



January 19, 2012

The Honorable Kathleen Sebelius
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
Via email to MLRadjustments@HHS.gov

Dear Secretary Sebelius,

Please accept our comments on Wisconsin Commissioner of Insurance Ted Nickel's medical loss ratio waiver request. Commissioner Nickel's waiver request lacks both credibility and merit and redirects over \$14 million from consumers back to a dysfunctional segment of the insurance industry that needs reform and stronger state and federal oversight. Therefore, we respectfully request that you reject Wisconsin's waiver request.

Our organization has a unique perspective on the insurance industry and the needs of health care consumers. Founded in 1994, Advocacy & Benefits Counseling for Health (ABC) helps families across Wisconsin gain access to health care benefits and services. ABC's mission is to provide parents and providers with information, advocacy tools, legal services, and expert support they need to secure health care coverage and services. ABC works to translate individual case experiences into local strategies as well as system level reforms through our statewide HealthWatch Wisconsin project. ABC also serves as a catalyst in the development of local HealthWatch Coalitions to promote community efforts and community voices directed at health care coverage and access concerns for children and families.

Commissioner Nickel's Waiver Request:

In his October 2011 request letter, Commissioner Nickel sought an exemption from the federal law that requires health insurers to spend at least 80 cents of every dollar collected in customer premiums on medical care. Commissioner Nickel indicated he preferred a gradual "phasing in" of the medical loss ratio requirement, to "protect consumers" who would otherwise "lose access to meaningful choices and affordable coverage." He expressed concern that insurance companies, such as Golden Rule and Time Insurance Company would make significant and potentially inappropriate expense structures cuts in order to remain in business. Nickel continued, "Without this adjustment, there is a reasonable likelihood that market destabilization and, thus, harm to consumers will occur...In 2010, six insurers representing 35% of the individual market and 68,310 covering lives had medical loss ratios that fell below 80%." The Commissioner also expressed concern about insurance agent commissions, a calculation required to be included in the administrative costs of insurance companies. The Commissioner feared that in order to preserve commissions for agents, some insurance companies may significantly reduce "non-claim related variable expenses...or lower premiums."



Prioritizing Profits over People:

Health reform, under the Affordable Care Act, wisely established a medical loss ratio minimum of 80% to control excessive profits at the expense of policyholders. Companies that fail to reach an 80% medical loss ratio are required to provide rebates to their customers. Commissioner Nickel asked in the waiver request that companies keep excess revenues instead of paying rebate of over \$14 million for certain Wisconsin consumers.

After an initial comparison, we calculated that the average medical loss ratio for HMOs in Wisconsin was 88.7%, with 21 of the 22 HMOs reporting that they exceeded the standard of health reform, an 80% medical loss ratio.¹ The insurance companies represented in the Commissioner's letter, however, and the subject of his concern, are the small group and individual market plans that are mostly struggling to hit 70%.

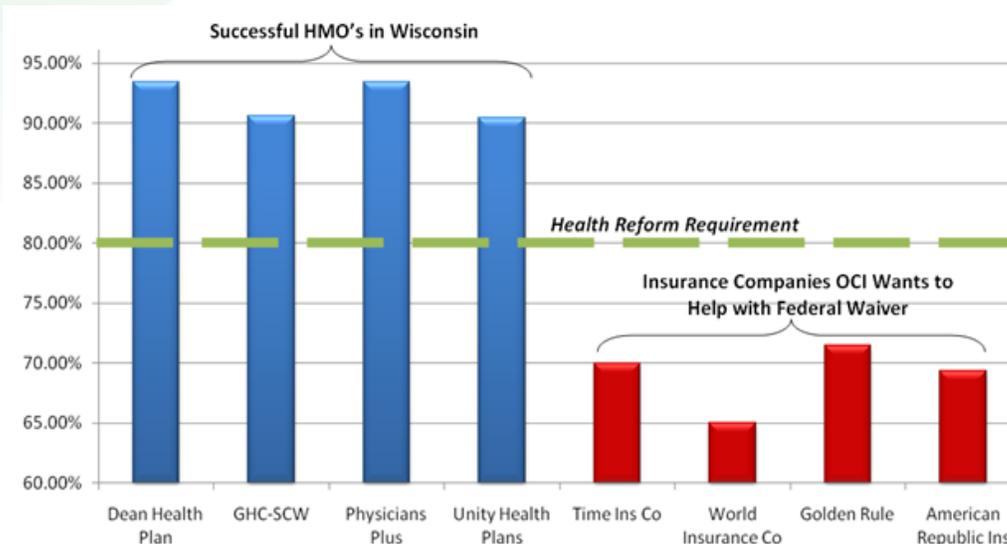


Figure 1. Representation of Wisconsin HMOs vs. select insurance companies the OCI waiver request is trying to preserve²

Wisconsin's Commissioner is relying on "free market" health care arguments to protect the non-compliant insurers.³ Yet, his rationale fails under closer scrutiny. The free market should punish insurers that fail to modernize or provide competitive products with comparable medical loss ratios.

¹ http://oci.wi.gov/hmo_info.htm

² The figure is derived from HMO filing data on the OCI website (http://oci.wi.gov/hmo_info.htm) and data as presented in the OCI waiver request letter (http://cciio.cms.gov/programs/marketreforms/mlr/states/Wisconsin/wi_mlr_request_10252011.pdf)

³ In January, 2011, Wisconsin's Office of Health Care Reform was closed, and replaced with the "Office of Free Market Health Care," administered jointly by Wisconsin's Commissioner of Insurance and Secretary of Health Services.



The Commissioner argues to stabilize the insurance market by helping a company like World Insurance Co. with a medical loss ratio well below 70%. The Commissioner posits that such action will stabilize the entire Wisconsin marketplace? This argument makes no sense! The so called free market is ill served by keeping high cost, low service, and low quality insurers in the Wisconsin marketplace and in fact, harms Wisconsin consumers. The sensible medical loss ratio requirement protects consumers with market competition that helps keep health insurance costs down and services high. The strong performing HMOs, and other achieving insurance companies already prove that multiple insurers in Wisconsin effectively meet the medical loss ratio rule while remaining solvent and profitable.

A Concern of Credibility:

For the people of Wisconsin, this waiver request is another example of a Commissioner prioritizing insurance industry profits over the rights of consumers. In his waiver request, Commissioner Nickel quixotically argues that the medical loss ratio rule will displace insurance products and harm consumer choice. In fact, Commissioner Nickel's own actions are a more likely cause of harm to Wisconsin consumers. Commissioner Nickel's litany of failures for consumers include stopping all action on developing health care exchanges,⁴ stalled progress on rate review and independent review standards under the Affordable Care Act, and cancelling Wisconsin's Consumer Assistance Project.

When examining the rate review situation in Wisconsin more broadly, consider a recent Government Accountability Office (GAO) report⁵ on state oversight of premium rate increases that cited Wisconsin and its Office of the Commissioner of Insurance as the *only* state that allows an insurance company to implement a health insurance premium rate increase *before* filing any paperwork. Additionally, the report indicated the Commissioner reviewed fewer than half of all rate increases implemented, and failed to deny a single request for a rate increase. In yet another rebuke to the Commissioner, a second report by federal regulators revealed that Wisconsin is currently one of only ten states that have inadequate consumer protections to effectively operate an independent review process over denied health claims. Wisconsin's Commissioner of Insurance is currently misleading the Department of Health and Human Services to believe that consumers are involved in its rate review process.

Federal regulators noted Wisconsin as a laggard under the Affordable Care Act provisions that allow states to create a consumer-oriented review process for denied insurance claims.⁶ These

⁴ On January 18, 2012, Wisconsin's Governor Walker announced that he directed the Wisconsin Department of Health Services to notify the federal government that Wisconsin will, "Discontinue any development on a health exchange and Wisconsin will turn down funding from the Early Innovator Grant program." Press release available: <http://www.wispolitics.com/index.iml?Article=258474>

⁵ See <http://www.gao.gov/new.items/d11701.pdf>

⁶ See http://cciio.cms.gov/resources/files/external_appeals_preliminary_determinations_8_1_11.html, and http://oci.wi.gov/bulletin/cciio_determination.pdf



federal reports are just more in a series of examples of how Commissioner Nickel panders to the insurance industry and ignores consumer needs. The people of Wisconsin deserve better. Recall, Commissioner Nickel brazenly killed the consumer assistance program for Wisconsin families enrolling in health care coverage programs.⁷ The Commissioner's rationale was that consumer assistance is "a waste of taxpayer money" according to Deputy Commissioner Dan Schwartz, a former insurance industry insider and lobbyist. The lack of consumer assistance punitive impact for consumers means virtually no assistance for over half our privately covered population in self funded ERISA health plans and much more limited assistance for individuals recently laid off from work, families facing bureaucratic hurdles with the BadgerCare programs or other health coverage programs, and for families facing an illness simply trying to understand and coordinate public and private coverage eligibility concerns.

Conclusion:

Commissioner Nickel's request is not in the interests of Wisconsin consumers. The pattern of harmful actions toward consumers by Nickel and his leadership team of insurance industry insiders lead to serious questions about the credibility and sincerity of his waiver request.

Please reject Wisconsin's waiver request.

Thank you for this opportunity to provide comment.

Sincerely,

ABC for Health, Inc.

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⁷See <http://www.safetyweb.org/projectsConsumerAssistance.html>