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January 20, 2012

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

Dear Secretary Sebelius,

We write to express our concern with the recently submitted request for adjustment (the "request") to the medical loss ratio (MLR) requirement for the State of Wisconsin submitted by the Wisconsin Office of the Commissioner of Insurance (OCI). OCI requests a delay to the MLR that instead phases in the requirement at 71% in 2011, 74% in 2012, and 77% in 2013; and then reaching the Affordable Care Act (ACA) required minimum of 80% in 2014.

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."[1]

Upon review, we believe OCI has not shown that meeting the ACA adjusted MLR requirement is likely to result in a destabilized individual market. In fact, OCI has provided evidence demonstrating that Wisconsin's robust individual insurance market is well-positioned to adhere to the new requirement without threat of market destabilization.

Although we are concerned about data inconsistencies between the OCI request and the HHS response, along with inconsistencies within the OCI request, we note that the OCI proposed adjustment levels equate to a loss of more than an estimated $13 million for Wisconsinites who buy insurance on their own. In the absence of evidence of a likelihood of destabilization, consumers who are struggling to afford health insurance should not be denied the full benefit of the MLR rule.

Carriers below 80% MLR are well positioned to give rebates based on profitability, solvency.

In the request, OCI briefly makes the case that "there is a real potential that 68,310 Wisconsin lives will be displaced and forced into a market with fewer affordable health insurance coverage options." However, OCI ignores the sufficient underwriting profit margins and/or risk based capital (RBC) levels of Wisconsin carriers. Instead, OCI unjustifiably suggests that carriers below an 80% MLR would have to "significantly [reduce] non-claim related variable expenses."

Out of the seventeen credible carriers who must meet the new rule, nine may not currently meet the MLR standard based on 2010 data.[2] However, these carriers are well positioned to

[1] Code of Federal Regulations, Title 45, Section 158.301
[2] There are several discrepancies between the HHS table and the OCI MLR estimates. We take into account all carriers listed as below an 80% MLR in either instance in reviewing the impact of the MLR

provide rebates even without increasing efficiency and reducing administrative costs. Table 1 below lists net underwriting profit for both individual market business and total business for each of these nine carriers alongside RBC levels and estimated annual rebates based on 2010 MLR.

Table 1: Companies Potentially Subject to Rebates – Underwriting Profits, RBC Levels

Company Name	2010 Net Underwriting Profit - Individual Business	2010 Net Underwriting Profit - All WI Business	Estimated Rebate Based on 2010 MLR	2010 Risk Based Capital Level
Golden Rule Ins Co	2,940,295	4,478,541	$4,136,901	654%
Time Ins Co	(5,478,514)	(285,522)	$3,926,172	595%
Humana Ins Co	121,124	30,478,111	$1,670,025	534%
WPS Health Plan Inc	2,086,888	(2,185,005)	$34,777	246%
Mega Life & Health Ins Co	903,363	1,243,645	$340,611	1799%
Group Health Coop of S Central WI	710,969	1,248,192	$291,592	757%
American Republic Ins Co	(267,857)	15,136,545	$245,109	1685%
Physicians Plus Ins Co	243,009	(3,899,151)	$247,783	357%
World Ins Co	(63,989)	7,716,572	$26,318*	1218%

*This estimate was not included in HHS data, therefore taken from the OCI request.

Table 1 shows that carriers subject to rebates are clearly positioned to meet rebate requirements even before increasing administrative efficiency.

- Golden Rule, Humana, Mega Life, Group Health Coop, American Republic, and World Insurance had higher underwriting profit for all Wisconsin business than would have been owed in rebates.
- WPS Health, Mega Life, and Group Health Coop have net underwriting profit in the individual market greater than estimated rebate levels.
- Physicians Plus had underwriting profit in the individual market equal to 98% of estimated rebate.

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requirement. Furthermore, as noted in the HHS response to OCI deeming the application complete, individual carrier estimates listed on p.16-17 of the OCI application do not equal the total rebate level provided on p.19.Therefore where a carrier is listed as below the 80% MLR on both the HHS response and OCI application, where possible, we use estimates provided in the HHS response deeming OCI's application complete.

- While Time Insurance Company shows losses, HHS has found, based on the statements of TIC's parent company, Assurant, that the company "has been able to successfully streamline its expense structure during 2011," mitigating concerns that the company would not be able to reduce expenses to remain profitable in 2011.[3]

The request lists "solvency concerns" in its attempt to make the case for an adjustment. However, these Wisconsin carriers all hold more than the National Association of Insurance Commissioners (NAIC) recommended minimum risk-based capital (RBC) ratio of 200% with some holding alarmingly high levels. Mega Life, American Republic and World Insurance have RBC levels well over 1000%. An additional four carriers have RBC ratios above 500%.

Wisconsin has the single most competitive health insurance market in the country, pointing to no clear potential for destabilization.

Wisconsin has the unique distinction of having the most competitive individual health insurance market in the nation using the Herfindahl-Hirschman Index (HHI), an objective measure of competition.[4] The largest carrier in the state holds just 17.1% market share.[5] According to the OCI application, there are 24 carriers currently offering individual health insurance policies in the state. Wisconsin consumers will still have significant choices even in the event of a market withdrawal.

Wisconsin residents are protected by statutory withdrawal requirements and restrictions.

The application for adjustment requires an explanation of state market withdrawal requirements. Appendix 1 of the request summarizes Wisconsin Statutes governing market withdrawals. Wisconsin carriers that exit the individual market are prohibited from returning to the state's market for five years with "no provision to waive for good or other cause," according to the request.[6] Under this rule, insurers that exit the market in 2012 or 2013 will be prohibited from selling coverage in 2014 to the greatly expanded and subsidized market in Wisconsin.

Additionally, as OCI points out, the State requires that insurers must provide notice to OCI at least "180 days before the date on which the coverage will be discontinued". However, OCI fails to note that this same statute requires notice to be given to individual policyholders at least 180 days in advance as well.[7]

The request omits this statutory consumer protection and instead points to Wisconsin Statute §632.7495(3)(a)(1) which requires 90 day notice to consumers in the event that an insurer

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[3] See Department of Health and Human Services, Letter to Commissioner Stephen W. Robertson, November 27, 2011, at pg. 8.
[4] Cox, Cynthia and Larry Levitt. How Competitive are State Insurance Markets, October 2011, Kaiser Family Foundation, available at: http://www.kff.org/healthreform/upload/8242.pdf
[5] We note inconsistencies between estimates of covered lives in the OCI application and the table included as part of the HHS response to OCI deeming the application complete and asking for additional information. The OCI application provides estimates of covered lives for non-credible carriers therefore we use the OCI estimates to review the impact of the MLR requirement on the overall Wisconsin market.
[6] Wis. Stat. § 632.7495(3)(b)(3) http://docs.legis.wi.gov/2007/statutes/statutes/632/VI/7495/3/b/3
[7] Wis. Stat. § 632.7495(3)(b)(1) http://docs.legis.wi.gov/2007/statutes/statutes/632/VI/7495/3/b/1

discontinues offering "a particular type of individual health benefit plan coverage."[8] OCI additionally omits a key statutory requirement that insurers offer "the option to purchase any other type of individual health insurance coverage that the insurer offers for individuals".[9] Thus, this section applies to carriers who are discontinuing a specific plan, but are continuing to offer coverage in the individual market. It would not apply in the event of a total withdrawal, as OCI suggests.

Consumers will not be harmed even if one or more companies leave the market

In asserting a "bottom line", OCI argues that "consumers will be displaced and forced to pay more for new coverage in a market with fewer options." However, this logic is flawed and OCI has failed to provide supporting evidence of the impact on premiums with fewer available carriers.

With 24 active carriers in the state's individual market, there is no reasonable likelihood that consumers will be harmed by lack of choices if the rule is in full effect in 2011. Consumers do need strong market competition to keep health insurance costs down and service up. And the new rule provides a level playing field for that competition. But consumers do not benefit from endless health insurance choices if they are of poor value. Multiple carriers in Wisconsin demonstrate that it is both possible to meet the MLR requirement, recognize profitability, and remain solvent.

Wisconsin lacks carriers that will have to significantly raise MLR, such as in Florida and Oklahoma.

Credible carriers in Wisconsin currently below the 80% threshold are better positioned than in other states where HHS has denied applications for an adjustment. According to 2010 data, Florida has six carriers below a 72% PPACA adjustment MLR, with two below even 60%. In Oklahoma, three carriers fall below 72% with one below 60%. However, in Wisconsin all carriers are above a 72% MLR. Clearly, having carriers currently below the new 80% MLR requirement is not alone reason to approve an adjustment.

OCI has not provided examples to back claims that carriers will be forced to exit.

The OCI application states "some companies will be forced to take more drastic measures such as exiting from the Wisconsin market altogether; as [they] have already seen with two companies." However, further in the application in Appendix II (d)(2)(ix) OCI reveals that neither of these two carriers is fully credible, thus they are exempt from meeting the MLR standard and did not withdraw due to the MLR rule.

As noted in HHS's response to OCI, American Republic and World insurers, both subsidiaries of American Enterprise Group, are exiting the individual market in all States. Given discrepancies between MLR levels provided by OCI and HHS it is unclear whether these insurers currently meet the 80% MLR standard. However, HHS figures show both companies as having a

[8] Wis. Stat. § 632.7495(3)(a)(1) http://docs.legis.wi.gov/2007/statutes/statutes/632/VI/7495/3/a/1
[9] Wis. Stat. § 632.7495(3)(a)(2) http://docs.legis.wi.gov/2007/statutes/statutes/632/VI/7495/3/a/2

substantially higher then required MLR which would negate the insinuation by OCI that these companies have responded to the new MLR standard by exiting the market.

Additionally, the withdrawal notice provided by American Enterprise Group to Florida and Oklahoma officials, notes that an arrangement has been made with Celtic Insurance Company, which also operates in Wisconsin, to offer guaranteed issue plans to affected enrollees. A similar arrangement in Wisconsin would further detract from OCI's claims of forthcoming market destabilization. OCI should provide any information available regarding these "two companies" that have exited or plan to exit the market.

Requested MLR adjustment levels are not supported by OCI data.

Although we believe no adjustment to the MLR rule is necessary for Wisconsin carriers, the OCI request for a first year standard of 71% is particularly inappropriate. According to OCI and HHS data all credible carriers are above at least a 72% MLR level. The market average based on OCI data for 2010 is in fact above 85%. OCI's statement that "the 71% starting point in 2011 reflects the current environment" is baseless given these MLR levels and overall market average.

OCI's concerns regarding access to agents and brokers are not supported by evidence.

OCI fails to provide any evidence to support concerns that the MLR rule will "negatively [affect] consumer access to agents and an agent's ability to offer the level of services consumers need." Furthermore, OCI's stated concern for consumers comes in contradiction to Wisconsin Insurance Commissioner Ted Nickel's decision to return a federal grant to create a consumer assistance program specifically focused on aiding consumers in accessing health insurance and filing complaints.[10]

Data reported to the National Association of Insurance Commissioners (NAIC) regarding broker and agent fees shows mixed evidence of increases and decreases in commissions from 2010 to 2011. Out of three carriers reporting commissions one decreased first year and renewal rates, a second decreased first year rates but maintained renewal rates, and a final carrier substantially increased both first year and renewal rates for all products.[11] This data is in line with overall findings by the NAIC that "a significant number of companies have reduced commission levels … [while] … a significant number of companies have not reduced commissions in 2011."[12]

The NAIC further found that "[t]he states with higher MLR requirements have not observed any problems with consumer access to insurance or to producers." Additionally, the Insurance

[10] Walberg, Dave. "New state insurance commissioner terminates $637K federal health care grant". Feb. 10, 2011. *Wisconsin State Journal*, available at: http://host.madison.com/wsj/news/local/health_med_fit/article_dd894d62-3572-11e0-a002-001cc4c002e0.html

[11] National Association of Health Underwriters, data provided to NAIC.

[12] NAIC, Report of the Health Care Reform Actuarial (B) Working Group to the Health Insurance and Managed Care (B) Committee on Referral from the Professional Health Insurance Advisors (EX) Task Force. Available at: http://www.naic.org/documents/committees_b_exposure_110607_phia_charge_report.pdf

Information Institute found that employment of agents and brokers increased by 5,500 nationally between July 2010 and June 2011.[13]

This evidence combined stands in opposition to OCI's concerns regarding eroding access to brokers and agents. OCI has refused to create a federally funded state consumer assistance program demonstrating no true concern for consumer access to assistance. With no supporting evidence provided, OCI clearly has not demonstrated that "absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers."

Conclusion: OCI has not demonstrated a reasonable likelihood of destabilization and Wisconsin's individual insurance market is well-positioned to adjust to the MLR requirement.

Wisconsin's insurance market stands as the most competitive in the nation offering a robust set of options for consumers and at least eight out of seventeen currently exceed the 80% MLR standard.[14] Furthermore, all credible carriers are above at least a 72% MLR making Wisconsin well-positioned to meet the new standard. Although the new rule is designed to improve efficiency and value for consumers, carriers currently below an 80% MLR have adequate underwriting profit margins or risk based capital levels to utilize in rebating consumers if needed.

If granted, the phased-in MLR levels proposed by OCI will result in no improved value in the first year for Wisconsin consumers and a loss of an estimated $13 million over the next three years. OCI's request offers no evidence to support claims of diminished access to brokers and agents or forthcoming market withdrawals that will result in a destabilized market.

HHS should reject this request for an adjustment to the MLR standard and require all Wisconsin individual market carriers to improve value for consumers struggling with rising premiums.

Sincerely,

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[13] Insurance Information Institute, Insurance Industry Employment Trends: 1990-2011, September 2011, PowerPoint presentation.

[14] HHS lists seven carriers below the 80% MLR standard while OCI lists six carriers. Combined there are potentially nine carriers that may not meet the 80% standard. Given this discrepancy our comments reflect a worst-case scenario in which we list the maximum number of insurers that may currently be below the standard.