DEPARTMENT OF HEALTH & HUMAN SERVICES Centers for Medicare & Medicaid Services

200 Independence Avenue SW
Washington, DC 20201

February 16, 2012

The Honorable Theodore K. Nickel
Commissioner of Insurance
State of Wisconsin
125 South Webster Street
Madison, WI 53707-7873

Re: State of Wisconsin's Request for Adjustment to Medical Loss Ratio Standard

Dear Commissioner Nickel:

This letter responds to the request of the State of Wisconsin Office of the Commissioner of Insurance ("OCI"), pursuant to section 2718 of the Public Health Service ("PHS") Act, 42 U.S.C. §300gg-18, for an adjustment to the 80 percent medical loss ratio ("MLR") standard applicable to the individual health insurance market in Wisconsin. The OCI requested an adjustment of that standard to 71 percent, 74 percent, and 77 percent for the reporting years 2011, 2012, and 2013, respectively.

Section 2718 was added to the PHS Act by Section 1001 of the Affordable Care Act and generally requires issuers in the individual market to spend at least 80 percent of premium dollars on reimbursement for clinical services and for activities that improve health care quality for enrollees. Beginning with MLR reporting year 2011, if an issuer does not satisfy the MLR standard, it is required to provide rebates to enrollees.

Section 2718 permits an adjustment to the 80 percent MLR standard for a State's individual health insurance market if it is determined that applying this standard "may destabilize the individual market in such State." The regulation implementing section 2718, 45 CFR Part 158, provides that an adjustment should be granted "only if there is a reasonable likelihood" that application of the 80 percent MLR standard will destabilize the particular State's individual health insurance market. (45 CFR §158.301.) The regulation also provides the criteria the Secretary may consider "in assessing whether application of an 80 percent MLR . . . may destabilize the individual market in a State that has requested an adjustment." (45 CFR §158.330.) These criteria are discussed in Part III of this letter.

The Center for Consumer Information and Insurance Oversight ("CCIIO") within the Centers for Medicare & Medicaid Services ("CMS") has reviewed the OCI's application, as well as the supplemental information provided to us in response to questions raised by the application and the public comments filed with regard to the application.[1] We have carefully examined all these materials and considered the criteria set forth in the statute and implementing regulation. Based on this, we have determined that the evidence presented does not establish a reasonable likelihood that the application of an 80 percent MLR standard will destabilize Wisconsin's individual market. Consequently, we have determined not to adjust the MLR standard in Wisconsin's individual market and, thereby, ensure that consumers receive the benefit of this provision of the Affordable Care Act. This letter explains the basis of our decision.

I. Summary of the Wisconsin Application

CCIIO received the OCI's request for an adjustment to the MLR standard on October 25, 2011. Among the information the OCI included in support of its request were data on the number of covered lives, premium amounts, estimated MLRs and rebates, agents' and brokers' commission expenses, net underwriting profits of the largest issuers in the Wisconsin individual market, and the State high-risk pool. The OCI also provided estimates of aggregate rebates for all issuers for the 2011, 2012, and 2013 reporting years under the 80 percent MLR standard and under the OCI's proposed adjustment.

On January 9, CCIIO sent the OCI a letter deeming the OCI's application complete, and the processing period provided for in 45 CFR §158.345 began. CCIIO's January 9 letter to the OCI also requested additional information and clarifications regarding matters raised by the OCI's application, including: verification of the OCI's MLR and rebate calculations; issuers' plans to price their products to reach an 80 percent MLR; and information regarding market penetration in local markets. The OCI responded to CCIIO's requests on January 27, 2012.

On January 9, 2012, CCIIO also posted notice on its website that any public comments regarding the OCI's application were due by January 20, 2012, as provided in 45 CFR §158.342. CCIIO received 12 public comments, which we also address in this letter.

II. Overview of the Wisconsin Individual Health Insurance Market

According to the OCI's application, approximately 184,000 Wisconsin residents obtain health insurance coverage through the Wisconsin individual health insurance market. Eighteen issuers account for over 95 percent of the Wisconsin individual market. According to the OCI's application, the number of enrollees and market shares of these issuers as of December 31, 2010 are:

[1] All of the documents and information described in this letter are posted on CCIIO's website at http://cciio.cms.gov/programs/marketreforms/mlr/mlr_wisconsin.html unless otherwise footnoted.

Table 1: Wisconsin Individual Market Issuers' 2010 Enrollees and Market Share[2]

	Issuer	Enrollees	Market Share
1.	Wisconsin Physicians	31,530	17.1%
2.	Golden Rule	28,195	15.3%
3.	Compcare	21,024	11.4%
4.	Time	17,812	9.7%
5.	BCBS of WI	15,857	8.6%
6.	Humana	15,527	8.4%
7.	Dean Health Plan	11,771	6.4%
8.	Security Health Plan of WI	7,914	4.3%
9.	WPS Health Plan	7,375	4.0%
10.	American Family Mutual	4,995	2.7%
11.	American Republic	2,774	1.5%
12.	MEGA	2,337	1.3%
13.	Group Health Coop of S Central WI	1,789	1.0%
14.	Physicians Plus	1,741	0.9%
15.	World	1,665	0.9%
16.	Unity Health Plan	1,229	0.7%
17.	New York Life	1,128	0.6%
18.	Celtic	1,057	0.6%
	Rest of Market	8,158	4.4%
	TOTAL	183,878	100%

According to the OCI's application, "Wisconsin does not have a state MLR standard." The application further states that the only mechanisms available in Wisconsin to provide options to consumers in the event an issuer withdraws from the individual market are "the state and federal high risk pools, offered through the Health Insurance Risk-sharing Plan Authority." These features are discussed in more detail in Part III below.

According to the OCI, no legal authority exists "whereby Wisconsin can require replacement of policies by other issuers before an insurer withdraws from the individual market," and "Wisconsin issuers are not required to file a withdrawal plan to exit the individual market." However, according to the OCI's application, Wisconsin law requires issuers wishing to withdraw from the Wisconsin individual market to (1) provide at least 180 days notice to their policyholders and the Commissioner; and (2) prohibits such issuers from re-entering the Wisconsin individual market for a period of five years.

III. Application of Regulatory Criteria to the Wisconsin Individual Market

[2] These numbers are based on data provided with the OCI's initial application. Market share was recalculated based on the number of enrollees.

Title 45 CFR §158.330 lists six criteria that the Secretary may consider "in assessing whether application of an 80 percent MLR … may destabilize the individual market in a State." They are:

a) The number of issuers reasonably likely to exit the State or to cease offering coverage in the State absent an adjustment to the 80 percent MLR and the resulting impact on competition in the State;

b) The number of individual market enrollees covered by issuers that are reasonably likely to exit the State absent an adjustment to the 80 percent MLR;

c) Whether absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers;

d) The alternate coverage options within the State available to individual market enrollees in the event an issuer exits the market;

e) The impact on premiums charged, and on benefits and cost-sharing provided, to consumers by issuers remaining in the market in the event one or more issuers were to withdraw from the market; and

f) Any other relevant information submitted by the State's insurance commissioner, superintendent, or comparable official in the State's request.

The preamble to the regulation provides that 45 CFR §158.330 "does not set forth a single test" for determining whether application of an 80 percent MLR standard may destabilize the individual market in a State, but rather lists the "main criteria" to be considered in assessing such risk. (75 Fed. Reg. 74887 (Dec. 1, 2010).)

A. *Number of issuers reasonably likely to exit the State*

The OCI's application states that, "given the magnitude and number of potential rebates, OCI is concerned about the impact that these rebates will have on maintaining competition in the Wisconsin market." The OCI explains that six issuers had MLRs below 80 percent in 2010, and that "if any of these six insurers that represent 35% of the health insurance market withdraw or severely curtail their coverage in the State, Wisconsin's competitive health insurance market will be negatively impacted." The OCI notes that some issuers may need to adjust their business models in order to comply with the 80 percent MLR standard. The OCI also expresses concern that some issuers "will have no choice but to leave the Wisconsin market altogether because the prospect of rebates will cause underwriting, liquidity and solvency concerns."

In its initial application, the OCI states that two issuers have left the Wisconsin individual market in 2010-2011: Consumers Life and American Community Mutual. Subsequently, American Enterprise Group, the parent company of American Republic and World, submitted its notice of withdrawal to the OCI on October 20, 2011. We have reviewed the circumstances of these withdrawals and do not find them to be relevant to the OCI's assertion that the MLR requirements will cause issuers to leave the market. According to the issuers' withdrawal letters provided by the OCI, Consumers Life and American Community Mutual had fewer than 1,000 life-years (78 and 623 enrollees, respectively) and therefore would be presumed to meet or exceed the MLR standard and not be subject to the MLR rebate requirements.[3] Furthermore, American Community Mutual indicated that it is withdrawing from the individual market in all States as a consequence of an order of rehabilitation that had been entered against it in April 2010 due to its loss experience in its business. We also note that American Enterprise Group has announced the withdrawal of American Republic and World in all States, even though in most States neither company would be subject to rebates. The fact that American Enterprise Group's decision to withdraw from the Wisconsin individual market did not take into account any potential MLR adjustments, coupled with the fact that it is withdrawing from markets where it would not be affected by the MLR provisions, suggest that its decision was not related to the risk of paying rebates, either in Wisconsin or elsewhere. Therefore, we do not believe that the exit by these four issuers supports the OCI's concern that immediate implementation of the 80 percent MLR standard could lead to market destabilization. The four issuers had a combined market share of 2.6 percent.

Under 45 CFR §158.321(d)(2)(iii), applicants requesting an adjustment to the MLR standard are asked to calculate the estimated MLR for issuers in the State using the methodology provided for in the ACA and implementing regulation. The MLR and rebate estimates shown in Table 2 below are calculated using data from calendar year 2010. As the OCI observes, the 2010 estimated MLRs are an imperfect proxy for the actual results issuers may generate if held to the 80 percent standard in 2011-2013. One reason for this is that the ACA was enacted at the close of the first quarter of 2010, presumably after pricing and other business decisions affecting MLRs had largely been made and implemented. Another reason historical data may constitute an imperfect proxy is that there can be year-to-year variability in issuers' claims experience, financial performance, and reported MLRs. Notwithstanding these limitations, the historical data remain the best available basis upon which to estimate the impact of the 80 percent standard in 2011-2013.

Seventeen issuers in the Wisconsin individual market had at least 1,000 life-years each and thus were at least partially credible in 2010 (as defined in 45 CFR §158.230(c)). Therefore, these issuers could be expected to be subject to rebate payments beginning in 2011 if their MLRs fall below the statutorily-mandated 80 percent standard. The chart below shows, for each of these issuers, the estimated 2010 MLR, estimated rebate based on 2010 MLR, estimated 2010 pre-tax net gain in the individual market before payment of rebates, and estimated 2010 pre-tax net gain in the individual market if the issuer would have had to pay rebates in 2010.[4]

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[3] Issuers with fewer than 1,000 life-years are not subject to rebate payments for the first reporting year. (45 CFR §158.230(d).) Life-years are the total number of months of coverage for enrollees during the year, divided by 12. (45 CFR §158.230(b).)

[4] "Pre-tax net gain" is the net gain or loss as reported on the Supplemental Health Care Exhibits ("SHCE"s) that issuers file with the National Association of Insurance Commissioners ("NAIC"), plus any Federal, State, or other taxes and fees paid. The net underwriting gain or loss reported on the SHCE is calculated by subtracting the following from net adjusted premiums earned after reinsurance: net incurred claims after reinsurance; expenses incurred for quality improving activities; claims adjustment expenses; and general and administrative expenses. Unlike the underwriting gain or loss reported on the SHCE, the pre-tax net gain is not reduced by taxes, and is thus consistent with the way underwriting gain is reported on the annual financial statements that issuers file with the NAIC.

Table 2: Estimated 2010 MLRs, Rebates and Pre-Tax Net Gain ($ in millions)[5]

	Issuer	MLR After Credibility Adjustment	Estimated Rebates	Pre-Tax Net Gain Before Rebates	Pre-Tax Net Gain After Rebates
1.	Wisconsin Physicians	85.0%	$0.0	($13.2)	($13.2)
2.	Golden Rule	73.1%	$4.1	$7.6	$3.4
3.	Compcare	82.9%	$0.0	($0.2)	($0.2)
4.	Time	72.0%	$3.9	($3.9)	($7.8)
5.	BCBS of WI	80.8%	$0.0	$4.2	$4.2
6.	Humana	75.1%	$1.7	$0.4	($1.3)
7.	Dean Health Plan	91.3%	$0.0	$0.3	$0.3
8.	Security Health Plan of WI	100.4%	$0.0	($2.4)	($2.4)
9.	WPS Health Plan	88.5%	$0.0	($2.9)	($2.9)
10.	American Family Mutual	79.8%	$0.0	($0.4)	($0.4)
11.	American Republic	74.5%	$0.3	$8.6	$8.3
12.	MEGA	77.1%	$0.3	$1.6	$1.3
13.	Group Health Coop of S Central WI	90.9%	$0.0	$0.7	$0.7
14.	Physicians Plus	94.8%	$0.0	$0.3	$0.3
15.	World	72.6%	$0.2	$2.5	$2.3
16.	Unity Health Plan	98.8%	$0.0	($0.0)	($0.0)
17.	New York Life	105.3%	$0.0	$0.1	$0.1

According to the 2010 MLR data shown above, it appears that 11 of the 17 partially-credible issuers in the Wisconsin individual market meet or nearly meet the 80 percent MLR standard: Wisconsin Physicians; Compcare; BCBS of WI; Dean Health Plan; Security Health Plan; WPS Health Plan; American Family Mutual; Group Health Coop of South Central Wisconsin; Physicians Plus; Unity Health Plan; and New York Life. Additionally, at a credibility-adjusted MLR of 77 percent, MEGA is also close to meeting the 80 percent standard, and would retain significant pre-tax net gains even after payment of rebates.

Three partially-credible issuers remaining in the Wisconsin individual market had 2010 MLRs below 80 percent: Golden Rule; Humana; and Time.[6] These issuers must adjust some combination of their operations and financial targets in order to satisfy an 80 percent MLR standard. In its basic form under the Affordable Care Act and implementing regulation, the MLR is the ratio of monies spent on incurred claims and quality improving activities to premium revenue (adjusted for certain State and Federal taxes and fees). See 45 CFR §158.221. Therefore, all other things being equal, these three issuers would either need to lower premiums or increase expenditures on claims or quality improving activities, or otherwise risk paying

[5] These estimates are calculated using the data from the 2010 SHCEs provided by the OCI with its January 27 letter. The OCI's initial application calculated MLRs without interpolating the base credibility factor values. CCIIO's January 9 letter presented corrected credibility adjustments, but mismatched issuer names and MLR estimates, leading the OCI to again use incorrect credibility adjustments in its January 27 response. Table 2 corrects for these errors.

[6] As noted previously, American Republic and World are withdrawing from the Wisconsin individual market.

rebates to enrollees. Assuming that these issuers did not reduce their administrative costs, either of these actions could lead to deterioration in profitability, which may be a consideration for each company in assessing whether to remain in the Wisconsin individual market.

As stated previously, the OCI expresses concern about the impact of the MLR rebate requirement on issuers' profitability and solvency. With regard to the OCI's concern with the impact of rebate payments on solvency, we note that all partially-credible issuers with MLRs below the 80 percent standard have risk-based capital ("RBC") ratios of 500 to 1,800 percent, well in excess of the minimum level of 200 percent recommended by the NAIC to ensure solvency. Specifically, the three partially-credible issuers with 2010 MLRs below 80 percent – Golden Rule, Humana, and Time – had RBCs of 654 percent, 534 percent, and 595 percent, respectively.

Furthermore, as shown in the chart above, Golden Rule would retain substantial pre-tax net gains in the Wisconsin individual health insurance market even after payment of rebates under an 80 percent MLR standard and even if Golden Rule did not adjust its business model. However, according to the information submitted with the OCI's January 27 letter, Golden Rule projects that it will owe no rebates for the 2011 MLR reporting year. This suggests that Golden Rule expects to meet or exceed the 80 percent MLR standard in 2011.

Although based on 2010 data, payment of rebates would appear to result in Humana incurring a pre-tax loss, according to the information submitted with the OCI's January 27 letter, Humana projects rebate payments for the 2011 MLR reporting year of only $0.2 million, a fraction of the amount estimated based on its 2010 experience. Consequently, it is likely that Humana will remain profitable even after payment of rebates under the 80 percent MLR standard. This suggests that Humana is in the process of changing its business model to achieve significantly higher MLRs in 2011-13, and that it will remain in the Wisconsin individual market.

Time was unprofitable in the Wisconsin individual market before payment of rebates, and would be somewhat more unprofitable after payment of rebates under an 80 percent MLR standard. However, this analysis presumes certain facts, most notably the continuation of 2010 financial performance and no changes to Time's 2010 business model that has likely changed in 2011. In its initial application, the OCI expresses concern that absent an adjustment to the 80 percent MLR standard, many issuers will have difficulty "significantly reducing non-claim related variable expenses" or "lowering premium." However, the OCI's concern does not appear to reasonably extend to Time. In its 2011 third quarter report ("Form 10-Q"), Assurant (Time's parent company) states that "Assurant Health Third Quarter 2011 results reflect progress as [Assurant and its subsidiaries] continue to adapt to the Affordable Care Act," and that "[s]elling, underwriting and general expenses decreased $79,084,000, or 18%" in the first nine months of 2011 versus the comparable period in 2010.[7] Assurant states that its full-year 2011 "expenses were down $104.4 million compared to 2010,"[8] a decrease of approximately 18 percent. In its 2011 earnings results call, Assurant adds that "2011 operating costs dropped significantly as we

[7] Assurant, Inc., Quarterly Report (Form 10-Q), at 42 and 52 (Nov. 2, 2011).
[8] Assurant, Inc., Press Release, Assurant Reports Fourth Quarter and Full-Year 2011 Financial Results (Feb. 1, 2012), *available at* http://newsroom.assurant.com/releasedetail.cfm?ReleaseID=644731&companyID=AIZ (*last accessed* Feb. 13, 2012).

drive toward a streamlined structure that will allow us to succeed under health care reform."[9] These statements suggest that Time, as part of Assurant Health, has been able to successfully streamline its expense structure during 2011. Therefore, the actual impact of rebates on Time's profitability in 2011 may be smaller than the 2010 data suggest.

The OCI notes that "it is equally as important to discuss the negative impact of the 80% MLR will have on companies entering the market." The OCI explains that "[a]cquisition costs and administration costs are higher in the first years of operation, and imposing a standard that a new or expanding company can use no more than 20% of its premium for necessary investments in its growing business is a strong disincentive to even begin selling in that market." We note that the MLR regulation's provision regarding newer experience, 45 CFR §158.121, allows an issuer with 50 percent or more of its experience during an MLR reporting year resulting from new business to exclude the experience of these policies from MLR calculations for that reporting year. Furthermore, we note that a new entrant would not become subject to MLR rebate requirements until it accumulates at least 1,000 life-years in the Wisconsin individual market.

The OCI additionally relates that "[s]ome local insurance markets are … more concentrated being served by fewer insurers than on a state-wide basis." The OCI expresses concern that "the loss of any additional insurers, or cessation of their respective products, will result in more limited coverage in comparable products, services, and geographic areas," including a potential reduction in coverage options for residents of Wisconsin rural areas and other medically underserved populations. In its January 27 letter, the OCI identifies eleven rural counties in three regional markets with "highly concentrated" insurance markets and "medically underserved" populations. Additionally, the OCI provides issuers' total covered lives in six of Wisconsin's regional markets, including two of the three regional markets that the OCI identifies as containing highly concentrated markets with medically underserved populations. These data show that in each of these two regional markets, six of 16 active issuers account for over 90 percent of the market: BCBS of WI; Compcare; Golden Rule; Humana; Security Health Plan; and WPS Health Plan. We note that, as discussed above, all of these issuers either already exceed the 80 percent MLR standard or expect to meet or approach the standard in 2011. Therefore, it is not likely that any of these issuers will exit and leave consumers with fewer options.

In sum, evidence shows that all issuers in the Wisconsin individual market either already meet the 80 percent MLR standard, or are adapting their business models in order to continue to achieve sustainable financial performance in that market. Based on this, we do not expect any issuers to withdraw from the Wisconsin individual market and therefore could not conclude that it is "reasonably likely" that the market will be destabilized if the 80 percent standard is not adjusted.

B. *Number of enrollees covered by issuers that are reasonably likely to exit the State*

[9] Assurant, Inc., Q4 2011 Earnings Conference Call (Feb. 2, 2012), *available at* http://files.shareholder.com/downloads/AIZ/1418058860x0x540075/e6fbc745-b074-4990-806e-954bd6cbf00d/AIZ_Final_4Q_Earnings_Transcript_2.2.12.pdf.

As stated previously, the OCI expresses concern about the impact of rebate payments on the profitability of issuers with MLRs below 80 percent, and concludes that four issuers in addition to World and American Republic – Golden Rule, Humana, Time, and MEGA – may consider exiting the Wisconsin individual market. However, as discussed in Part A above, we do not share the OCI's concern, because only one issuer with a 2010 MLR below 80 percent – Time – is expected to owe a substantial amount in rebates for 2011, and Time appears to be successfully changing its business model. We further note that, according to the OCI's application, Wisconsin law prohibits an issuer electing to withdraw from the Wisconsin individual health insurance market from reentering the individual market for five years and "contains no provision to waive for good or other cause." This presents a significant disincentive for issuers to exiting the market. In light of these circumstances, it appears that all issuers would remain in the market even with an 80 percent MLR standard.

C. *Consumers' ability to access agents and brokers*

In its application, the OCI states that issuers "have already begun to reduce agent commissions," and explains that "[a] reduction in agent commissions makes an agent's business less profitable and forces agents to leave the market." However, the OCI does not provide specific information on the number of agents or brokers who have or might leave the business, or the number of Wisconsin consumers who could be affected. We note that, as discussed in Part A above, nearly all issuers in the Wisconsin individual market either already meet the 80 percent MLR standard, are very close to meeting it, or expect to meet it in 2011. Therefore, even if these issuers were to reduce commission rates, such reductions could not be reasonably attributed to the MLR standard. In sum, the OCI has not provided evidence that would allow us to conclude, according to the criterion established by 45 CFR 158.330(c), that "absent an adjustment to the 80 percent MLR standard consumers may be unable to access agents and brokers."

D. *Alternate coverage options*

As discussed in Part A above, we expect that all issuers are likely to remain in the Wisconsin individual market subsequent to the implementation of an 80 percent MLR standard. We note that according to the OCI's application, Wisconsin has a high risk pool, the Health Insurance Risk-Sharing Plan ("HIRSP") Authority. HIRSP provides guaranteed issue coverage to Wisconsin residents who have lost or have been denied coverage in the individual market due to medical conditions, and to HIPAA-eligible individuals. HIRSP imposes a six-month pre-existing condition exclusion, and premiums are on average 26 percent higher than the industry standard. We further note that Wisconsin has a highly competitive individual health insurance market, with the largest issuer accounting for only 17 percent of that market. Even if any issuers were to withdraw, there is no indication that issuers remaining in the market would be unwilling or unable to provide enrollees of any issuers that might withdraw with comparable products, at comparable prices.

E. *Impact on premiums, benefits, and cost-sharing of remaining issuers*

The OCI states that "it is difficult to speculate how one company's withdrawal might affect the market in general, in geographic locality, or for specialized populations, let alone quantify the negative impact there may be on premiums, benefits, or cost-sharing among remaining issuers." Nonetheless, the OCI expresses concern that if issuers with low MLRs were to leave the market, consumers would be "forced to pay more for new coverage in a market with fewer options." However, as noted in Part A above, evidence suggests that all issuers are likely to remain in the Wisconsin individual market without an adjustment to the 80 percent MLR standard. Furthermore, as the OCI acknowledges, the Wisconsin individual health insurance market is "one of the most competitive health insurance markets in the country." Indeed, the OCI appears to suggest that extensive rate regulation has not been necessary in part because "price competition exists at the consumer level." Based on this, we do not consider the impact of an 80 percent MLR standard on premiums, benefits, and cost-sharing of issuers remaining in the Wisconsin individual market to be a significant factor in making our determination.

F. *Other relevant information submitted by the State*

In explaining its rationale for requesting an adjustment of the MLR standard, the OCI states that "[t]he 71% starting point in 2011 reflects the current environment." However, the 2010 SHCE data and information provided by issuers show that the aggregate MLR for the Wisconsin individual market is in fact approximately 82 percent. Considering that two issuers that had MLRs below 80 percent in 2010 expect to meet or approach the 80 percent standard in 2011, the market average is likely to be even higher for 2011. Even the lowest credibility-adjusted MLR among the partially-credible issuers in the market in 2010 was 72 percent, higher than the 71 percent that the OCI believed to reflect the current environment in the Wisconsin individual market.

IV. Summary of Public Comments

CCIIO received e-mails from seven Wisconsin consumers urging the Secretary not to grant the OCI's request. In addition, CCIIO has received five letters from 14 consumer and patient advocacy organizations and a former member of the U.S. House of Representatives opposed to the OCI's request. These commenters assert that the OCI has failed to demonstrate that the market is likely to be destabilized under any criteria for granting an adjustment. The commenters additionally highlight the fact that Wisconsin has a highly competitive individual market, characterized by a large number of well-performing HMOs whose experience shows that efficient issuers are able to meet the statutory MLR standard while remaining solvent and profitable. The commenters further express concern with the amount of rebates that consumers would not receive if the OCI's request is granted, and express disappointment that the OCI's request prioritizes "insurance industry profits over the rights of consumers."

We acknowledge the views and concerns expressed in this comment. They are discussed, many in great detail, in the body of this letter.

V. Conclusion

As described at the outset of this letter, section 2718 of the PHS Act permits the Secretary to adjust the 80 percent standard in the individual market if it is determined that applying this standard "may destabilize the individual market in [the] . . . State." The regulation implementing section 2718, 45 CFR Part 158, provides that an adjustment should be granted "only if there is a reasonable likelihood" that application of the 80 percent MLR standard will destabilize the particular State's individual health insurance market (45 CFR §158.301).

After applying the standards and criteria set out in section 2718 and 45 CFR Part 158 to the information submitted by the OCI, we conclude that the evidence presented does not establish a reasonable likelihood that implementation of an 80 percent MLR standard may destabilize the Wisconsin individual market. We reach this conclusion for the reasons outlined in the analysis under the criteria set out above, and based on the specific characteristics of the Wisconsin individual market addressed in that analysis.

As noted in Part III.A above, of the fifteen issuers remaining in the market that are at least partially-credible and would thus be expected to be subject to MLR rebate provisions, twelve already meet, or are close to meeting, the 80 percent standard. The evidence suggests that the remaining three issuers – Golden Rule, Humana, and Time – are adapting their business models, which should allow them to achieve higher MLRs and/or sustainable financial performance in the individual market. There is no basis to conclude, based on these facts, that there is a reasonable likelihood that these issuers may leave the market. Consequently, no enrollees are likely to require alternate coverage due to withdrawal of any issuer.

As discussed in Part III.C above, although the OCI expresses concern that an 80 percent MLR standard may cause producers to leave the marketplace due to receiving lower compensation, the OCI does not provide specific data to support this concern. Based on the information provided in the OCI's application, there is insufficient evidence to conclude that an 80 percent MLR standard would significantly reduce consumers' ability to access agents and brokers in Wisconsin.

As further discussed in Part III.F, the OCI's proposed phase-in of the statutory MLR standard from 71 percent to 80 percent over three years was predicated on OCI's belief that 71 percent reflects the current MLR of the issuers in the Wisconsin individual market. As stated previously, data provided by the OCI show that the aggregate MLR of the partially-credible issuers was in fact above the 80 percent MLR standard in 2010, and is likely to be even higher in 2011.

For these reasons, we conclude that an adjustment to the 80 percent MLR standard in the Wisconsin individual market is not appropriate.

Pursuant to 45 CFR §158.346, the OCI may request reconsideration of the determination issued in this letter. A request for reconsideration must be submitted in writing within ten days of the date of this letter to MLRAdjustments@cms.hhs.gov, and may include any additional information in support of such request. A determination on a request for reconsideration will be issued within 20 days of the receipt of the request.

Please contact me should you have any questions.

Sincerely,

/Signed, SBL, February 16, 2012/

Steven B. Larsen
Deputy Administrator and Director,
Center for Consumer Information and Insurance Oversight