Steven B. Larsen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Submitted Via Electronic Mail:
MLRAdjustments@hhs.gov

January 20, 2012

Re: Wisconsin's Request for an MLR Adjustment

Dear Mr. Larsen:

We are writing to oppose the medical loss ratio (MLR) adjustment requested by the Wisconsin Office of the Commissioner of Insurance (OCI). This adjustment would cost Wisconsin consumers at least $14 million and likely many millions more.

The medical loss ratio (MLR) gives consumers a straightforward calculation of how their premium dollars are spent and sets a minimum level of spending on medical services and quality improvement at 80 percent in the individual and small group markets. Congress, with the support of the Congressional Budget Office, concluded that efficient insurers could achieve an 80 percent minimum MLR in the non-group market.

Adjustments to the MLR may be granted only if the state demonstrates that there is a "reasonable likelihood" that application of the requirement "may destabilize the individual market in the state." 45 CFR § 158.301. We believe Wisconsin has failed to make its case for an adjustment. In fact, the information the state provided indicates that Wisconsin faces little threat of a destabilized individual market. Given this, an adjustment that undercuts the MLR is unwarranted.

Wisconsin has a robust insurance market with two dozen issuers writing insurance in the individual market, including 18 issuers with more than 1,000 covered lives. By OCI's calculation, in 2010, six insurers representing 35% of the individual market and 68,310 covered lives had MLRs below 80%. OCI is requesting an adjustment for 2011 to 71%, as well as adjustments for 2012 and 2013 (74% and 77%, respectively).

The rebate estimates vary greatly. OCI calculates rebates of $4.4 million in 2011 with an 80% MLR and a total of $14 million through 2013. If its adjustment request is granted, OCI estimates that rebates will be reduced to $451,000 – a loss of $13.5 million to consumers. However, HHS calculates that issuers would owe more than $10.6 million in 2011 alone under an 80% MLR; since every issuer has an HHS-calculated MLR higher than 71%, no issuer would owe rebates if the request is granted.

The purpose of the adjustment process is to prevent market destabilization, not to forgive rebates that are owed to consumers. Payment of the rebates themselves will not destabilize the Wisconsin market. For example, Humana's $1.67 million expected rebate is only a fraction of its $30.5 million underwriting profit in the state; Humana operates at a 25.5% profit margin. Golden Rule Ins. Co., an affiliate of UnitedHealth, also has underwriting profit sufficient to cover its anticipated individual market rebate. Furthermore, these rebate estimates are for 2010 and may not reflect premium or administrative cost adjustments made in 2011 in anticipation of compliance with the 80% MLR target.

OCI's 2011 adjustment request would be retroactive – essentially, rebate forgiveness. Since it is clear that market destabilization has not occurred after a full year of MLR applicability, there is no reason to grant any retroactive adjustment. Furthermore, it is not clear that HHS has the authorization to do so.
HHS has five standards by which MLR adjustment applications are evaluated.

1. The number of issuers reasonably likely to exit Wisconsin and the resulting impact on competition in the state.
OCI cites two insurers with a total of about 700 customers that are leaving the market. Each of those insurers had fewer than 1,000 covered lives and would not have owed rebates, so the MLR could not have played a role in their withdrawal. As HHS notes, two other small insurers – World Ins. Co. and American Republic – are withdrawing from the individual market nationwide. The withdrawal of all of these insurers would still leave 20 issuers in the individual group market. No other insurers have provided the required 180 days' notice of exit. It is unlikely that other insurers will withdraw since that would lock them out of the market for the next five years and keep them from competing for customers in the new health insurance exchange, which is expected to insure 423,000 Wisconsinites.

OCI also expresses concerns that the MLR creates barriers to new entrants in the market. However, § 158.121 specifically accommodates new plans by excluding newer experience from the calculation to eliminate such barriers.

2. The number of individual market enrollees covered by issuers that are reasonably likely to exit the state.
OCI references 68, 310 covered lives at threat of losing coverage; this represents the entire enrollment of the six insurers with MLRs below the federal minimum. However, rebate payments alone are unlikely to drive insurers to leave the market, and none of the insurers expected to owe a rebate have indicated they plan to withdraw from the market.

3. Whether absent an adjustment to the 80 percent MLR standard, consumers may be unable to access agents and brokers.
OCI provided no evidence of loss of access to brokers and does not quantify any commission reductions.

4. The alternative coverage options within the state available to individual market enrollees in the event an issuer exits the market.

Issuers must give 180-days' notice for market withdrawal and 90 days for discontinuance of a plan. Consumers that have lost a plan have ample choice in the market. Furthermore, additional withdrawals are unlikely since issuers are barred from re-entry for five years.

5. Impact on premiums and cost-sharing in plans of the remaining insurers.
OCI does not estimate the impact on premiums. OCI implies that with less competition, premiums will rise but, with nearly two-dozen insurers remaining in the market, the loss of a handful of small insurers is unlikely to cause prices to go up.

The medical loss ratio is a powerful tool to give consumers more information about how their premium dollars are spent and to compare plans in a relatively crowded marketplace. The state has not adequately justified its proposal to take more than $10 million in rebates from consumers in 2011 alone (and many millions more in 2012 and 2013), lower consumer protection standards for Wisconsinites, and give insurers a free pass from the standard in nearly every other state is enforcing. We oppose the state's request.

Sincerely,

Robert Kraig, Executive Director, Citizen Action of Wisconsin
Leon Burzynski, Executive Director, Wisconsin Alliance for Retired Americans
Dana Schultz, Director, 9 to 5 Milwaukee
Sara Finger, Executive Director, Wisconsin Alliance for Women's Health
Scot Ross, Executive Director, One Wisconsin Now
Jim Cavanaugh, President, South Central Federation of Labor
Andrea Kaminski, Executive Director, League of Women Voters of Wisconsin Education Fund
Bruce Colburn, Vice President, SEIU Healthcare Wisconsin
Bryan Kenned, President, AFT Wisconsin
Kyle Bailey, Program Associate, WISPIRG
Dr. Steve Kagen (former Member of Congress)