



Wisconsin Medical Society

April 10, 2018

Deputy Commissioner JP Wieske
Office of the Commissioner of Insurance
125 South Webster Street
Madison, WI 53707
RE: Wisconsin 1332 Draft Waiver Application

Dear Deputy Commissioner Wieske:

Comprised of more than 12,500 physicians, residents and medical students, the Wisconsin Medical Society (Society) is the largest association of medical doctors in Wisconsin. It is our mission to improve the health of the people of Wisconsin by supporting and strengthening physicians' ability to practice high-quality patient care in a changing environment. The Wisconsin Healthcare Stability Plan (WIHSP) supports this mission by helping Wisconsin's patients maintain access to high quality care at affordable levels. The Society supports the implementation of the reinsurance program under WIHSP as it will help lower premiums for Wisconsin's patients while maintaining a healthy marketplace.

Working to manage the health care costs of Wisconsin's patients and maintaining network adequacy are stated principles of the Society's Health System Reform Objectives (attached). Such efforts pertain to office visits and prescribed treatments, but also extend to out-of-pocket costs associated with insurance premiums, co-insurance, and coverage requirements. Oftentimes, it is the out-of-pocket costs that can have adverse effects on Wisconsin's patients, forcing them to make difficult decisions about their health care.

In 2018, Wisconsin's premiums for plans offered on the Affordable Care Act (ACA) exchange increased 36 percent on average.¹ According to an analysis performed by Wakely Consulting Group and estimates from the Office of the Commissioner of Insurance (OCI), the average premium for all exchange participants is expected to be 42 percent higher in 2018 compared to 2017.² Along with premium concerns, rising out-of-pocket costs are also adversely affecting many patients, especially those with incomes above 400 percent of the federal poverty level.³ Taken together, these rising costs place patients

¹ "Wisconsin Individual ACA Plan Rates set to Rise 36 Percent on Average in 2018," *Wisconsin Health News*, Oct. 17, 2017. <https://wisconsinhealthnews.com/2017/10/12/individual-aca-plan-rates-set-rise-36-percent-average-2018/>.

² Office of the Commissioner of Insurance, "Wisconsin 1332 Draft Waiver Application," accessed March 15, 2018 <https://oci.wi.gov/Documents/AboutOCI/WI%201332%20DRAFT%20Waiver%20Application%203%2013%2018.pdf>.

³ Anna Goldman et al. "Out-of-Pocket Spending and Premium Contributions After Implementation of the Affordable Care Act," *JAMA Internal Medicine* 178, no. 3 (2018): 347-355, doi: 10.1001/jamainternmed.2017.8060.

in unconscionable positions, whereby they are rationing their own treatment and care because they don't think they can afford it.⁴

Lowering costs for patients can help with issues of affordability, but without adequate insurer participation patients who receive coverage from the ACA exchanges may not have adequate access to care. Reinsurance programs have been demonstrated to lower insurer risk, which can incentivize insurers to participate in the ACA marketplaces.⁵ Further, with elimination of the individual mandate in the 2018 tax reform law, concerns have arisen regarding the stability of the ACA exchanges,⁶ including potential bifurcation of the market with the exchanges operating as de facto high-risk pools. Primary among these concerns is that only the sickest will opt to obtain coverage creating a “death spiral” for the ACA marketplace. Reinsurance programs can guard against adverse selection concerns, and incentivize insurers to continue participating in the ACA marketplace.⁷ By stabilizing and lowering premiums, the Wisconsin Healthcare Stability Plan could help incentivize younger, healthier patients to acquire coverage, rather than risking a potential catastrophic event.

The reinsurance structure proposed by WIHSP addresses the concerns of affordability and access, and will help reduce the financial burden on patients through lowered premiums. Further, the proposal maintains existing patient protections and guarantees that patients will have access to an adequate range of services, which the Society also supports.

As physicians we play a central role in the health of Wisconsin's patients and want to do everything we can ensure and promote their health and well-being. The Society looks forward towards being a partner with OCI, the Department of Health Services, and the Centers for Medicare and Medicaid Services to help ensure the 1332 waiver and subsequent reinsurance program are successful.

Sincerely,



Clyde “Bud” Chumbley, MD, CEO

⁴ Sarah Kliff, “Why Obamacare Enrollees Voted for Trump,” Vox, Dec. 13, 2016. <https://www.vox.com/science-and-health/2016/12/13/13848794/kentucky-obamacare-trump>.

⁵ TJ Layton et al. “Risk Corridors and Reinsurance in Health Insurance Marketplaces: Insurance for insurers,” *American Journal of Health Economics* 2, no. 1 (2016): 66-95, doi: 10.1162/ajhe_a_00034.

⁶ HR 1 15th Congress of the United States. Accessed March 15, 2018. <https://www.congress.gov/115/bills/hr1/BILLS-115hr1enr.pdf>.

⁷ JM Zhu et al. “The Power of Reinsurance in Health Insurance Exchanges to Improve the Fit of the Payment System and Reduce Incentives for Adverse Selection,” *Inquiry* 50, no. 4 (2013): 255-274, doi: 10.1177/0046958014538913.



Matthew Eyles
President and CEO

June 1, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 445-G
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Verma:

America's Health Insurance Plans (AHIP) appreciates the opportunities presented by the 1332 waiver as an approach for states to address their own market needs. Because health insurance markets are inherently local, we support the 1332 waiver option for the development of state-specific solutions to state-specific challenges.

I write you today in support of the 1332 waiver application submitted by the State of Wisconsin. We believe that proposals for 1332 waivers should explore solutions to increase consumer choice and reduce costs while ensuring consumers in that specific state have access to coverage. States that utilize a 1332 waiver should consider how to implement that waiver in a manner that minimizes disruption for individuals who purchase coverage in that state.

The Wisconsin Office of the Commissioner of Insurance has thoroughly engaged with a wide variety of stakeholders, including health plans doing business in Wisconsin, and the Wisconsin 1332 waiver application reflects thoughtful consideration of input provided by stakeholders on how to best stabilize the Wisconsin market. The Wisconsin Healthcare Stability Plan seeks to establish a \$200 million state-based reinsurance program to stabilize rates for individual health insurance plans and provide greater financial certainty to consumers. We believe the proposal will allow health plans to continue offering more affordable products in the individual market leading to increased competition and more affordable health plan options for Wisconsin residents.

We urge you to act quickly to approve Wisconsin's waiver application. The state's reinsurance program would help stabilize the individual market and provide an opportunity for the Administration to see how innovation and state flexibility can help address the ongoing challenges of health care access.

We appreciate the Administration's work to create a simpler, more robust, and more affordable individual market. We look forward to working with you to ensure consumers have access to quality, affordable coverage and care for years to come.

Sincerely,

A handwritten signature in cursive script that reads "Matthew Eyles".

Matthew D. Eyles
President and CEO



Advocacy Department

1150 Connecticut Ave., NW | Suite 300 | Washington, DC 20036
P 202-785-7900 | F 202-785-7950 | www.heart.org

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June 5, 2018

The Honorable Alex Azar, Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Honorable Steven Mnuchin, Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Azar and Secretary Mnuchin:

On behalf of the American Heart Association and the American Stroke Association (AHA/ASA), we would like to thank you for the opportunity to provide written comments on the Wisconsin Section 1332 State Innovation Waiver application to implement the Wisconsin Healthcare Stability Plan (WIHSP).

As the nation's oldest and largest voluntary organization dedicated to building healthier lives free from heart disease and stroke, our nonprofit and nonpartisan organization represents over 100 million patients with cardiovascular disease (CVD) and includes over 40 million volunteers and supporters committed to our goal of improving the cardiovascular health of all Americans. AHA has worked diligently for many years to support and advance strong public health policies in addition to providing critical tools and information to providers, patients, and families in order to prevent and treat these deadly diseases.

The AHA believes everyone should have quality and affordable healthcare coverage and a strong, robust marketplace is essential for people with CVD to access the coverage that they need. To that end, a well-designed reinsurance program can help offset the costs of enrollees with expensive health care needs. Additionally, implementing a reinsurance program could help to alleviate other systemic problems within the state insurance exchange including smaller provider networks and low issuer participation. The AHA would like to express our support for the proposal.

As you are aware, reinsurance programs have been used to stabilize premiums in a number of healthcare programs, such as Medicare Part D.

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A temporary reinsurance fund for the individual market was also established under the Affordable Care Act and reduced premiums by an estimated 10 to 14 percent in its first year. We are pleased to see that the state estimates WIHSP will reduce premiums by 10.6 percent in 2019.

The AHA is also pleased that the state acknowledges that the comprehensiveness and affordability of coverage offered on the individual markets will not be altered by the 1332 waiver proposal. The patient protections extended to individuals with pre-existing conditions under the Affordable Care Act (ACA), including the ten essential health benefit categories, guaranteed issue, out of pocket maximums and many other critical consumer protections are the bedrock of care for our patients. These guarantees make our healthcare system navigable for CVD patients and we commend the state for ensuring that the waiver proposal does not alter the integrity of these requirements.

On behalf of the American Heart Association and American Stroke Association, thank you for reviewing our comments. We appreciate the opportunity to provide feedback on this application. If you have any questions, please contact Katie Berge, Government Relations Manager for Federal Affairs at katie.berge@heart.org or 202-785-7900.

Sincerely,

A handwritten signature in black ink that reads "Sue A. Nelson". The signature is written in a cursive, flowing style.

Sue Nelson
Vice President of Federal Advocacy

Wisconsin Association of Health Plans

The Voice of Wisconsin's Community-Based Health Plans

June 6, 2018

Mr. Randy Pate
Director, Center for Consumer Information & Insurance Oversight
Deputy Administrator, Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, D.C. 20201

Re: Wisconsin Section 1332 Waiver Comments

Dear Mr. Pate:

The Wisconsin Association of Health Plans appreciates the opportunity to comment on Wisconsin's application for a Section 1332 State Innovation Waiver. Wisconsin seeks to establish the Wisconsin Healthcare Stability Plan, a state-based reinsurance program for individual market single risk pool products.

The Wisconsin Association of Health Plans is the voice of 11 community-based health plans, which collectively serve businesses, government programs, and individuals in all 72 counties of the state. Wisconsin's community-based health plans are committed to serving their neighbors, providing access to affordable health insurance coverage, and supporting efforts that promote a stable individual market. Many Wisconsin-based health plans have offered coverage through the Exchange every year since its inception. Today, members of the Wisconsin Association of Health Plans make up the majority of insurers serving Wisconsin consumers in the Exchange.

Although Wisconsin has more insurers offering coverage through the individual market Exchange than any other state in the country, the market remains volatile. Intervention is needed to counteract further erosion of the individual market risk pool in 2019 and beyond. Wisconsin's community-based health plans believe a reinsurance program is an important step toward promoting an affordable, stable individual market for more than 200,000 Wisconsin consumers.

As you know, health insurance providers are currently preparing their Qualified Health Plan offerings for 2019. Wisconsin's community-based health plans appreciate timely review of the Wisconsin Healthcare Stability Plan waiver by the Department of Health and Human Services and the Department of the Treasury. Please contact me with any questions.

Sincerely,



Nancy J. Wenzel
Chief Executive Officer
Wisconsin Association of Health Plans
nancy@wihealthplans.org
608-255-8599



June 7, 2018

Randy Pate, Director
CMS Center for Consumer Information and Insurance Oversight
US Department of Health and Human Services
200 Independence Ave. SW
Washington, DC 20201

Re: Support for Wisconsin's 1332 Waiver Application

Sent via email to: StateInnovationWaivers@cms.hhs.gov

Dear Mr. Pate:

On behalf of the members of Common Ground Healthcare Cooperative (CGHC), I write to express support for the 1332 Waiver Application submitted by the state of Wisconsin which would establish a reinsurance program to help stabilize Wisconsin's individual insurance market.

CGHC is a nonprofit health insurance cooperative that is governed by individuals and small employers receiving health insurance coverage through our organization. We have served Wisconsin's individual market since 2014 and have experienced first-hand the impact of law changes, rule changes and funding changes that have combined to create an unstable market for insurers and consumers alike. We strongly support Wisconsin's effort to stabilize its market through a reinsurance program that will have a positive impact on insurance premiums for consumers.

Our primary concern is for our members; a core tenant of our mission is to ensure Wisconsin consumers continue to have access to health insurance. Many of our members have suffered high premium increases over the past several years resulting from uncertainties in the market and law changes that have eroded and continue to erode the individual market risk pool. These changes have significantly impacted members that do not have help from the federal government in affording their premium payments. We believe Wisconsin's 1332 Waiver, if approved, will help protect the interests of our members and other consumers in the state of Wisconsin.

We appreciate the opportunity to provide comments. If you have any questions or would like to discuss these suggestions further, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Cathy Mahaffey".

Cathy Mahaffey
CEO, Common Ground Healthcare Cooperative



via electronic submission

June 7, 2018

Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: ACS CAN's Comments on Proposed 1332 Waiver

Dear Administrator Verma:

The American Cancer Society Cancer Action Network (ACS CAN) appreciates the opportunity to comment on the Wisconsin Insurance Commissioner's 1332 waiver application. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government.

ACS CAN supports a robust marketplace from which consumers can choose a health plan that best meets their needs. Access to health care is paramount for persons with cancer as well as survivors. More than 1.7 million Americans will be diagnosed with cancer this year.¹ An additional 15.5 million Americans are living with a history of cancer.² In Wisconsin alone, an estimated 33,340 people are expected to be diagnosed with cancer this year³ and another 288,410 Wisconsinites are cancer survivors.⁴ For these Americans access to affordable health insurance is a matter of life or death. Research from the American Cancer Society has shown that uninsured Americans are less likely to get screened for cancer and thus are more likely to have their cancer diagnosed at an advanced stage when survival is less likely and the cost of care more expensive.⁵

¹ American Cancer Society. Cancer Facts & Figures: 2018. Atlanta: American Cancer Society, 2018.

² Id.

³ Id.

⁴ American Cancer Society. Cancer Treatment & Survivorship: Facts & Figures 2016-2017. Atlanta: American Cancer Society, 2016.

⁵ E Ward et al, "Association of Insurance with Cancer Care Utilization and Outcomes, *CA: A Cancer Journal for Clinicians* 58:1 (Jan./Feb. 2008), <http://www.cancer.org/cancer/news/report-links-health-insurance-status-with-cancer-care>.

ACS CAN supports the state's application for a 1332 waiver which would implement a state reinsurance program. A well-designed reinsurance program can help to lower premiums and mitigate plan risk associated with high-cost enrollees. We note that the Wisconsin Insurance Commissioner's Office estimates that the proposed reinsurance program will reduce premiums by 10.6 percent in 2019.⁶ These savings will not only benefit the federal government through reduced subsidy payments (an estimated \$166 million in 2019 and \$164 million in subsequent years), but will also benefit consumers not eligible for subsidies who enroll in coverage through the exchange.

A reinsurance program may also encourage insurance carriers to continue offering plans through the exchange, or begin to offer plans as applicable. This maintenance or increase in plan competition also may help to keep premiums from rising. These premium savings could help cancer patients and survivors afford health insurance coverage, and may allow some individuals to enroll who previously could not afford coverage. The Commissioner estimates that enrollment in non-group insurance will rise .8 percent if this waiver is implemented.

ACS CAN believes that patient protections in current law – like the prohibition on pre-existing condition exclusions, lifetime and annual limits, and Essential Health Benefits requirements – are crucial to making the healthcare system work for cancer patients and survivors. We are pleased that Wisconsin's 1332 waiver application does not propose to alter any key patient protections, and specifically states that “[r]egardless of whether the waiver is granted, all Exchange-compliant plans will be required to provide coverage of essential health benefits.”⁷

Conclusion

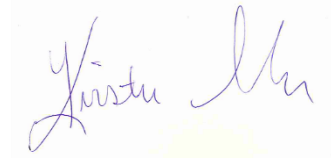
On behalf of the American Cancer Society Cancer Action Network we thank you for the opportunity to comment on the proposed section 1332 waiver, which we believe will provide long-term viability of the individual market while not eroding important consumer protections. We strongly encourage CMS to approve this waiver in a timely fashion so the state can

⁶ Office of the Insurance Commissioner. Wisconsin 1332 Waiver Application. April 18, 2018. <https://oci.wi.gov/Documents/Regulation/1332%20Waiver%20WI%20Application.pdf> Accessed May 23, 2018.

⁷ *Ibid.*

implement the program in time for the 2019 plan year. If you have any questions, please feel free to contact me at Kirsten.Sloan@cancer.org or 202-585-3240.

Sincerely,

A handwritten signature in blue ink that reads "Kirsten Sloan". The signature is written in a cursive style and is positioned above a light yellow rectangular highlight.

Kirsten Sloan
Vice President, Public Policy
American Cancer Society Cancer Action Network



June 8, 2018

Secretary Alex Azar
US Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201
StateInnovationWaivers@cms.hhs.gov

RE: ABC for Health, Inc.'s comment on Wisconsin's Section 1332 State Innovation Waiver Request Regarding a State Reinsurance Program

Dear Sec. Azar–

Thank you for the opportunity to provide comment on Wisconsin's Section 1332 Waiver Request. Advocacy and Benefits Counseling for Health, Inc. (ABC for Health) helps low-income, health disparity populations obtain access to both health care and coverage in Wisconsin. ABC for Health's mission is to provide consumers and providers with information, advocacy tools, legal services, and expert support they need to secure health care coverage and services. We translate individual client case experiences into local strategies as well as system level reforms through our statewide HealthWatch Wisconsin subsidiary, which 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.

The Affordable Care Act envisioned reinsurance as a way to stabilize the individual insurance market as individuals with preexisting conditions entered the market for the first time without discrimination. Reinsurance stabilized markets for insurance companies carrying higher risk, or with underpriced monthly premiums, in a temporary, three-year program. Reinsurance provided a glide path for insurance companies to evaluate price plans and remain competitive in the expanded individual policy market. That program, however, only succeeded in compensating insurers for about half the claims expenses of high-cost enrollees. The original ACA legislation grossly underestimated the amount of funding necessary to keep up with high-cost claims in the Marketplace's second year, and subsequent challenges by Republican opponents, including Wisconsin's Governor Walker, limited the federal government's ability to pay out fund contributions.

With the draft waiver, Governor Scott Walker changes course and pivots toward the ACA and the reinsurance concept. The plan, approved by the legislature, includes a request for federal and state funding for a state operated reinsurance program that would partially reimburse individual health insurance plans for claims paid on behalf of their highest cost enrollees.

In substance, the plan mirrors programs enacted in other states, including Minnesota, Alaska, and Oregon. Wisconsin's proposal asks the US Treasury and US Department of Health and Human Services (HHS) to waive section 1312(c)1 under Sec. 1332 of the ACA for 5 years (starting in 2019) to implement the "WI Healthcare Stability Plan" (WIHSP). The Office of the Commissioner of Insurance (OCI) will administer this state-based reinsurance program upon federal approval. OCI is responsible for WIHSP operations, including setting the attachment point, reinsurance cap, and



coinsurance amounts. Wisconsin seeks approximately \$170 million in federal pass through dollars for Wisconsin's reinsurance program. The state would contribute the balance.

The waiver language blames the existing premium increases in Wisconsin's individual insurance market almost exclusively on the "failing" of the ACA, looking backward with rose-colored glasses on the pre-ACA market in Wisconsin, citing a time when there was "more competition" in the marketplace. Yet, upon scrutiny, the past also lacked Medical Loss Ratios, essential health benefits, individual mandate, or other consumer-level protections. In reality, the small group market was collapsing under the weight of its own inefficiencies.

Marketplaces in Wisconsin evolved after ACA implementation, more specifically, after the implementation of HealthCare.gov in 2013. Market forces cause inefficient insurers, selling ineffective products, unable to meet the stricter Medical Loss Ratio requirements to close.¹ Strong political opposition from state and federal policymakers barraged markets, as did continued high-stakes constitutional or other ACA legal challenges, some of which Wisconsin spearheaded. State and federal regulators extended ability of certain health plans to remain exempt from the ACA's insurance reforms. In addition, states lacked sufficient funding for consumer outreach and assistance or like Wisconsin, rejected already awarded consumer assistance funding and sent it back to Washington,² harming consumers, the operation of OCI, and ultimately enrollment and stability in the markets. For these and other reasons, enrollment growth slowed and premiums increased.

While ABC generally recognizes reinsurance programs as a useful tool, especially in risky insurance markets, Wisconsin's proposed waiver request generates three major concerns: 1) lack of sufficient consumer protections; 2) troubling funding mechanisms; and 3) insufficient impact in the context of recent state and federal policy.

Consumer Protection

Wisconsin should take proactive steps to support enhanced consumer protections in the private insurance market, and promote increased growth of risk pools and plan enrollment. Wisconsin could expand public-private partnership coverage options like BadgerCare Plus, that promote large-scale

¹ At the time, companies like American Republic Insurance and World Insurance Company were at 68% and 65% Medical Loss Ratios, respectively. Commissioner Nickel went so far as to request a waiver of the medical loss ratio requirements of the ACA, in an obvious effort to help support these failing small group market plans. OCI claimed Wisconsin's insurance market could not operate with requirements that limits health insurer profits, salaries, marketing, and other overhead costs to 20% of the amount spent by consumers in the individual market. OCI rejected the idea of streamlined administration of insurance plans and a more competitive marketplace, instead preferring to have consumers cover the cost.

² On February 10, 2011, then new Commissioner of Insurance, Ted Nickel terminated Wisconsin's federally funded consumer assistance program. The majority of the \$637,114 grant to Wisconsin went to the Office of the Insurance Commissioner. The purpose of the program, supported by a U.S. Department of Health and Human Services Consumer Assistance Grant, was to "educate consumers about their health coverage options, empower consumers, and ensure access to accurate information." See also, "New state insurance commissioner terminates \$637K federal health care grant," Feb. 10, 2011, WI State Journal, *available at*:

http://host.madison.com/wsj/news/local/health_med_fit/article_dd894d62-3572-11e0-a002-001cc4c002e0.html



pooling, spread risk, create financial leverage, and promote consumer protection and health plan accountability.

Most fundamentally, Wisconsin's draft waiver (the language in Act 138) provides no guarantee that any reinsurance payment made to Wisconsin insurers will translate into reduced premiums for consumers.

OCI estimates the waiver's impact to include premium decreases of approximately 10% for 2019. Lowering premiums is an important goal, but consumers should bear some of the fruit of that reduction. As such, the waiver must also require insurance companies to pass on the savings to the consumer as a condition of receiving WIHSP payments. Otherwise, WIHSP risks simply subsidizing insurance companies who could otherwise "justify" accepting reinsurance payments while subsequently increasing premiums or out of pocket costs to high cost consumers, or both.

OCI's role will be an important one, when paired with OCI's duty to administer a fully transparent rate review process in Wisconsin. We would expect OCI to administer a strict rate review process for those insurers receiving reinsurance payments. The language in Act 138 stops short of any such guarantee. Ch. 601.83(1)(e) requires eligible health carriers to "calculate the rates the eligible health carrier would have charged for a benefit year if the healthcare stability plan had not been established and submit the calculated rates as part of its rate filing submitted to the commissioner," for *consideration*, and nothing more. To efficiently review requests for rate increases, OCI determines the reasonableness of requests that fall into a certain "review path." Establishing a review path specific to reinsurance providers would be appropriate, and creating a heightened threshold of responsibility, expected.

For stability, reinsurance alone is not enough. Wisconsin's program effects will depend on its impact on the cost of coverage, the ability of lower premiums to attract a healthier mix of enrollees, and an overall expanded enrollment in the market to help achieve economies of scale in non-claim costs. As reported in the draft waiver request, WIHSP will help a negligible amount of people gain health insurance. OCI estimates only a 0.8% increase in enrollment after reinsurance in the short term.

Over the short and long term, Wisconsin must expand and maintain the marketplace's enrollment to include healthier and younger consumers. Moreover, Wisconsin should embrace educational campaigns and consumer outreach and assistance efforts, and even reinforce mechanisms like auto-enrollment of enrollees that do not proactively select a plan. Instead, Wisconsin is doing the opposite,³ making the impact of reinsurance negligible in the broader context.

³ "Update: Wisconsin Gov. Signs Health Reinsurance Bill; State Joins 'Obamacare' Suit," Insurance Journal, Feb. 28, 2018, available at: <https://www.insurancejournal.com/news/midwest/2018/02/28/481836.htm>, saying "Walker signed the reinsurance bill less than 24 hours after Schimel joined with 19 other states in filing a federal lawsuit in Texas. The lawsuit, which Schimel led along with Texas Attorney General Ken Paxton, argues that the individual mandate is unconstitutional and that the entire law should be blocked."



Even if it is as effective as OCI predicts, at best, WIHSP will lower premiums for only a relatively small group of people, and in only small amounts. (The waiver predicts a 10% premium reduction for 2019, yet the impact over time reduces to 6.5% over the next decade). Other market instabilities will offset any reduction in premiums, discussed more below. Wisconsin had approx. 225,000 enrollees in the 2018 marketplace, the vast majority, 80% of whom are eligible to receive federal subsidies.⁴ Approximately 30,000 are unsubsidized consumers, and the target of this reinsurance program.

The program benefits higher income consumers. Unsubsidized Marketplace customers with incomes above 400% FPL are the primary beneficiaries of the reinsurance proposal. Those people range from middle class incomes up to higher self-employed incomes. We recognize that premium support for this population is needed; however, funding \$200 million a year – over \$30 million in state money – for reinsurance to bring down premiums for this sliver of the insurance market seems wasteful and inefficient. Funding the reinsurance program with Medicaid leftovers is an upward redistribution of income, regressive and wrong. We address this more, below.

Funding Concerns

Wisconsin asks the federal government to pay up to 85% of the reinsurance program, with the State paying “a sum sufficient” to cover the rest of the program. Total funding is not allowed to exceed \$200 million dollars. ABC has three concerns about how WIHSP is funded: 1) the \$200 million limit may not be enough to adequately fund a robust reinsurance program; 2) the state may be left to pay more than anticipated; and 3) the state’s funding mechanism may incentivize reducing Medical Assistance coverage to the most vulnerable.

The state seeks federal support of an 85% pass through rate of the \$200 million deemed necessary to fund the reinsurance program. State reinsurance programs (1332 waivers generally) are required to be budget-neutral to the federal government. Passing through Advance Premium Tax Credit (APTC) expenditures for reinsurance payments is how the state generates their approx. \$170 million federal savings. As such, Wisconsin’s funding request could very well fall short of required funding to support an effective reinsurance program. We need look no further than Minnesota. After devoting \$300 million in 2017, the Minnesota Legislature spent an additional \$542 million to set up a reinsurance pool for the next two years.⁵ Should the sum not be sufficient, Act 138 allows OCI to ask Wisconsin’s Joint Finance Committee to increase the amount, most likely to come out of state dollars.⁶

⁴ https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Marketplace-Products/2018_Open_Enrollment.html

⁵ Available at: <https://www.usnews.com/news/best-states/minnesota/articles/2017-09-19/apnewsbreak-reinsurance-approval-costly-for-minnesota>

⁶ In addition, Act 138 allows OCI simply, without a legislative process or following formal administrative rulemaking procedures, to make up its own rules. Under 601.83(3g), the Commissioner of Insurance can promulgate “any rules necessary to implement the healthcare stability plan” as “emergency rules under s. 227.24,” but “the commissioner is not required to provide evidence that promulgating a rule under this paragraph as an emergency rule is necessary...” This is an extraordinary and perhaps impermissible grant of *legislative* power to the Commissioner of Insurance. OCI can promulgate emergency rules without the usual finding of emergency required under current law, and extend the reach of the Commissioner, without the legislature, to create policy. In such an



Furthermore, the state takes on even greater financial risks, thanks to the drafting of a “sum sufficient appropriation.” Wisconsin’s waiver “grants” the state the needed “flexibility” to fund the \$200 million program if the federal pass through funds differ from the anticipated amount. Recognizing that there is no guarantee the federal government’s payment will cover the program’s costs or that the federal government would not fully fund its “share,” the waiver directs the state to fund the balance. Such a scenario is entirely possible, as federal pass through funding originates from savings in APTC. Large increase in premiums anticipated in 2019 and beyond (discussed more below) would surely mean a larger need for APTC in the Wisconsin market and therefore fewer dollars available to be redirected to reinsurance.

Curiously, Governor Walker rejected federal Medicaid Expansion funds for fear that the state would be left “holding the bag” for the full cost of expansion, should the feds “renege” on their funding share. Here, the statute *directs* the state to “pay the bill,” should the feds not pay its share.

Similarly, Act 138 expressly prohibits the state from accepting federal Medicaid Expansion money without legislative approval. Despite the fact that if Wisconsin were to fully expand Medicaid, more than 80,000 adults between 100 and 138% FPL would be covered in BadgerCare Plus. That change would yield a net savings for state taxpayers of about \$190 million per year,⁷ freeing up more than enough GPR to fund the state’s reinsurance share – or even the entire cost of reinsurance – and dozens of other state projects and priorities.

Chapter 16.5285(3)(a) of the statute as written in Act 138 authorizes the Secretary of Health Services to transfer savings from the Medical Assistance program to the GPR. Wisconsin’s funding provisions may create a perverse incentive to reduce Medical Assistance program spending in order to pay for WIHSP. As Wisconsin develops an annual Medicaid budget, it can generate larger and larger Medicaid lapse funds at the end of the fiscal year that can become a “goodie bag” fund for the administration to dole out to special interests. Wisconsin can engineer a Medicaid surplus by adding administrative hoops and hurdles in the eligibility path of people seeking or using Medicaid.⁸

instance, OCI could also draft exemptions for the insurance industry instead of waiting for the legislature to create new Wisconsin law. The waiver’s broad delegation of emergency rulemaking authority to OCI may be illegal, and at the very least will further erode consumer protections. Also troubling, Act 138 *requires* OCI to submit a recommendation report, not an assessment, a recommendation to the Governor on requesting additional waivers. In these recommendations, OCI “shall consider and include” impacts of creating a high-risk pool or an invisible high-risk pool; funding of consumer health savings accounts; expanding consumer plan choices, including catastrophic plans or coverage and new low-cost plan options; and implementing any other approach...” [601.85(4)]. Curious how it is in the best interest of consumers that OCI should be statutorily-required to recommend a high-risk pool to the Governor.

⁷ The Wisconsin Approach to Medicaid Expansion, Dec. 2017, Kids Forward, available at:

<http://kidsforward.net/assets/Medicaid-Approach.pdf>

⁸ Elements of Wisconsin’s still pending Sec. 1115 Demonstration waiver, including drug testing requirements, work requirements, premium requirements, etc. are anticipated to create a drop in BadgerCare Plus enrollment (as witnessed from other states such as Indiana. Similarly, Wisconsin need look no further than its own FoodShare program where work requirements caused 86,000 to be cut from the program.



In Wisconsin, nearly 1.2 million people rely on BadgerCare and Medicaid programs to provide essential, affordable, and effective health care services. Moreover, the impact of these programs reaches thousands more--our friends, neighbors, grandparents, colleagues, and health care providers large and small in every county of Wisconsin. The large pool of BadgerCare and Medicaid recipients provides cost effective coverage that lowers the number of uninsured and keeps people out of expensive, inefficient, and often uncompensated emergency room care. Most people realize that uncompensated care costs do not disappear but rather show up in the form of increased health care costs. Health care providers redistribute unpaid medical bills to small business, people with insurance, and other hospital patients. Lowering premiums is important, but Wisconsin should take care to ensure that marginal benefits for 30,000 higher-income Wisconsinites do not come at the expense of our most vulnerable.

In order to comply with Sec. 1332 guardrails, Wisconsin's waiver promises "comprehensive coverage," and says that the "scope of benefits provided by other types of coverage such as Medicaid, CHIP, and grandfathered plans will not be impacted." Nevertheless, this is a promise Act 138 alone cannot make, and therefore delivers false confidence to Wisconsinites. The state has already taken other steps to reduce services for a large portion of Wisconsin's BadgerCare Plus population.⁹

Overall Impact

In fact, Wisconsin's entire waiver request needs to be examined in the broader context of the current health care coverage landscape. A new report¹⁰ paints a grim picture for premiums in the individual insurance market over the next three years. The report predicts a 15% average premium increase stemming from the repeal of the Affordable Care Act's personal responsibility tax penalty in 2019 (in the Tax Reconciliation Act signed into law December 22, 2017). In combination with Trump Administration proposed rules to increase the availability of association health plans and short-term health plans, the authors predict overall price increases ranging between 12% and 23% in 2019 and rising to triple that amount in 2021. The highest increases are expected for states that did not pursue federal Medicaid expansion. Wisconsin joins ranks with Texas as states at "catastrophic risk" of 90% premium increases over a three-year period. Neighboring Medicaid Expansion states, such as Illinois, Indiana, and Iowa, will fare somewhat better with premium rates topping out at a 50% increase over the next three years. However, these changes also mean 5 million people losing coverage by 2027, and insurers dropping out of the marketplace.

The nonpartisan Urban Institute¹¹ corroborates that prediction in a separate study evaluating the impact of the GOP Tax bill and federal move to allow short term insurance plans. The combined

⁹ *Infra* note 8.

¹⁰ "Individual Markets Nationally Face High Premium Increases in Coming Years..." Covered California, March 2018, available at: http://hbex.coveredca.com/data-research/library/CoveredCA_High_Premium_Increases_3-8-18.pdf

¹¹ "The Potential Impact of Short-Term Limited-Duration Policies on insurance Coverage, Premiums and Federal Spending," Urban Institute, March 2018, available at: <https://www.urban.org/research/publication/updated-potential-impact-short-term-limited-duration-policies-insurance-coverage-premiums-and-federal-spending>



effect of eliminating the individual-mandate penalties and expanding short-term limited-duration policies would increase 2019 ACA-compliant nongroup insurance premiums 18.3% on average, and 20% in Wisconsin.¹²

Finally, in a May 29 Bulletin, Wisconsin's OCI reauthorized transitional health plans through December 2019, another decision likely to increase premiums in the Marketplace.¹³

Any reduction in premiums Wisconsin hopes to achieve with the reinsurance program will likely be offset by, and most likely obliterated by, other political decisions that dramatically increase premiums and destabilize the private insurance market, further diminishing the impact of reinsurance, and certainly prohibiting federal pass through dollars from entering the state. We call WIHSP, "much ado about nothing."

Conclusion

Under the right circumstances, reinsurance is an effective tool to help stabilize risk and jittery insurance marketplaces. The Wisconsin approach could be drastically improved to better serve the insurance consumers of our state. Unfortunately, too many myopic, political decisions impede effective, impactful implementation of a reinsurance program in our state.

Sincerely,
ABC for Health, Inc.

Bobby Peterson
Executive Director/Public Interest Attorney
32 N. Bassett St.
Madison, WI 53703
bobbyp@safetyweb.org

¹² *Id.* at 16, Table 4 "Percent change in ACA-Compliant Premiums because of Expanded Short-Term Limited-Duration Policies and Loss of Individual Mandate, 2019." Five states prohibit short-term limited duration policies in state law and therefore fare better in the estimated premium increases. Wisconsin has no such regulation.

¹³ CMS Extension of Transitional Health Plans Could Ding ACA Market, Modern Healthcare, April 26, 2018, available at: <http://www.modernhealthcare.com/article/20180426/NEWS/180429925>

WISCONSIN HOSPITAL ASSOCIATION, INC.



Sent Via Electronic Email to: StateInnovationWaivers@cms.hhs.gov

June 8, 2018

TO: Department of Health and Human Services
FROM: Eric Borgerding, President & CEO, Wisconsin Hospital Association
RE: Wisconsin 1332 Draft Waiver Application: Reinsurance Program

The Wisconsin Hospital Association (WHA) believes all Wisconsin residents should have access to high-quality, affordable health insurance, and that action is necessary at the state level to mitigate premium increases and ensure choice and affordability in the individual market. WHA believes the State's 1332 waiver application to establish a reinsurance program is a logical first step to encourage market stability and sustain our recent gains in coverage expansion.

Wisconsin's hospitals and health systems are on the front lines of providing high quality care every day, from our large urban communities to small rural areas so vital to our state, and everywhere in between. In 2013, as the nation was gearing up for the implementation of the health insurance exchange and the significant changes to the health care markets as a result of the Affordable Care Act (ACA), Wisconsin's hospitals and health systems stepped up as well. We worked with the Office of the Commissioner of Insurance (OCI), the Department of Health Services, Governor Scott Walker and with many state lawmakers to help our Wisconsin residents sign up for health care coverage through either the insurance exchange or Wisconsin's version of Medicaid expansion. Regardless of ideology, Wisconsinites are united in the belief that everyone should have access to high quality, affordable health care coverage. Indeed, Wisconsin's uninsured rate has been cut by 42% since then.

Now, five years later, we are seeing troubling signs in the individual market, including insurers exiting the market, and premiums increasing (on average) 36 percent for 2018. WHA vigorously engaged with our federal elected officials over the past year as debate about the repeal and replacement of the ACA ebbed and flowed in Washington, DC, and we were disappointed and frustrated when nothing was done to address states' concerns. It is clear that action is required at the state level to mitigate premium increases and ensure choice and affordability for the individual market.

We support using the tools available under the ACA to put forward a plan aimed at stabilizing premiums, increasing competition in the insurance market and sustaining coverage gains for the foreseeable future or until the ACA is repaired or replaced. Therefore, we respectfully submit our support for the State's waiver application to establish a reinsurance program. WHA looks forward to partnering with OCI on the eventual implementation, as well as engaging in discussions to develop longer-term solutions to ensure market stability and maintaining insurance coverage for Wisconsin residents.

Sincerely,

A handwritten signature in black ink that reads 'Eric Borgerding'.

Eric Borgerding
President/CEO



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LUNG
ASSOCIATION®**



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Multiple Sclerosis
Society



NORD®
National Organization for Rare Disorders



**NATIONAL
PSORIASIS
FOUNDATION®**

June 8, 2018

Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC

Honorable Steven Mnuchin
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Wisconsin Section 1332 State Innovation Waiver

Dear Secretary Azar and Secretary Mnuchin:

Thank you for the opportunity to submit comments on Wisconsin's Section 1332 State Innovation Waiver.

The undersigned organizations represent millions of individuals facing serious, acute and chronic health conditions across the country. Our organizations have a unique perspective on what patients need to prevent disease, cure illness and manage chronic health conditions. The diversity of our groups and the patients and consumers we represent enables us to draw upon a wealth of knowledge and expertise and serve as an invaluable resource regarding any decisions affecting state health insurance marketplaces and the patients that they serve. We urge the Department to make the best use of the recommendations, knowledge and experience our organizations offer here.

Our organizations are committed to ensuring that any changes to the healthcare system achieve coverage that is adequate, affordable and accessible for patients. A strong, robust marketplace is essential for people with serious, acute and chronic health conditions to access comprehensive coverage that includes all of the treatments and services that they need to stay healthy at an affordable cost. Our organizations support Wisconsin's efforts to strengthen its marketplace by submitting this 1332 State Innovation Waiver to implement a reinsurance program, and we urge the Departments to approve the application.

Reinsurance is an important tool to help stabilize health insurance markets. Reinsurance programs help insurance companies cover the claims of very high cost enrollees, which in turn keeps premiums affordable for other individuals buying insurance on the individual market. Reinsurance programs have been used to stabilize premiums in a number of healthcare programs, such as Medicare Part D. A temporary reinsurance fund for the individual market was also established under the Affordable Care Act and reduced premiums by an estimated 10 to 14 percent in its first year.ⁱ

Wisconsin's proposal would create a reinsurance program starting for the 2019 plan year and continuing for five years. Wisconsin's application states that that the program will create a broader and healthier risk pool, preventing insurers from leaving the market and improving choices for consumers. The state projects that the program will reduce premiums by 10.6 percent in 2019 and increase the number of individuals obtaining health insurance through the individual market by 0.8 percent. This would help patients with pre-existing conditions obtain affordable, comprehensive coverage.

The proposal will also result in significant savings for the federal government. Wisconsin projects that the reinsurance program will result in \$166 million in savings to the federal government in 2019 and \$164 million in each subsequent year during the waiver's five year period.

As states consider different ways to stabilize their marketplaces, our organizations are pleased that Wisconsin has submitted an application that is projected to improve coverage and affordability without compromising access to essential health benefits or jeopardizing other important protections that our patients rely on. Our organizations believe that this Section 1332 State Innovation Waiver will help stabilize the individual market in Wisconsin and help patients and consumers, and we urge the Departments to approve the application. Thank you for the opportunity to provide comments.

Sincerely,

American Heart Association
American Liver Foundation
American Lung Association
Arthritis Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation
Leukemia & Lymphoma Society
Lutheran Services in America
Mended Little Hearts
NAMI, National Alliance on Mental Illness
National Multiple Sclerosis Society
National Organization for Rare Disorders
National Psoriasis Foundation

ⁱ American Academy of Actuaries, Individual and Small Group Markets Committee. *An Evaluation of the Individual Health Insurance Market and Implications of Potential Changes*. January 2017. Retrieved from https://www.actuary.org/files/publications/Acad_eval_indiv_mkt_011817.pdf.



June 8, 2018

Honorable Alex Azar, Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC

Honorable Steven Mnuchin, Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Re: Wisconsin Section 1332 State Innovation Waiver

Dear Secretary Azar and Secretary Mnuchin:

On behalf of people with cystic fibrosis, the Cystic Fibrosis Foundation appreciates the opportunity to support Wisconsin's 1332 State Innovation Waiver application to operate a reinsurance program.

Cystic fibrosis (CF) is a life-threatening genetic disease that affects 663 people in Wisconsin and 35,000 children and adults in the United States. CF causes the body to produce thick, sticky mucus that clogs the lungs and digestive system, which can lead to life-threatening infections. As a complex, multi-system condition, CF requires targeted, specialized treatment and medications.

People with CF benefit from insurance marketplaces that offer affordable health plans that cover their complex health needs. We support Wisconsin's efforts to stabilize the insurance market by implementing reinsurance. Reinsurance has been an effective measure to slow premium growth and protect against adverse selection at the federal level, as well as in states like Maine. The American Academy of Actuaries estimated that the federal reinsurance program reduced premiums by 10 to 14 percent in the individual market in 2014.¹ An analysis of Maine's "invisible" high risk pool found the program significantly reduced premiums in the state's individual market.² The Cystic Fibrosis Foundation supports Wisconsin's creation of a reinsurance program that will make coverage more affordable and expand plan choice by encouraging insurer participation in the marketplace.

While we believe reinsurance can help insurance markets function better, this program must be implemented with additional protections for patients such as the prohibition on medical underwriting, ban on annual and lifetime coverage caps, guarantee of essential health benefits, and out-of-pocket maximums.

¹ American Academy of Actuaries. *Drivers of 2015 Health Insurance Premium Changes*. (Online). June 2014. Available: https://www.actuary.org/files/2015_Premiums_Drivers_Updated_060414.pdf

² Bagley, Nicholas et. Al. *Making Sense of "Invisible Risk Sharing"*. Brookings. (Online). April 2017. Available: <https://www.brookings.edu/blog/up-front/2017/04/12/making-sense-of-invisible-risk-sharing/>

The Cystic Fibrosis Foundation appreciates the opportunity to provide input on these important policy changes. As the health care landscape continues to evolve, we look forward to working with the state of Wisconsin to ensure high-quality, specialized CF care and improve the lives of all with cystic fibrosis. Please consider us a resource moving forward.

Sincerely,



Mary B. Dwight
Senior Vice President of Policy & Advocacy
Cystic Fibrosis Foundation



Lisa Feng, DrPH
Senior Director of Policy & Advocacy
Cystic Fibrosis Foundation



June 8, 2018

Via Electronic Mail to: StateInnovationWaivers@cms.hhs.gov
The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Re: Wisconsin Section 1332 Waiver Comments

Dear Administrator Verma:

Quartz Health Solutions is a Wisconsin-based health plan offering individual market coverage through the federal Exchange. Quartz strongly supports Wisconsin's Innovation Waiver under section 1332 of the Patient Protection and Affordable Care Act (PPACA) to develop and implement the Wisconsin Health Care Stability Plan (WIHSP) reinsurance program.

As has been the case in many States, shifting market dynamics in Wisconsin have put upward pressure on premiums and thousands of consumers have exited the individual market. Without intervention, market volatility will fuel the continued loss of traditionally healthier consumers from the individual market, further risking the stability and long-term viability of the individual market.

Wisconsin's \$200 million reinsurance program will give Quartz and other Wisconsin-based health plans the support needed to mitigate the effect of high-cost claims, slow premium growth, incentivize members to remain in or rejoin the individual market and bring much needed stability to Wisconsin's individual market.

The reinsurance programs in Alaska, Oregon, and Minnesota, established under section 1332 of the PPACA, are demonstrating how innovative, State-based solutions can effectively protect access to high-quality, affordable health insurance through premium and enrollment stabilization.

On behalf of Quartz, I encourage the expeditious review and approval of the WIHSP 1332 waiver application so Wisconsin health plans and the Wisconsin Office of the Commissioner of Insurance (OCI) can implement and achieve stabilization efforts beginning plan year 2019.

Sincerely,

A handwritten signature in red ink, appearing to read "Terry Bojz", is written over the typed name.

Terry Bojz
President and CEO

To whom it may concern I support the request to add reinsurance to protect Affordable Healthcare in Wisconsin. I work in Cancer Care we have many patients that have affordable healthcare policy's. Without this insurance they would not have the care they need to battle their cancer.

Thanks,

Sharon Young
Financial Advocate, ElmBrook Cancer Care

Good afternoon,

I wanted to express some concerns with Wisconsin's reinsurance plan.

First and foremost, there is no language in the waiver that guarantees savings will be passed on to consumers. I urge you not to approve the waiver without this guarantee. Consumers, not insurance companies are in need of saving on health insurance costs.

Next, I'm concerned where the funding will come from. Especially because I understand that if there is Medicaid lapse funding, that could be used. I want to make sure that those living close to, or below the poverty line are protected. I do not want this waiver to incentivize changing Medicaid eligibility rules to reduce the number of Medicaid recipients. The income limits as is are quite low and we are turning people away who still desperately need help, but make a little more than the income limits.

I'm also concerned about prohibiting Medicaid expansion. Medicaid is a necessary program to take care of the poor and disabled population here in Wisconsin. Expanding it would help many Individuals and families get back on their feet through their time of need. We cannot turn our backs on hardworking Wisconsinites like this.

Thank you for your consideration. Please feel free to reach out to me.

Sincerely,
Katie Pope

I have multiple concerns that need to be clarified regarding the Wisconsin Section 1332 Waiver that was requested.

1). This waiver needs to include clear language regarding consumer protections: the savings need to be passed onto the consumers from the insurance companies. This needs to be clearly stated! Insurance companies cannot just take a reinsurance payment and they keep it and continue to drive up the price of premiums!

2). What are the funding mechanisms for this program?? Are the taxpayers going to be left paying for this? We do NOT want the Medicaid lapse funding paying for this. You need to clarify how this is going to be funded!

3). We need to keep the delegation of authority left with the legislature, and do NOT give such broad delegation to OCI using Emergency Rule Making Procedures however the OCI wants. It is called checks and balances for a reason!

Gov Walker was very critical of the ACA and he continues to fight it. Yet, how interesting that this waiver was introduced to stabilize the markets during an election year. Health care should not be political!!!

Abby Hammes, MSN RN-BC