000 and $25,000 and eight percent have incomes between $25,000 and $35,000. Together, these 15 percent of MEGA policyholders could potentially qualify for premium discounts of 20 percent to 60 percent[19], but these discounts are likely insufficient in making Dirigo policies an affordable alternative. The remaining 78 percent of MEGA policyholders with incomes above $35,000 may not be eligible for any amount of discount since the discount is based on the household size, income and countable assets. However, these conclusions may differ based on the breakdown of MEGA policyholders' by household size, income and countable assets, and any affordability comparisons hinge upon the policy types purchased by these enrollees.

Moreover, the mere current availability of Anthem and Dirigo products in the Maine individual market does not necessarily guarantee that either issuer has the capacity to take on additional members if MEGA exits the market. While guaranteed issue requires all issuers to offer their policies to any individual, writing new policies may have corresponding capital requirements. However, the MBI did not address the potential impact of a MEGA withdrawal on Anthem's capital requirements, presumably because the MBI does not view Anthem's policies as a viable alternative for MEGA policyholders. Anthem has a risk based capital ratio of 687 percent, which is above the minimum 200 percent threshold that Maine requires of issuers.

A potential limitation for Dirigo as an alternative coverage mechanism, in addition to the cost of premiums for those who do not qualify for subsidies, is potential funding constraints. Under the Dirigo subsidy program, the cost of premiums for Dirigo policyholders is shared by participants (or participants' employers) and Dirigo. Funds for Dirigo subsidies are primarily generated through access fees assessed on issuers in the Maine insurance market. While the program is currently open, the MBI points out in its initial application that enrollment for the program has closed in the past. Dirigo's proposed budget for the State fiscal years 2012 and 2013 assumes the maintenance of enrollment levels as of fiscal year 2011, and Dirigo insured 7,832 standard enrollees as of January 2011 (the seventh month of Maine's fiscal year). If half of current MEGA policyholders hypothetically enrolled in Dirigo, this would nearly double the current standard enrollment in the Dirigo program. We assume, based on Dirigo's proposed budget, that if this happened it may potentially strain current funding. Thus, the ability of the Dirigo program to fund subsidies of additional members may be uncertain.

Finally, in considering alternate coverage options for MEGA policyholders, it should be noted that under State law the Superintendent has the authority to define one or more

[19] Assuming a single policyholder with countable assets of less than $15,000.

standardized individual plans required to be sold by all issuers in the Maine individual market. As a result, theoretically the Superintendent could require all issuers to offer policies comparable in benefit design to those currently offered by MEGA. If other issuers were mandated to offer policies with a standardized "catastrophic" benefit package, MEGA policyholders would have the option to purchase more comparable coverage from another issuer than currently exists today, although comparability in price would not be guaranteed.

However, in response to questions from CCIIO, the MBI suggests that "it is highly unlikely that Anthem would be able to offer the type of coverage MEGA now offers at comparable rates. Anthem has no experience in pricing or administering products of this type." The MBI also notes that a moratorium was recently placed on new regulations in Maine, temporarily restricting the Superintendent's ability to require the selling of a new standardized plan. The consequence is that, realistically, the MBI does not view this statutory power as a likely avenue to provide availability of a comparable product, sold at a comparable price, for current MEGA policyholders if MEGA leaves the Maine individual market.

Summarized simply, the market is characterized by only two private insurers with material enrollment in the individual market. The exit of MEGA would result in essentially a single insurer in the market. That insurer, Anthem, does not issue policies comparable in design and therefore affordability. The MBI has limited ability to provide alternative options for current MEGA enrollees, and the Dirigo program does not appear to be an affordable option for many MEGA insureds, although it could be for some.

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

There is little evidence suggesting that MEGA's exit and the lack of availability of this coverage would impact the benefits or cost sharing of remaining issuers. Anthem has apparently not sought to compete with MEGA by offering policies of comparable design, and so there would likely not be a concern that Anthem would now alter the benefits it provides today in response to the departure of a competitor. The MBI has also presented no evidence regarding the potential impact on premiums in the market should MEGA exit. In summary, there is no evidence presented that MEGA's withdrawal would adversely impact the remaining issuers' premiums, benefits, or cost-sharing provisions.

F. Other relevant information submitted by the State

The MBI notes that "it is unlikely that MEGA will continue, after 2013, to offer [in Maine] individual health insurance products other than supplemental products not subject to" the ACA. The MBI anticipates, however, that "starting in 2014, new carriers and coverage options will be available." The MBI believes these new options will include "new insurance companies likely to enter the market ...; the required two new multi-state insurance plans offered in every state beginning [in] 2014; and a nonprofit health insurer under the CO-OP program incentivized to be established." However, because the MBI does not anticipate the entry of these new carriers until 2014, the MBI believes that "it is important to allow Maine's consumers with MEGA coverage to be able to keep the coverage they have until then."

Responding to 45 CFR §158.321(d)(2)(v), the MBI calculates that MEGA would have paid rebates of $1.9 million based on its 2009 MLR if the Federal 80 percent MLR standard were in place. Because all other issuers have MLRs well above the 80 percent MLR standard, no other issuers are expected to pay rebates. If an adjustment is granted to a 65 percent MLR standard, the foregone value of rebates to consumers would therefore be the amount attributable to MEGA, or $1.9 million. If MEGA exited the individual market sometime in 2011 due to the implementation of an 80 percent MLR standard, no consumers would receive rebates other than the amount that may be required based on the 2011 period in which the company operated in Maine.

IV. Summary of Public Comments

CCIIO received three public comments in connection with the MBI'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_maine.html. One comment came from an individual[20] in opposition to the MBI's request. The commenter stresses that the decision regarding Maine will set a precedent for future State applicants, and that it should be "transparent, equitable, and consistent with the law." The commenter then suggests that the MBI should provide further support for why MEGA cannot lower administrative expenses or increase medical expenditures in order to meet the 80 percent standard, as well as provide further support for the lack of incremental phase-in toward a higher standard. The commenter then recommends at most a one-year adjustment to a 70 percent standard, and suggests that any adjustment grant should move the State closer to the 80 percent standard rather than maintaining the State's status quo.

We agree that this decision should be fully "transparent, equitable, and consistent with the law." To that end, all materials received by CCIIO from the MBI and all correspondence between CCIIO and the MBI have been publicly posted pursuant to 45 CFR §158.341. We have undertaken a careful assessment of the request pursuant to the criteria and standard in 45 CFR §§158.330 and 158.301, and the basis for our decision is explained in detail in this letter. We have requested from the MBI information regarding MEGA's administrative expenses and rationale for the MBI proposal, both pursuant to 45 CFR §§158.321(d) and 158.322 as well as in our follow-up questions to the information the MBI submitted. In short, we have considered in our analysis the points raised by the commenter.

CCIIO received two public comments from a national union representing workers in the hospitality, gaming, food service, manufacturing, textile, distribution, laundry, and airport industries. In both comments, the union opposes the MBI's adjustment request, asserting that HealthMarkets, MEGA's parent corporation, exemplifies the types of business practices that Congress intended to limit. The commenter highlights HealthMarkets' low nationwide MLR and the company's payment of dividends and participation in transactions with its two private equity investors. The commenter also describes HealthMarkets' history of regulatory noncompliance and ongoing litigation.

[20] This individual wrote in his individual capacity, but is a law professor and a consumer representative to the NAIC.

We acknowledge that HealthMarkets has been and is currently the subject of market conduct examinations and legal actions, as set out both in States' public records[21] and the company's publicly filed risk disclosures. We have reviewed the pertinent public documents and agree with the commenter that it suggests a record of regulatory noncompliance in a number of States. We note, however, that the MBI does not raise this concern in its application. Additionally, we do not see evidence of current regulatory non-compliance by MEGA in the Maine individual market.

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). Although §158.330 enumerates criteria that are relevant to this analysis, it does not identify any single criterion as dispositive to the analysis. However, the criteria enumerated serve to inform basic questions relating to the potential for market destabilization and its impact on consumers, such as the likelihood that one or more issuers may withdraw from the market and, if so, what coverage alternatives would be available to policyholders whose issuer has left the market. Some of the criteria bear on the issue of the likelihood of withdrawal (*i.e.* if an issuer is profitable and has a high risk-based capital level, it may be less likely to withdraw than one that is unprofitable and undercapitalized) and others bear on the ability of policyholders to obtain coverage elsewhere (*i.e.* the risk-based capital levels and profitability of remaining issuers, State laws regarding guaranteed issue, and alternative coverage mechanisms).

The preamble to 45 CFR Part 158 describes a guiding principle for making a determination on the MBI'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 MBI and conclude that, based on the application of the criteria and standard set out in section 2718, there is a reasonable likelihood that MEGA would exit the Maine individual market in the absence of an adjustment to the 80 percent MLR standard, and that MEGA's exit has a reasonable likelihood of destabilizing the Maine individual market. We

[21] For example, see the report of HealthMarkets' Multi-State Market Conduct Examination, posted on the website of the Washington Department of Insurance, at http://www.insurance.wa.gov/oicfiles/marketconduct/2007mc/megareportfinal.pdf.

believe the potential for a destabilized market exists because MEGA's departure could leave many of the approximately 14,000 MEGA policyholders with the prospect of materially higher premiums and out-of-pocket expenses in order to procure replacement coverage. As such, we believe there is a reasonable likelihood consumers could be harmed either through the significant additional financial burden for procuring such coverage, or because the coverage may be unaffordable and thus many may choose to drop their coverage altogether.

We reach these conclusions for many of the reasons outlined in the analysis under the criteria set out above, and based on several specific characteristics of the Maine market addressed in that analysis. As noted in Section III. A., MEGA, through the filings of its parent company HealthMarkets, has made public statements indicating the possibility of market withdrawals. Clearly, the MBI believes a MEGA withdrawal is possible, if not likely. MEGA in fact withdrew from the small group market in Maine when a new MLR standard was implemented. MEGA also appeared unprofitable in 2009, and the data suggest that notwithstanding the underwriting loss it posted in 2009, it would have been required to pay a rebate in 2009 had the provisions of the ACA been in effect at that time.

In addition to MEGA's demonstrated history of exiting another line of business in the State of Maine, MEGA had a 37 percent market share in the Maine individual market as of September 2010. This is a particularly high market share for a potentially departing issuer and is also a distinguishing factor of the MBI's application. As described in detail above, the coverage alternatives available from Anthem are not comparable to MEGA products and, as we described above, the Superintendent is limited in her ability to issue regulations requiring other issuers to issue policies comparable to MEGA's offerings. It is reasonable to believe that many of MEGA policyholders may not be able to afford these products. It also appears, as we describe above, that the Dirigo program could be a source of alternative coverage for some, but not the majority, of MEGA policyholders. And, as we described above, the Superintendent is limited in her ability to require the assumption of MEGA policies by other issuers. Finally, as the MLR regulation's preamble states, "while the focal point of any market destabilization analysis must be the manner in which any requested MLR adjustment may affect consumers," buyers "have numerous interests that extend beyond whether they will receive rebates, including an interest in multiple health insurance options." (75 Fed. Reg. 74886 (Dec. 1, 2010)). In short, MEGA's withdrawal would likely leave consumers with limited comparable alternative health insurance options.

Having reached the conclusion that an adjustment to the Maine MLR is appropriate, the remaining issue is whether to adopt the proposal from the MBI. The data that the MBI provided suggest that MEGA could meet an MLR standard of more than 65 percent as calculated under the regulation implementing section 2718. The MBI's data show that MEGA would have generated an estimated 68 percent MLR in Maine in 2009 prior to the application of the credibility adjustment provided in the MLR regulation. MEGA would have qualified for a 3.7 percent credibility adjustment, which would bring its MLR to 72 percent for the purposes of calculating a potential rebate under the ACA. However, all other things being equal and assuming an equivalent enrollment, the credibility adjustment would decline to 2.4 percent in 2012 due to the manner in which the credibility adjustment is applied across multiple years. Given this fact, coupled with the financial reports submitted by the MBI, it may not be advisable

to establish an MLR higher than that requested by the MBI if the goal is to effectively minimize the risk of market destabilization.

In setting the adjusted MLR for Maine at 65 percent as determined under section 2718, we next address the issue of the length of time this adjustment should apply. While we largely accept the MBI's basis for the request as outlined in this letter, we believe it is consistent with the statutory directive in section 2718 to grant a modification for three years, with the third year adjustment granted on the condition that the MBI submits data in 2012 indicating that a risk of destabilization remains. As we note in this letter, the data included in the application will be several years old by 2013. MEGA's financial condition, business priorities, and ability to satisfy the statutory standard could change significantly between now and 2013. Other market conditions could also change in the intervening time. Implicit in the requirements of section 2718 is a balancing of interests, in particular the interest of avoiding a potentially destabilized market balanced against the interests of consumers getting "value for their premium payments" as the Affordable Care Act intends. We believe it is in the best interests of health care consumers to update the data upon which the adjustment is based. For this reason, we are granting an MLR standard modification for three years, with the adjustment for 2013 conditioned on the submission of data by the MBI that CCIIO determines supports the need for such a continued adjustment.

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 Maine individual health insurance market is adjusted to 65 percent.

Pursuant to 45 CFR §158.346, the MBI 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,

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

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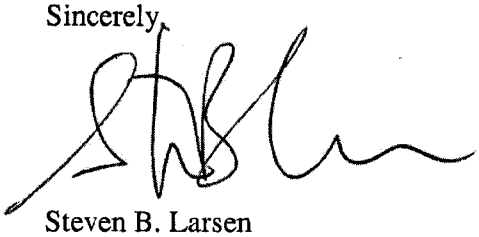

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