



May 25, 2012

Secretary Kathleen Sebelius

c/o: Centers for Medicare and Medicaid Services
Center for Consumer Information and Insurance Oversight
Room 739H
200 Independence Avenue
Washington, DC 20201
ratereview@cms.hhs.gov

ATTN: State-Specific Threshold Review

Dear Secretary Sebelius,

Please accept Advocacy & Benefits Counseling for Health, Inc. (ABC) comments on Wisconsin Commissioner of Insurance Ted Nickel's state specific threshold request. We respectfully request that you reject Wisconsin's state specific threshold request. Commissioner Nickel's request lacks actuarial data and fails to include any public input. He proposes a system that "takes an average" of current insurer rate setting without regard to whether the rates or averages are reasonable. We find Commissioner Nickel's request to lack merit and credibility.

ABC has a unique perspective on the insurance industry and the needs of health care consumers. Founded in 1994, 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 State Specific Threshold Proposal:

In his May 7, 2012 request letter, Commissioner Nickel seeks a state specific threshold for rate review, pursuant to the Rate Increase Disclosure and Review Final Rule (45 CFR Part 154).

Commissioner Nickel explained, albeit vaguely, that Wisconsin will use a methodology that "incorporates company-specific medical trend data and historical rate changes implemented in the individual and small group markets." His methods include "surveying carriers" in the individual and small group markets. He hopes medical trend data will include medical price increases, utilization changes, medical cost shifting, and medical procedures and new technology. He never mentions "public input" in his list of considerations.

Unfortunately for the Commissioner, his rationale for "why Wisconsin is unique with a competitive marketplace," contradicts his rationale for why he believes 10% to be inappropriate for Wisconsin.



Nickel writes that in 2011 a number of carriers filed for health insurance rates that were lower than those that were actuarially justified. He concluded that the competitive market, therefore, was the best regulator of rates. Yet earlier in his letter, he argued that companies were “artificially capping their rates,” and that the Office of the Commissioner of Insurance (OCI) had data that showed that companies could “legitimately support a rate increase over 10% but chose to file under 10%” to avoid “additional administrative burden and public scrutiny” of meeting a 10% threshold. Commissioner Nickel never provides actual data, nor actuary tables or survey results to show if the same companies “artificially capped rates” as those who filed for lower than justified rates. In addition, he’s assuming that any rate under 10% is considered “reasonable.” It is not. It may be unreasonable for an insurer to fail to reduce its rates if medical costs are declining. We are provided no data from our Commissioner to even evaluate if this is happening. He is, again, hoping to keep the data away from public scrutiny, or as we would argue, away from the people of Wisconsin, per usual.

Commissioner Nickel’s Proposal Ignores CMS Guidance:

We look to the very guidance CMS presented to states and find Wisconsin has not included any of the suggested analytically oriented factors that have predictive validity for rate increases or policy oriented factors. In fact, the only factor Commissioner Nickel states, the hope to use medical trend data, without citing any, is not objectively measurable and has not been proven to have predictive validity in determining attributes of the distribution of rate increases for Wisconsin. Not only that, Commissioner Nickel provides no example of public comment on rate review and reasonableness of any rates in Wisconsin, nor does he provide one example of public comment on the need to move the threshold. This is easy to explain. There have been no public hearings and absolutely no opportunity for public input on this or any other topic remotely related to rate review. The one “working group” that was established to help understand health reform was stacked with insurance industry insiders-19 different industry representatives and 24 other business associations-and never once convened. OCI is under the leadership of industry insiders who have badly fumbled an opportunity to reach out and include consumers in a meaningful way. The lack of representation from the aging, disability groups or child advocacy networks stacks the deck for the insurance industry. Consider, as well, a [new report](#) released by Citizen Action of Wisconsin which raises disturbing questions about the Wisconsin's enforcement of new health insurance rate review requirements. The report finds Commissioner Nickel may be frustrating the intent of new accountability and transparency standards which are part of national health care reform. Wisconsin has accepted \$4.9 million from the federal government to review health insurance rate increases over 10%, hold public hearings on especially large or questionable rate hikes, and make public findings on whether or not the increases were justified. Alarming, the report confirms our suspicions that the Commissioner has not held a single public rate review hearing, and has not found a single health insurance rate increase unreasonable.

Commissioner Nickel’s Proposal Mischaracterizes Rate Review in WI:

Additionally, Commissioner Nickel’s letter incorrectly characterizes the current rate review procedures in Wisconsin. Commissioner Nickel writes, “While all rate increases in the individual and small group markets are reviewed by OCI at some level...” This is not the case. The way insurance companies file rate increases may have changed—slightly—but the actual “review” is still missing. Wisconsin traditionally was a “file and use” state, where insurers were to “tell regulators about new rates as they



went into effect or soon thereafter." They did not have to get prior authorization to have rates approved by regulators before they were effective. Wisconsin was among a handful of state that "reviewed" rates in a hands-off fashion. Rates, therefore, were really only reviewed in response to consumer complaints. However, this review was constrained by a statutory presumption under Wisconsin Statute ([Wis State 625.11\(2\)](#)) that if price competition exists in the market, then the rates are not excessive. Since nothing has changed legislatively on this point, the review is therefore the same-hands-off. More typically, the rates are only checked for completeness. A policyholder can request a rate hearing, but the Commissioner has the *discretion* to determine whether there was sufficient cause to hold one. Under the new rate review grants Wisconsin received made possible by the Affordable Care Act, OCI intended to improve their procedures. In fact, OCI proposed as a condition of receiving its first rate review \$1 million grant that they would, among other things, "Improve the review process... by developing more rigorous standardized requirements. Funding will also be used to assess the need for additional legislative or needed authority actions; and develop a public hearing and comment process and create more understandable information and explanations for consumers." The summary of their grant objectives is listed on [healthcare.gov](#). Above all else, Wisconsin has yet to see anything on a process for consumers to participate in this—where are the public hearings, for example? Where is a Wisconsin progress report on how OCI is using the rate review grant money—the almost \$5 million total funds?

The state appears to be putting on a face that looks to comply with rate review—accepting the filing of a proposed increase with "actuarial and data forms," but then is doing nothing with the information and letting HHS take it from there. Consider the following "[FAQ](#)" sheet that OCI has on its website updated on April 13, 2012 to—beginning at question 5: and an [OCI Bulletin](#) from July of last year to stop short as well. Both documents say OCI is to accept both individual and small employer group filings from those insurers whose rate increases meet or exceed the 10% threshold (using actuarial memo and data element attachment forms). It seems as though from there, the process is the same as before—Wisconsin is collecting this information and doing nothing different in its review. OCI will simply say it is constrained by a statutory presumption under Wisconsin Statute that if price competition exists in the market, then the rates are not excessive (as mentioned above).

Wisconsin Cited as Laggard in Implementing Rate Review:

When examining the rate review situation in Wisconsin more broadly, consider a recent [Government Accountability Office](#) (GAO) report 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. These federal reports are just more in a series of examples of how Commissioner Nickel panders to the insurance industry and ignores consumer needs.



A Concern of Credibility:

For the people of Wisconsin, this threshold proposal is another example of a Commissioner prioritizing insurance industry profits over the rights of consumers. In his proposal, Commissioner Nickel quixotically argues that he is merely protecting consumers from “a rate increase roller coaster.” 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 was to stop all action on developing health care exchanges,¹ stall progress on rate review and independent review standards under the Affordable Care Act, and cancel Wisconsin’s Consumer Assistance Project.

Recall, 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 in January of this year. 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."

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.

¹ 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.”

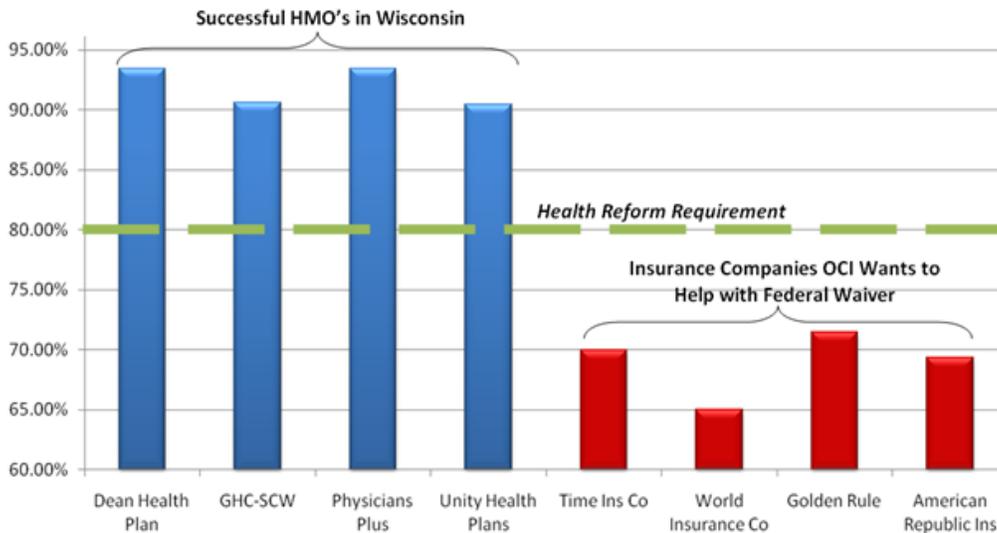


Figure 1. Representation of Wisconsin HMOs vs. select insurance companies the OCI waiver and threshold requests are trying to preserve²

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. 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%.

Wisconsin's Commissioner is once again 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 and rates passed on to consumers. 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 rate threshold and medical loss ratio requirement protect 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 standards envisioned in the ACA while remaining solvent and profitable.

The people of Wisconsin deserve better. Recall, Commissioner Nickel brazenly killed the [consumer assistance program](#) for Wisconsin families enrolling in health care coverage programs. The

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. Governor Walker "closed" the Office of Free Market Health Care January 18, 2012, when he ordered Wisconsin's Health Secretary to stop work on insurance exchanges.



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. Require Wisconsin's Commissioner to use a transparent process with consumer input when setting rates or when proposing a state specific threshold. The penalty for not doing so should be the return of the \$5 million rate review grant awards to the state.

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 proposal. Thank you for this opportunity to provide comment.

Sincerely,

ABC for Health, Inc.

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