August 17, 2015

Kevin Patrick Beagan, Deputy Commissioner
Division of Insurance
1000 Washington Street, Suite 810
Boston, MA 02118-6200

RE: Division of Insurance Regulatory Review Comments

Dear Deputy Commissioner Beagan:

Minuteman Health, Inc. ("MHI") appreciates the opportunity to provide the Division of Insurance ("the Division") with comments on state regulations impacting the Commonwealth's health insurance market in accordance with Executive Order 562. First, we would like to offer our full support to related comments submitted by our trade association, the Massachusetts Association of Health Plans ("MAHP"). MAHP's comments outline a set of collective feedback from across the industry that can significantly help to reduce administrative burden among the health plans and foster greater competition in the merged market. Although we have not repeated those comments herein for the sake of efficiency, we would ask that you consider them to be incorporated by reference.

In addition to those comments, MHI is submitting three additional comments in relation to 211 CMR 25 (Risk-Based Capital for Insurers); 211 CMR 154 (Enforcement of Mental Health Parity) and unpublished guidance entitled "Minimum Standards and Guidelines for Insured Medical Health Benefit Plans Offered in Massachusetts in 2012."

Division of Insurance Financial Regulations

1. **211 CMR 25: Risk-Based Capital (RBC) for Insurers**

We suggest that the Division include a new subsection after 211 CMR 25.09 to address the situation where a carrier's RBC falls below the acceptable percentage due to a risk adjustment payment required under 956 CMR 13. The RBC regulations at 211 CMR 25 are designed to assist the DOI in monitoring the sufficiency of an issuer's capital in relation to its risk, and grants the DOI authority to intervene at predetermined thresholds to prevent insolvency.[1]

As stated in the final 2014 Benefit and Payment Parameter rule, which finalized the federal risk adjustment methodology, "the goal of the Affordable Care Act risk adjustment program is to mitigate

[1] National Association of Insurance Commissioners. Risk-Based Capital. Last updates 11/25/2014.

the impact of possible adverse selection and stabilize the premiums in the individual and small group markets as and after insurance market reforms are implemented."[2]

Certain market reforms included in the ACA – such as guaranteed issue and restrictions on rating based on health status – have the potential to lead to higher-cost individuals adversely selecting into plans, thus driving up premiums. At the same time, insurers may engage in risk selection practices to discourage higher-cost individuals from selecting their plans. Risk adjustment was desgined to counteract these two potential market destabilizers by spreading risk among plans based on their respective risk scores: plans with lower-than-average risk scores will be required to make payments to plans with higher-than-average risk scores. The payments are calculated using the plans's risk scores and a baseline premium amount. Thus, the purpose of risk adjustment is to discourage insurers from engaging in risk selection, and/or to subsidize those insurers who are negatively affected by adverse selection.[3]

MHI fully supports these admirable goals of the ACA risk adjustment program, but the practical impact of the Massachusetts Risk Adjustment program has been to harm the Commonwealth's consumers and the overall stability of the Massachusetts insurance market. The Masachusetts Risk Adjustment Program is fundamentally flawed in two ways. First, the calculation of risk scores itself has flaws. Second, the resulting risk score is then applied to a market average premium and not a carrier's own premium. There are other significant issues, such as the fact that the methodology penalizes issuers that focus on developing products for price-sensitive consumers, and the fact that the methodology ensures that payors will always loss money on members with zero Hierarchal Condition Categories who are nonetheless incurring claims and administrative costs. The ultimate impact of these flaws is that smaller, more innovative issuers are penalized to the advantage of the state's most expensive, inefficient issuer.

We believe the Divison can amend its existing RBC regulations to provide specific authority for the Division to intervene in a risk adjustment payment or reconsideration under 956 CMR 13 when a risk adjustment payment threatens the financial solvency of a Massachusetts insurer.

Specifically, we urge the Division to adopt language that would permit it to require an automatic Reconsideration where a risk adjustment payment would cause an Issuer's RBC to fall within the definition of either Authorized or Mandatory Control Levels as defined in 211 CMR 25. Such an automatic Reconsideration will substantially reduce the probability that an Issuer will be rendered insolvent because of a payment under 956 CMR 13.

---

[2] HHS Notice of Benefit and Payment Parameters for 2014. 78 Fed. Reg. 15410, 15412. March 11, 2013.
[3] Explaining Health Care Reform: Risk Adjustment, Reinsurance, and Risk Corridors. Kaiser Family Foundation. Jan. 22, 2014.

We also ask the Division to consider adding automatic intervention rights when the Division determines that a risk adjustment payment would jeopardize the solvency of an issuer outside the RBC limits or otherwise destabilize the market, in contravention to the stated purpose of the program. The Division has majority jurisdiction over solvency and the merged market, and should therefore be able to intervene when, it its expert judgment, it believes the Risk Adjustment Program will harm Massachusetts' consumers, issuers or the merged market.

Division of Insurance Health Insurance Regulations

1. **211 CMR 154.00: Enforcement of Mental Health Parity**

MHI is committed to upholding state and federal mental health parity in the Commonwealth. However, we believe that the existing state mental health parity regulations at 211 CMR 154 could benefit from several clarifying edits. We have included suggested redline edits below:

1. 211 CMR 154.02 Federal Mental Health Parity Law: Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAE) and any amendments promulgated thereafter.

2. 211 CMR 154.02 (2)(a) Prior to July 1st in each year, Carriers must review their administrative and other practices, including those delegated to subcontracting organizations, for the prior calendar year for compliance with the relevant provisions of State Mental Health Parity Laws and Federal Mental Health Parity Law.~~, and any interim or final regulations, guidelines, sub-regulatory guidances, or related instructions that have been issued or promulgated by the Federal Mental Health Parity Law Agencies in their exercise of appropriate authority over Federal Mental Health Parity Law.~~.

3. 211 CMR 154.03(2)(b) On or before July 1st in each year, Carriers are required to submit a certification to the Division of Insurance and the Office of the Attorney General signed by the Carrier's ~~chief executive officer and~~ chief medical officer that states that the Carrier has completed a comprehensive review of the administrative practices of the Carrier for the prior calendar year for compliance with the necessary provisions of State Mental Health Parity Laws and Federal Mental Health Parity Law.

4. 211 CMR 154.05 The Commissioner may order the following penalties if he or she finds, after hearing held pursuant to M.G.L. c. 30A, that a violation of M.G.L. c. 26, §8K or 211 CMR 154.00 has occurred:

   (1) A corrective action plan and a timeframe to achieve compliance;

(2) A civil fine not to exceed $ 10,000 for each violation;

(3) For those violations found to have occurred intentionally and due to willful disregard of State Mental Health Parity Laws and Federal Mental Parity Law, ~~S~~suspension or revocation of a Carrier's accreditation; and/or

(4) For those violations found to have occurred intentionally and due to willful disregard of State Mental Health Parity Laws and Federal Mental Parity Law, s~~S~~uspension or revocation of a Carrier's license or certificate of authority.

Minimum Standards and Guidelines for Insured Medical Health Benefit Plans Offered in Massachusetts in 2012

Finally, we ask that the Division clarify the applicability of draft guidance that was shared with MHI in 2014 during our first product filing that is entitled “Minimum Standards and Guidelines for Insured Medical Health Benefit Plans Offered in Massachusetts in 2012” (“Draft Guidance”). We understand that the Draft Guidance was created in April of 2012 but never finalized. We also understand that the Division does still enforce certain aspects of the Draft Guidance.

We respectfully ask that the Division revisit and revise the content to ensure alignment with the Patient Protection and Affordable Care Act, and to provide for a public comment period if appropriate. Additionally, we would ask the Division to update both the Health Maintenance Organization and Preferred Provider Organization filing checklists with any new information contained in the Draft Guidance for easy of product filing.

Conclusion

MHI is committed to the continued success and competitiveness of the Massachusetts merged market, and commends Governor Charlie Baker’s efforts to reduce administrative burden and cost through this regulatory review. We believe the comments outlined above, in addition to the comments submitted by MAHP, will go a long way to optimizing the merged market for the benefit of the Commwealth’s residents and insurers alike. Please contact Laura Cohen, Regulatory Counsel at Minuteman Health, Inc. if you have additional questions or concerns.

Sincerely,

Laura Cohen
Regulatory Counsel
lauracohen@minutemanhealth.org
857.265-3218
P.O. Box 120025
Boston, MA 02112-0025