State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

125 South Webster Street • P.O. Box 7873
Madison, Wisconsin 53707-7873
(608) 266-3585 • (800) 236-8517
Fax: (608) 264-8115
E-Mail: ocicomplaints@wisconsin.gov
Web Address: oci.wi.gov

Scott Walker, *Governor*
Theodore K. Nickel, *Commissioner*

Wisconsin.gov

December 12, 2018

Randy Pate, Director
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201

Dear Mr. Pate,

Thank you for your November 30, 2018 letter informing Governor Walker the estimated pass through funding available to implement the Wisconsin Healthcare Stability Plan is $127,726,259. As we discussed, this estimate is significantly lower than the $166 million estimate included in Wisconsin's 1332 waiver application. Prior to the thorough actuarial analysis of state-specific enrollment and premium data that resulted in $166 million, preliminary state estimates pointed to a pass through amount close to $150 million, with a worse-case scenario estimate of a $120 million.

Press reports and conversations with other states indicate Wisconsin is not alone. Minnesota's program is facing an even wider discrepancy, according to news reports, close to $100 million.

The actuarial firm used to develop Wisconsin's pass through amount performed a data call to obtain the most recent insurer enrollment and premium data available at the time and leveraged the most recent data available from the Centers for Medicare & Medicaid Services (CMS). Specifically, the insurer data call requested full year 2017 and emerging 2018 enrollment, premium, and Advanced Premium Tax Credit (APTC) data to inform baseline estimates. That data, along with CMS data, was used to estimate 2019 enrollment, premium and APTC amounts. A detailed explanation of the data and methodology used is included in the actuarial and economic analysis submitted with the application, as required by federal law.

Unfortunately, it appears the U.S. Department of the Treasury (Treasury), in estimating Wisconsin's pass through rate, used an entirely different set of data points. Treasury's process is opaque, making it impossible to reconcile the difference between Treasury's pass through estimate and the estimate used in Wisconsin's 1332 application. The actuarial report required as part of the 1332 Waiver application process does not appear to inform the pass through estimate received from Treasury. Further, neither Governor Walker nor the Office of the Commissioner of Insurance (OCI) was notified the estimate submitted was not aligned with analysis conducted by the Office of Tax Analysis (OTA).

To understand the current variation between OCI and Treasury estimates, below are a number of specific questions:

1. Can you explain your assumptions in the model related to the impact of the repeal of the individual mandate penalty? To what degree did it differ from Wisconsin's assumptions.

2. Can OTA explain how enrollment was trended to 2019 (or how 2016 enrollment was updated)?

3. Can OTA discuss 2018 attrition patterns for Wisconsin's exchange enrollment? Please share current APTC enrollment (or the point and time measurement that was used).

4. For 1332 waivers in prior years, was the IRS reconciliation used in calculating the pass through rate?

5. Is the APTC to PTC adjustment (i.e., tax reconciliation) a major impact on the calculations? Can you quantify the difference for Wisconsin?

6. Is there anything systematic (e.g., changes to the microsimulation model) that changed between 2018 and 2019?

Overall, we urge Treasury to be more transparent by clearly explaining their process and providing access to underlying data informing their model. To be clear, the black box approach threatens the viability of the 1332 State Relief and Empowerment Waiver process. The impact of reinsurance waivers and pass through estimates should be easy for actuaries to predict, however, this year a number of states received a significant negative surprise. The complicated federal waivers contemplated by the new guidance may be good for consumers, but will be even more difficult to analyze.

With an unpredictable black box pass through model, governors and state legislators may find it impossible to consider new 1332 waivers. State budgets are tight and a much stronger level of predictability in terms of the federal commitment to reinsurance and other 1332 efforts is necessary.

Thank you for your time and consideration.

Sincerely,

Theodore K. Nickel
Commissioner of Insurance