RETAILERS ASSOCIATION of MASSACHUSETTS
The Voice of Retailing

December 20, 2012

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

RE: CMS-9972-P Health Insurance Market Rules

Dear Secretary Sebelius:

A statewide trade association representing over 3,400 member companies from the retail sector, the Retailers Association of Massachusetts (RAM) respectfully requests your important assistance in ensuring that the lessons learned and innovations implemented in Massachusetts under our model healthcare reform law are fully understood and are not in any way preempted or derailed through integration of the Affordable Care Act (ACA).

While appearing on Meet the Press in June of 2009, you responded to a question about the experience of small businesses in Massachusetts and their healthcare costs with the following: "I've had a lot of discussions with the Massachusetts individuals, including the head of their retail association, who was very involved in passing the bill. He said they made a fundamental mistake, they did this as two steps; they went for universal coverage, now they have a group back at the table revisiting the costs." RAM appreciates your recognition of the cost issues facing small businesses and thanks you for your efforts, as well as those of the Patrick Administration and the legislative leadership in Massachusetts to fix the cost problem for employees of small businesses here in the Commonwealth.

Now RAM must ask for your help in making sure our innovative efforts and solutions are permitted to continue. Enclosed please find a copy of RAM's comments to the Centers for Medicare and Medicaid Services (CMS) regarding their proposed regulations on Health Insurance Market Rules (CMS-9972-P). Of particular concern are the provisions focusing on individual and small group community rating factors.

If strictly construed as a ceiling, as opposed to a rate setting floor, the four factors enumerated in the proposed rule will result in very large, double-digit rate increases for small businesses as, all other longstanding rating factors currently utilized here in the Commonwealth would be prohibited. This includes a rate adjustment factor essential to the continued operation of an innovative, small business group purchasing cooperative effort in Massachusetts designed to level the playing field between those who work for small businesses versus those who work for big business or big government.

The common misconception is that small businesses want equality with other small businesses in the health care arena. That is simply wrong. What they and their employees really want is equality in products, flexibility, tools, legal rights and premium costs with their big business competitors. Massachusetts has taken strides toward accomplishing this goal through the creation of the aforementioned non-profit small business health insurance purchasing cooperatives, authorized by legislation unanimously passed by our Legislature and granted by application to the Division of Insurance.

As a certified cooperative, RAM has already begun to offer our small business members a number of programs which until now have not been available to them, including defined contribution plans and meaningful wellness programs. The defined contribution model allows each member business to offer their employees more than one plan to choose from as opposed to the merged market norm of one plan per company. This allows the employee to choose the plan that is right for them and their family rather than the one plan chosen by their employer. As for our wellness program, a robust offering of educational content aims to create healthier and better consumers of health care, which when coupled with the cooperative rate adjustment factor, can result in a real financial incentive through future premium reductions for our members. RAM continues to seek out similar opportunities for introduction into the marketplace in Massachusetts, but needs your help to protect the mechanism through which this is possible.

As government now requires health insurance coverage for its residents, opportunities for better health and lower costs should not discriminate based upon where you work. If employees of small businesses do not have similar abilities to benefit financially through collective efforts to get healthier, then healthcare mandates may not survive economically, legally or politically.

RAM asks that you to consider our innovative efforts in Massachusetts which came about as a result of six years of experience under mandated health insurance. Please allow our efforts to continue in Massachusetts, and just as the ACA is in a large measure based upon our Chapter 58 of the Acts of 2006, we believe our small business reforms and efforts will become a model for the rest of the country under the ACA.

RAM stands ready to travel to Washington D.C. to discuss with you this vital issue.

Best wishes for the New Year, and the important work of fair implementation of the ACA.

Sincerely,

Jon B. Hurst

Jon B, Hurst

Enclosure

cc: Massachusetts Congressional Delegation, Massachusetts Governor Deval Patrick, Massachusetts Speaker Robert A. Deleo, Massachusetts Senate President Therese Murray, et al.

Impact of CMS—9972-P on Small Businesses in MA

Jon Hurst, Retailers Association of MA
Peter Forman, South Shore Chamber/MA Association of Chamber of Commerce Executives

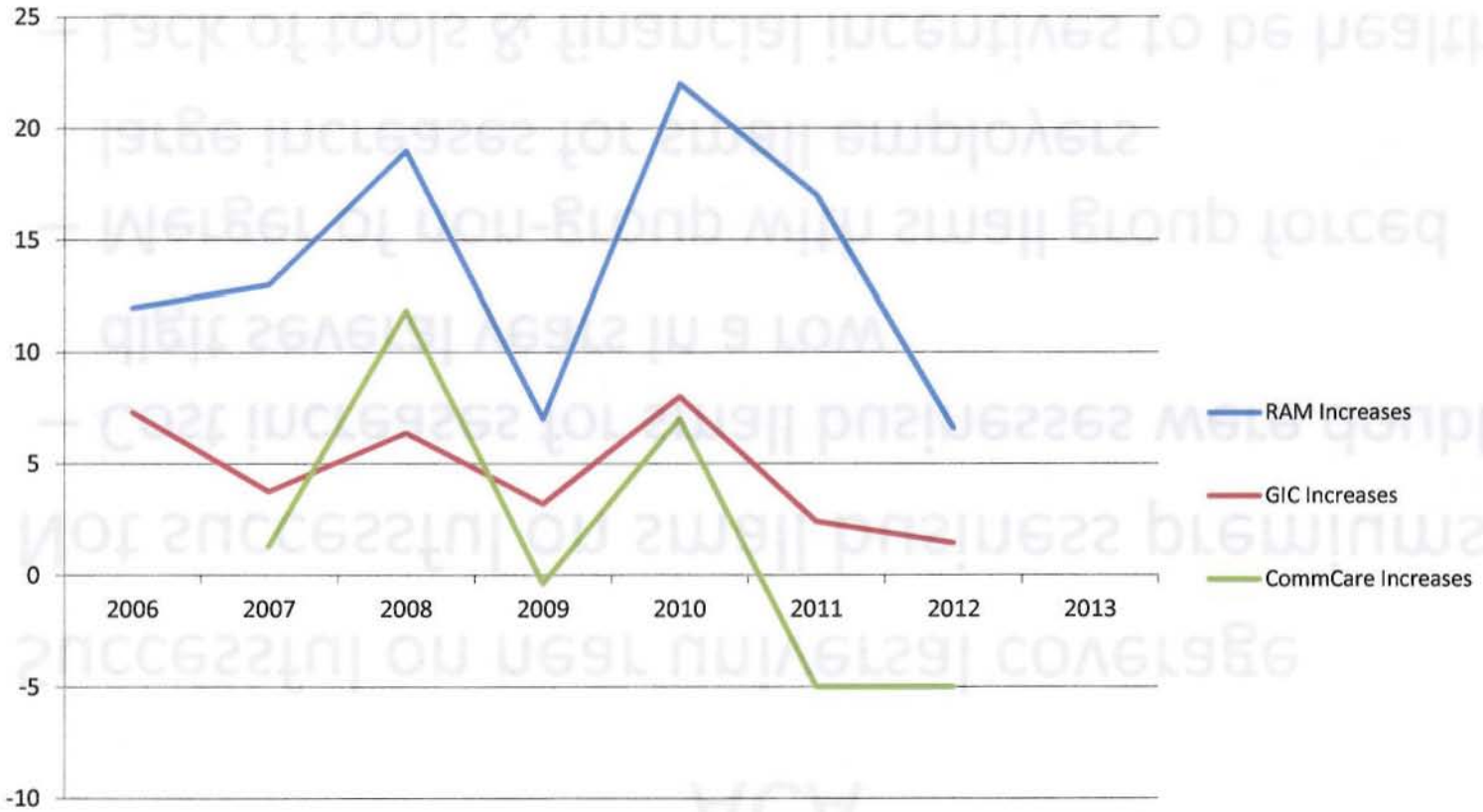
Incomplete Cost Benefit Analysis

- CMS includes in their regulatory analysis the benefit of universal coverage— specifically citing the MA reform effort— BUT
- Ignores the significant costs to MA small businesses resulting from such actions.
- We request OIRA to return the proposed regulations to CMS to for further analysis of these costs.

Ch. 58 of 2006—The Model for the ACA

- Successful on near universal coverage
- Not successful on small business premiums
  - Cost increases for small businesses were double digit several years in a row
  - Merger of non-group with small group forced large increases for small employers
  - Lack of tools & financial incentives to be healthier & more educated consumer of health care

MA Rate Increase Comparison



Response from Governor Deval Patrick & Legislature

- Establishment of small business cooperatives
  - designed to provide small employers a seat at the table with providers & insurers
  - creates new choices & levels the playing field by making wellness a reality with financial returns.
- Marketplace & rating reforms

Small Business Cooperatives

- Provides a direct wellness discount to the membership
  - —Based on cooperative rating factor created by enabling law
  - —33% wellness participation requirement
  - —Initially 3% with potential for growth
- Through active engagement employees are educated and directly assisted with financial incentives, to deal with current or future chronic conditions.
- Allows like-minded consumers to benefit financially from their efforts to become healthier and better consumers of health care services.

Issue with CMS-9972-P

- Focus on availability of individual coverage and standardization of the marketplace neglects impact on small businesses
- Regulations must consider premiums, tools & choice differential between small businesses and big businesses
- Limiting small market to 4 rating factors ignores aforementioned cost concerns and removes the ability of States to address them

Eliminated MA Rating Factors

- Group Purchasing/Wellness Cooperative Factor
- Industry Rating Factor
- Group Size Rating Factor
- Participation-Rate Rating Factor
- Restriction on Age Rating
- Plus Merger of Large Group & Potential Move From 2:1 to 3:1 Bandwidths

Results of State Rating Factor Elimination

- Dramatic 2014 premium increases for groups of 10-100, with further reductions for individuals who benefited from merger of non-group & small group
- Removal of cost containment tools for small group consumers
- Likely dramatic increase in self-insurance for larger employers
- Some drop in coverage
- "Death Spiral" for those remaining

Recommendations

- Request CMS to reconsider the costs and benefits of adopting these regulations
- Amend CMS-9972-P to make four rating factors a "floor requirement" rather than "ceiling"
- Include in CMS-9972-P a waiver for MA & other states so requesting

Summary

- In order for gov't requirements to offer & buy insurance to work economically, politically & legally long-term, equal rights, choices & cost containment tools must be available to all, regardless of employer size
- Wellness is the best tool anyone has to control future costs & premiums
- To not allow collaborative efforts & financial incentives to offer wellness is discriminatory

Summary

- In order for taxpayers to afford & buy
  insurance or work economically & efficiently, policymakers
  must ensure that 'user-pay' equal rights, 'rights' & costs
  are considered equally.
- All of these tools must be available to all
  taxpayers to develop and test the validity of
  control & premium
  future cost & premium
- To put collaborative walls around & trust is
  increasingly important to avoid

RETAILERS ASSOCIATION of MASSACHUSETTS
The Voice of Retailing

February 6, 2013

Boris Bershteyn
Acting Administrator
Office of Information and Regulatory Affairs
725 17th St, NW
Washington, DC 20503

RE: CMS-9972-P

Dear Administrator Bershteyn,

The Retailers Association of Massachusetts (RAM), established in 1918, is a statewide trade association of over 3,500 member companies. Our membership ranges from independent, "mom and pop" owned stores to larger, national chains operating in the general retail, restaurant and service sectors of the retail industry. The industry's contributions to the Commonwealth of Massachusetts include over $112 billion in annual sales; over $5.7 billion in annual sales and use taxes collected; 17% of all Massachusetts jobs; and operations in over 38,000 locations across the state.

One of RAM's primary functions as a trade association is the provision of a wide range of benefit programs to our membership. Our list of benefit programs includes the RAM Health Insurance Cooperative (RAMHIC), through which we provide our small business members more options for their health insurance coverage at a more affordable price than they would receive in the open market.

On behalf of our membership, RAM submits for your consideration the following comments regarding proposed rule CMS-9972-P, Health Insurance Market Rules, recently proposed by the Centers for Medicare & Medicaid Services, and currently under review by Office of Information and Regulatory Affairs pursuant to Executive Order 12866. In addition, RAM respectfully requests a meeting with the Office of Information and Regulatory Affairs to discuss our concerns with the aforementioned regulation.

Massachusetts Market

Following the adoption of the landmark healthcare reform law in 2006, Massachusetts has already implemented a number of the reforms contained in the

Patient Protection and Affordable Care Act (ACA). While these reforms have been successful in achieving near universal health coverage in Massachusetts, they have failed to address the issue of inequitable costs of coverage for small businesses.

Beginning with the Commonwealth's shift to a merged market system in 2006, small businesses have experienced disproportionate premium increases when compared to large employers, including state and local governments. In addition to the increases caused by the subsidization of the non-group market, small businesses also experienced increases due to minimum credible coverage requirements and increases in mandated benefits – the latter of which is a driver that large employers may avoid by self-insuring.

Further adding to this disparity has been the inability of small businesses to take advantage of essential cost containment tools, such as wellness programs, due to the community rating structure imposed on the merged market. Large, self-insured employers investing in wellness to prevent and treat chronic conditions for their employees, commonly see a 15% premium savings in return for their investment. However, small businesses in the merged market, who need these tools the most, face discrimination under the law as community rating prevents wellness investments from resulting in direct premium savings. With wellness being one of the biggest keys to control healthcare costs in the future, small businesses' premiums will continue to skyrocket if they are not given the financial incentive to invest in wellness, and the education on how to best purchase health care services for both their business and their employees.

The result of these disparities for RAM small business members has been an average annual premium increase of 15% on their health insurance premiums from 2006 to 2011. That is a 90% cumulative increase during one of the worst economic downturns in our country's history. Many even saw premiums double, forcing them to repeatedly buy down – elect higher co-pays, higher deductibles and increases in employee premium contributions – in their effort to make coverage affordable.

Small Business Group Purchasing Cooperatives

Recognizing these disparities in the marketplace and under the law, Massachusetts statutorily authorized the creation of six small business group purchasing cooperatives through Chapter 288 of the Acts of 2010, "An Act to Promote Cost Containment, Transparency, and Efficiency in the provision of Quality Health Insurance for Individuals and Small Businesses." The cooperatives are designed to level the playing field for small businesses by allowing them to group together to increase their bargaining power when purchasing health insurance. This provides small employers with a seat at the table with big health care, thus creating the opportunity for the cooperatives to craft innovative and cost saving plan designs and options tailored to the needs of their small business members and their employees.

The law requires all plans offered through the cooperatives to also be available for all small businesses but provides for a cooperative rate adjustment factor determined through negotiations between the cooperative and the carrier, subject to the approval of the Massachusetts Division of Insurance (DOI). The result is an upfront discount for cooperative participants as well as an overall increase in small business friendly and consumer driven products in the marketplace. The law also requires the cooperatives to offer wellness and education programs and to maintain

certain member participation thresholds therein. For the first time, small businesses and their employees have the opportunity to see real financial returns in future premiums by joining together and creating a healthier and better educated consumer through wellness efforts.

The law designates the DOI as the regulatory agency responsible for the oversight of the cooperative program. The regulatory framework promulgated by the DOI includes a comprehensive approval and renewal process as well as stringent reporting requirements designed to ensure protection of the consumer and compliance with the law. To date, three organizations, including RAM, have been approved by the DOI to operate as certified group purchasing cooperatives. Of the three, RAM and the Massachusetts Association of Chamber of Commerce Executives (MACCE) are currently operating in the marketplace. By demonstrating their commitment to creating a healthier, more educated population of health care consumers through adoption of wellness participation requirements beyond what is required by the law, these cooperatives have been able offer members between a 3% and 5% discount on premium rates, with the potential to increase such discounts in the future based on collective results.

The cooperative concept follows six years of experience under a mandated universal health insurance law in Massachusetts. It is an innovative approach, strongly supported by our elected and regulatory officials, and should be permitted to continue under the ACA. This approach can serve as a model for the other 49 states as well as an effective alternative, if not effective partner, to the efforts of the exchanges created by the ACA.

CMS-9972- Health Insurance Market Rules; Rate Review

Having reviewed the proposed regulatory changes, RAM applauds the goal of protecting the ability of individuals and small groups to access affordable health insurance coverage at a fair price when compared to others within that pool. However, as our experience in Massachusetts has indicated, it is equally as important to address the issue of premium disparities across purchaser size and type as well. It is simply unfair to require small businesses to offer and purchase health insurance, if their opportunities and pricing are not relatively equal to those of their big business competitors. Such a scenario is not economically, politically or legally sustainable as it is borderline discriminatory.

For Massachusetts, the solution has been the statutory adoption of various rating factors aimed at addressing the disparities unique to the marketplace in Massachusetts. RAM strongly suggests that the final rules be revised to include provisions which would allow states the continued utilization of such factors.

Rating Factors

Pursuant to the ACA, section 147.102 of the proposed regulations provide insurance carriers a list of four rating factors which may be utilized in determining rates for health insurance coverage in the individual and small group markets. Strictly construed, this provision would prohibit the use of a number of rate adjustment factors which have been adopted by states to address irregularities in their markets, particularly those states operating in a community rated market system. The prohibition of these factors would result in significant market disruption and increased costs to many individuals and small businesses in the merged market.

In Massachusetts, for example, removing the ability to use industry as a rating factor would significantly increase costs for low risk industries by forcing the subsidization of those industries presenting higher risks. Similarly, removing the cooperative rating factor would eliminate the ability of like-minded small businesses committed to making themselves healthier and smarter healthcare consumers from realizing lower premiums compared those who do not make such efforts. In short, this rule eliminates the ability of the merged market consumer from proactively impacting their costs by removing the financial incentives to get healthier.

As such, RAM respectfully requests that these proposed rules be amended in a manner that would protect premium discounts currently being utilized by states. In particular, proposed §147.102 should be amended to clarify what additional discounts may be applied to a premium rate once it has been calculated according to the four factors provided. Specifically we request that the section state that nothing in the rule should be construed to preclude a state from allowing health insurance carriers to offer additional discounts and incentives approved by the insurance regulator of that state.

The justification for the adoption of this suggested amendment derives from the Fair Health Insurance Premiums provisions of section 2701 of the ACA which states:

"IN GENERAL.—With respect to the premium rate charged by a health insurance issuer for health insurance coverage offered in the individual or small group market—

''(A) such rate shall vary with respect to the particular plan or coverage involved only by—

''(i) whether such plan or coverage covers an individual or family;

''(ii) rating area, as established in accordance with paragraph (2);

''(iii) age, except that such rate shall not vary by more than 3 to 1 for adults (consistent with section 2707(c)); and

''(iv) tobacco use, except that such rate shall not vary by more than 1.5 to

The use of the words "IN GENERAL" is indicative of the intent to allow for flexibility in the application of additional factors or discounts. This interpretation is supported by the fact that participation in a wellness program has not been included as one of the enumerated factors. Yet according to proposed rule CMS-9979-P, issued alongside this proposal, wellness is a permissible reason for receiving a premium discount or rebate.

In addition, as the majority of states do not currently operate under a community rated system, RAM would suggest that these enumerated factors are intended to serve as baseline for those states required to implement community rating rather than a ceiling for states already operating in such a system.

As the ACA is implemented, it is vital that employees of small businesses have similar choices and costs as those who work for big business and government. Similarly, for both employee recruitment purposes and for profitability and competitive reasons, small businesses cannot be denied the ability to be innovative through education and wellness initiatives. Preempting such innovation means that employees of small businesses are second class citizens in the health care market and under the law — with no clout, no tools and no financial incentives to do better — and that is not a scenario which should be allowed to occur.

RAM appreciates your hard work reviewing these proposed rules as well as your time and consideration of our comments. If upon review there are any questions regarding these comments please feel free to contact RAM by the phone number or email address provided. We look forward to hearing from you regarding our requested meeting.

Sincerely,

Jon B. Hurst

Jon B. Hurst
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RETAILERS ASSOCIATION
of MASSACHUSETTS
The Voice of Retailing

December 20, 2012

Marilyn Tavenner
Acting Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention CMS-9972-P
P.O. Box 8012
Baltimore, MD 021244-1850

RE: CMS-9972-P

Dear Administrator Tavenner,

The Retailers Association of Massachusetts (RAM), established in 1918, is a statewide trade association of over 3,400 member companies. Our membership ranges from independent, "mom and pop" owned stores to larger, national chains operating in the general retail, restaurant and service sectors of the retail industry. The industry's contributions to the Commonwealth of Massachusetts include over $112 billion in annual sales; over $5.7 billion in annual sales and use taxes collected; 17% of all Massachusetts jobs; and operations in over 38,000 locations across the state.

One of RAM's primary functions as a trade association is the provision of a wide range of benefit programs to our membership. Our list of benefit programs includes the RAM Health Insurance Cooperative (RAMHIC), through which we provide our small business members more options for their health insurance coverage at a more affordable price than they would receive in the open market.

On behalf of our membership, RAM submits for your consideration the following comments regarding proposed rule CMS-9972-P, Health Insurance Market Rules, currently before the Centers for Medicare & Medicaid Services.

Massachusetts Market

Following the adoption of the landmark healthcare reform law in 2006, Massachusetts has already implemented a number of the reforms contained in the Patient Protection and Affordable Care Act (ACA). While these reforms have been successful in achieving near universal health coverage in Massachusetts,

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they have failed to address the issue of inequitable costs of coverage for small businesses.

Beginning with the Commonwealth's shift to a merged market system in 2006, small businesses have experienced disproportionate premium increases when compared to large employers, including state and local governments. In addition to the increases caused by the subsidization of the non-group market, small businesses also experienced increases due to minimum credible coverage requirements and increases in mandated benefits – the latter of which is a driver that large employers may avoid by self-insuring.

Further adding to this disparity has been the inability of small businesses to take advantage of essential cost containment tools, such as wellness programs, due to the community rating structure imposed on the merged market. While large employers may utilize such tools to improve their claims data resulting in premium savings, those in the merged market that need the tools the most cannot. With wellness being one of the biggest keys in controlling healthcare costs in the future, the costs of small businesses will continue to skyrocket if they are not given the financial reasons to invest in wellness and the education on how to purchase health care services for both their business and their employees.

The result of these disparities for RAM small business members has been an average annual premium increase of 15% on their health insurance premiums from 2006 to 2011. That is a 90% cumulative increase during one of the worst economic downturns in our country's history. Many even saw premiums double, forcing them to repeatedly buy down – elect higher co-pays, higher deductibles and increases in employee premium contributions – in their effort to make coverage affordable.

Small Business Group Purchasing Cooperatives

Recognizing these disparities, Massachusetts statutorily authorized the creation of six small business group purchasing cooperatives through Chapter 288 of the Acts of 2010, "An Act to Promote Cost Containment, Transparency, and Efficiency in the provision of Quality Health Insurance for Individuals and Small Businesses." The cooperatives are designed to level the playing field for small businesses by allowing them to group together to increase their bargaining power when purchasing health insurance. This provides cooperatives with a seat at the table with big health care thus creating the opportunity for the cooperatives to craft innovative and cost saving plan designs and options tailored to the needs of their small business members.

The law requires all plans offered through the cooperatives to be based on products available in the merged market by the issuing carrier but provides for a cooperative rate adjustment factor determined through negotiations between the cooperative and the carrier, subject to the approval of the Division of Insurance (DOI). The law also requires the cooperatives to offer wellness and education programs and to maintain certain member participation thresholds therein. For the first time, small businesses have the opportunity to see real financial returns in future premiums by joining together and creating a healthier and better educated consumer through wellness efforts.

The law designates the DOI as the regulatory agency responsible for the oversight of the cooperative program. The regulatory framework promulgated by the DOI includes a

comprehensive approval and renewal process as well as stringent reporting requirements designed to ensure protection of the consumer and compliance with the law. To date, three organizations, including RAM, have been approved by the DOI to operate as certified group purchasing cooperatives. Of the three, RAM and the Massachusetts Association of Chamber of Commerce Executives (MACCE) are currently operating in the marketplace. By demonstrating their commitment to creating a healthier, more educated population of health care consumers through adoption of wellness participation requirements beyond what is required by the law, these cooperatives have been able offer members between a 3% and 5% discount on premium rates.

The cooperative concept follows six years of experience under a mandated universal health insurance law in Massachusetts. It is an innovative approach, strongly supported by our elected and regulatory officials, and should be permitted to continue under the ACA. This approach can serve as a model for the other 49 states as well as an effective alternative, if not effective partner, to the efforts of the exchanges created by the ACA.

Recommendations for CMS

Having reviewed the proposed regulatory changes, RAM applauds the ACA's goal of protecting the ability of individuals and small groups to access affordable health insurance coverage at a fair price when compared to others within that pool. However, as our experience in Massachusetts has indicated, it is equally as important to address the issue of premium disparities across purchaser size and type as well. It is simply unfair to require small businesses to offer and purchase health insurance, if their opportunities and pricing are not relatively equal to those of their counterparts. Such a scenario is not economically, politically or legally sustainable as it borderline discriminatory.

RAM strongly suggests that the final rules promulgated by CMS include provisions which would allow for the continued operation of small business group purchasing cooperatives. RAM believes the following actions may serve to accomplish this request.

Rating Factors

Pursuant to the ACA, section 147.102 of the proposed regulations provide insurance carriers a list of four rating factors which may be utilized in determining rates for health insurance coverage in the individual and small group markets. Strictly construed, this provision would prohibit the use of a number of rate adjustment factors which have been adopted by states to address irregularities in their markets, particularly those states operating in a merged market system. The prohibition of these factors would result in significant market disruption and increased costs to many individuals and small businesses in the merged market.

For example, a shift in the age rating factor to a 3:1 rating band would significantly increase costs for older individuals in Massachusetts where the rating band is currently 2:1. In other states where the band is larger than the proposed federal threshold, the result of implementation will be healthier, younger individuals being charged more. Similarly, removing the ability to use industry as a rating factor would significantly increase costs to low risk industries as they would then have to subsidize those industries presenting higher risks. Finally, in Massachusetts specifically, removing the cooperative rating factor would eliminate the ability of like-minded

small businesses committed to making themselves healthier and smarter healthcare consumers from realizing lower premiums compared those who do not make such efforts. In short, this rule eliminates the ability of the merged market consumer from proactively impacting their costs.

As such, RAM respectfully requests that these proposed rules be amended in a manner that would protect premium discounts currently being utilized by states. In particular, proposed §147.102 should be amended to clarify what additional discounts may be applied to a premium rate once it has been calculated according to the four factors provided. Specifically we request that the section state that nothing in the rule should be construed to preclude a state from allowing health insurance carriers to offer additional discounts approved by the insurance regulator of that state.

The justification for CMS to adopt the suggested amendment derives from the Fair Health Insurance Premiums provisions of section 2701 of the ACA which states:

> "IN GENERAL.—With respect to the premium rate charged by a health insurance issuer for health insurance coverage offered in the individual or small group market—
> ''(A) such rate shall vary with respect to the particular plan or coverage involved only by—
> ''(i) whether such plan or coverage covers an individual or family;
> ''(ii) rating area, as established in accordance with paragraph (2);
> ''(iii) age, except that such rate shall not vary by more than 3 to 1 for adults (consistent with section 2707(c)); and
> ''(iv) tobacco use, except that such rate shall not vary by more than 1.5 to

The use of the words "IN GENERAL" is indicative of the intent to allow for flexibility in the application of additional factors or discounts. This interpretation is supported by the fact that participation in a wellness program has not been included as one of the enumerated factors. Yet according to proposed rule CMS-9979-P, issued alongside this proposal, wellness is a permissible reason for receiving a premium discount or rebate.

In addition, as the majority of states do not currently operate under a community rated system, RAM would suggest that these enumerated factors are intended to serve as baseline for those states required to implement community rating rather than a ceiling for states already operating in such a system.

Single Risk Pool

Proposed rule 156.80 requires that "a health insurance issuer shall consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer in the individual [or small group] market, including those enrollees who do not enroll in such plans through the Exchange, to be members of a single risk pool." Although the Massachusetts cooperative program currently operates as part of the state's established single risk pool, there is a concern that this rule may be construed to prohibit the use such programs designed to reward participants for lowering their risks. RAM therefore requests that this rule be amended to clarify that states may continue to allow the use of programs that incentivize the promotion of wellness and healthcare education necessary for consumers to positively affect their healthcare costs.

RAM appreciates your hard work on drafting these proposed rules as well as your time and consideration of our comments. If upon review there are any questions regarding these comments please feel free to contact RAM by the phone number or email address provided below.

Sincerely,

Jon B. Hurst

Jon B. Hurst, President

The Commonwealth of Massachusetts
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GLEN SHOR
Executive Director

Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE
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DEVAL PATRICK
Governor

TIM MURRAY
Lieutenant Governor

JOSEPH G. MURPHY
Commissioner of Insurance

December 26, 2012

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–9972–P
P.O. Box 8010
Baltimore, MD 21244–8010

Re: CMS-9972-P:
Health Insurance Market Rules; Rate Review

To Whom It May Concern:

On behalf of the Commonwealth of Massachusetts, we appreciate the opportunity to provide comments on the CMS-9972-P, as published in the Federal Register on November 26, 2012. This rule proposed by the Centers for Medicare and Medicaid Services (CMS) applies to Sections 2701, 2702 and 2703 of the Public Health Service Act, as added and amended by the Patient Protection and Affordable Care Act (ACA) and are proposed to be effective for plan years (group market) and policy years (individual market) starting on or after January 1, 2014.

The comments presented in this letter are intended to assist CMS with implementation of the ACA and are focused on areas that we think are important for your consideration and/or that might benefit from clarification of a particular issue.

We appreciate the opportunity to provide comments to the proposed rule and offer ours in the following areas:

Standardization of Small Group Rating Factors

In CMS-9972-P, it is proposed at 45 CFR 147.102(a)(1) that the rates that are to be applied to individuals and small employers with respect to a particular plan may only vary based on (i) whether the plan covers an individual or family, (ii) rating area, (iii) age, and (iv) tobacco use. It is further noted at 45 CFR 147.102(g) that noted restrictions would apply to all group plan years and individual policy years beginning on or after January 1, 2014.

The Commonwealth has had a strong guarantee issue market for individual coverage since 1997 and for small employer coverage since 1992. These separate markets were merged in 2007 into one market that covers approximately 720,000 Massachusetts residents. Our state laws restrict the rates that may be charged to eligible individuals and eligible small employers, using statutorily required rating factors within a 2-to-1 rating band. The changes proposed at 45 CFR 147.102(a)(1) will make the following changes to our longstanding rating rules:

- Restrict use of age rating;
- Remove industry as a rating factor;
- Remove participation-rate as a rating factor;
- Remove group size as a rating factor;
- Remove intermediary discount as a rating factor; and
- Remove group purchasing cooperative discount as a rating factor.

Our actuaries have reviewed how these changes would impact our markets and have found that on a revenue-neutral basis, while many individuals and small group members in the Commonwealth will see premium decreases, a significant number will see extreme premium increases as a result of these changes.

It is noted in CMS -9972-P that CMS is interested in comments that "CMS or states might deploy to avoid or minimize disruption of rates in the current market…[including]a phase-in or transition period for certain policies." The Commonwealth points out the need for such flexibility to mitigate the substantial rate impacts that will likely disrupt coverage markets in states such as Massachusetts.

The Commonwealth respectfully requests that 45 CFR 147.102(a)(1) be amended to permit individual states to request waivers from the ACA-prescribed rating rules when rating factors advance a state's sound public policy.

The Commonwealth respectfully requests that 45 CFR 147.102(a)(1) be further amended to permit individual states to request a reasonable transition period during which the state would gradually modify its rating rules to ultimately comply with 45 CMR 147.102(a)(1).

During the years in which the Commonwealth implemented its guaranteed issue markets, it employed three-year transition periods to mitigate overall market rate disruption and led to the orderly acceptance of our own market rating restrictions. Allowing states to gradually implement the rules through a reasonable transition period can reduce the premium impacts to more reasonable levels of increase on a year-to-year basis.

In addition, allowing for a transitional period to implement the ACA rating factors would not thwart the overall goals and purpose of the ACA. The preamble to the proposed market and rating rule states that "the provisions of the proposed rule, combined with other provisions in the Affordable Care Act, will improve the individual health insurance market by making insurance affordable and accessible to millions of Americans who currently do not have affordable options available to them." In Massachusetts, those goals have already been realized, and a shift to the

ACA rating factors represents a different approach to the same solution. The goals of the ACA are not thwarted in any way by allowing a transition to the ACA rating rules. *See* Preamble to Proposed Rule, Federal Register, at. 70585.

Clarification of Area Rating Factors

In 45 CFR 147.102(b), there are proposed rules regarding the development of rating areas associated with the rating area factor permitted in 45 CFR 102(a)(1)(ii) which are generally consistent with rules being applied in the Commonwealth. However, when applying rating area factors to premiums charged to the Commonwealth's merged small group/individual markets, the variation in the rating area factor is limited to a 1.5-to-1 band and there do not appear to be any items in the rules that contemplate an individual state having such limitations in the permissible variation in area rating factors.

The Commonwealth respectfully requests that 45 CFR 147.102(b) be amended to clarify that individual states may request that rating area factors be limited to a permissible range when such limits advance a state's sound public policy.

Guaranteed Availability of Coverage

45 CFR 147.104 of the NPRM proposes implementation of a market-wide initial and annual open enrollment period, consistent with those required by Exchanges for individual market QHPs. The NPRM solicits comments on whether this sufficiently addresses the open enrollment needs of individual market customers whose coverage renews on dates other than January 1 and whether aligning open enrollment periods with policy years (based on calendar years) in the individual market is more desirable.

Based on our experience implementing open enrollment periods in our nongroup market, the Commonwealth respectfully requests that states be provided flexibility to mandate a common anniversary or renewal date of January 1, even for those who initially purchased on a different date. This significantly reduces confusion in the market and promotes a streamlined approach to benefit design associated with deductibles and out-of-pocket expenses for consumers.

Special Enrollment Election Period

45 CFR 147.104 of the NPRM allows for special open enrollment periods for individuals based on certain qualifying events. For those individuals eligible to enroll during these special open enrollment periods, the NPRM proposes a 30-day election period for individuals to enroll and/or change plans, but requests comments "as to whether another standard, such as 60 calendar days, generally consistent with the Exchange, is more appropriate."

Based on our experience implementing open enrollment periods in our nongroup market, we recommend that the same election periods apply both inside and outside of the state's Exchange marketplace to minimize consumer confusion and ease state administration. We would further recommend that 63 days, instead of 60 days, be the required election period for individuals shopping in a state's nongroup market, whether inside or outside of the state's Exchange marketplace. The recommended 63-day election period is based on Massachusetts' current open enrollment rules, which capture a full two calendar months' time and which we believe provide

the appropriate amount of time needed for individuals to take advantage of a special open enrollment period. In addition, this standard is more in line with existing market practice and would be least disruptive for nongroup members.

Catastrophic Health Plans

45 CFR 156.155 describes Catastrophic Health Plans and indicates that these plans must "provide coverage for at least three primary care visits per year before reaching the deductible." We seek clarification as to if the intent is to provide coverage for three primary care visits prior to the deductible *in addition to* preventive care visits which must be covered prior to the deductible and with no cost-sharing per insurance market reforms introduced by Title I of the Affordable Care Act (ACA). If that is the intended definition, then a Catastrophic Health Plan may not meet the definition of a federally qualified High Deductible Health Plan (HDHP) and would not, therefore, be compatible with a Health Savings Account (HSA). For those consumers that are eligible to purchase Catastrophic Health Plans, we would respectfully recommend that these plans be deemed to be federally qualified HDHPs so that they would be HSA compatible, providing maximum support to those consumers that may need to purchase Catastrophic Health Plans.

Common Rate Filing Tool

In CMS-9972-P, it is proposed at 45 CFR 154.215 that if any health insurance product is subject to a rate increase that a health insurance issuer must submit a Rate Filing Justification for all products on a form and in a manner prescribed by the Secretary. It is further clarified at 45 CFR 154.215(b) that the Rate Filing Justification must consist of a standardized data template that must include items as listed in 45 CFR 154.215(d). It is also proposed at 45 CFR 154.220 that a health issuer must submit a Rate Filing Justification for all rate increases that are filed in a State on or after April 1, 2013, or effective on or after January 1, 2014 in a State that does not require the rate increase to be filed.

Within CMS-9972-P, CMS proposed the use of a standard data collection tool in order to create greater uniformity for effective rate review information, creating efficiencies and also providing issuers with a standardized, electronic format for submitting this uniform data. It was suggested that this should, on net, reduce the burden of providing similar data in multiple formats to each state and the federal government. CMS requested comments about the additional burden, if any, it would impose on health insurance issuers and the state.

The Commonwealth of Massachusetts is concerned that the required use of the federal tool described in 45 CFR 154.215 will not assist our existing rate review process and will create additional regulatory burdens. Massachusetts has been deemed an "effective rate review state" by CMS following a review of the manner that our staff has used in reviewing health insurance rate increase filings. Over the past year, the Commonwealth has developed and employed a standard rate filing data submission tool to collect the information that Massachusetts has deemed necessary and appropriate to conduct rate reviews in our state. This tool has provided the right level of detail for our consulting actuaries to collect, analyze and report on small group/individual health insurance rate filings within the 45-day period allowed under

Massachusetts statutes. The Massachusetts tool enables our actuaries to review rate filings in a way that reduces the burden on state regulators and regulated parties.

From a review of the standardized date template proposed by CMS, the Commonwealth does not find that the template includes the level of information necessary and appropriate to conduct the Commonwealth's rate reviews in an orderly and timely manner and that the Commonwealth would need to continue to collect information according to its own rate filing submission tool. The tool required under 45 CFR 154.215(d) would decrease the efficiency of the rate review process in Massachusetts as issuers would be required to complete a CMS tool that would not be used in the rate review process, and Massachusetts regulators would be required to ensure that information reported in its own tool were consistent with what is reported in the CMS tool.

The Commonwealth respectfully requests that 45 CFR 154.215(d) be amended to permit individual states to request a waiver from the required standardized data template if the state has been found to be an effective rate review state, if the state collects more detailed information than included in the federal tool, and if the information in the state toolis more necessary and appropriate information to conduct reviews within that state.

We thank you for consideration of our comments and look forward to continuing to work with the federal government in implementation of the ACA.

Sincerely,

Glen Shor
Executive Director
Commonwealth Health Connector

Joseph G. Murphy
Commissioner of Insurance