

Testimony of
Deputy Commissioner J.P. Wieske, on behalf of the
Wisconsin Office of the Commissioner of Insurance

Before the
Subcommittee on Health
U.S. House Committee on Energy and Commerce

Regarding:
Patient Relief from Collapsing Health Markets

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2125 Rayburn House Office Building

EXECUTIVE SUMMARY

The state experience with the Affordable Care Act (ACA) or Obamacare has been mixed. States like Wisconsin had a well-functioning market prior to the passage of the ACA. Our individual and small group markets were competitive allowing consumers numerous choices including co-ops, HMO's, not-for-profit plans as well as traditional health insurance options.

For consumers who could not meet the underwriting requirements of private coverage, the state had a high-risk pool which provided relatively affordable health insurance coverage while offering a choice of plan designs, and provided subsidies for those with family incomes up to \$34,000.

The ACA has changed the Wisconsin health insurance market. Consumers have fewer choices. Rates have increased significantly. A number of our insurers have seen a significant loss in capital. Insurers have left the individual market and those that remain have reduced service areas and plan offerings. To make changes to their coverage, consumers must now work with the federal government and not with the insurer from whom they wish to purchase coverage. In the long run, the ACA market is not sustainable.

It is our belief health insurance should be primarily regulated at the state level and states should have the ability to determine what is best for their market. What works in Wisconsin may not be the best solution for California or New York. A return to the states does not mean an unregulated health insurance market. Indeed, the ACA includes many standards that were first implemented at the state level.

TESTIMONY

Good morning Chairman Burgess, Ranking Member Green, and distinguished members of the Subcommittee on Health. My name is J.P. Wieske and I am the Deputy Commissioner of Insurance for the Wisconsin Office of the Commissioner of Insurance (OCI). I have been with OCI since October of 2011. As part of my duties, I have been involved with a number of health insurance issues including serving on Wisconsin's high-risk pool board, working with our state legislature, and assisting with operationalizing the Affordable Care Act (ACA). In addition, I have been actively involved with the National Association of Insurance Commissioners (NAIC) serving as chair of the Regulatory Framework Task Force, Network Adequacy Subgroup, and a group discussing pharmacy benefits.

Thank you for the opportunity to testify on the state of Wisconsin's health insurance market. While the Wisconsin market has been healthier than most, the ACA has caused significant harm. Before describing the current state of the market, it is important to understand what it looked like prior to the passage of the ACA.

As a regulator, Wisconsin has been traditionally known as a state with tough but consistent rules. We were one of the first states with a number of market and consumer protections that eventually became models for the NAIC and were subsequently included as part of the ACA. These included independent external review, standardized applications, coverage for adult dependents, coverage for certain health care services associated with cancer clinical trials, guaranteed renewability in the individual and small group markets, and a robust review of insurer market conduct. Our financial review of companies has been led by highly experienced staff. In short,

we ensured, and continue to ensure, that insurers in the health insurance market deal with consumers fairly and maintain the financial means to pay consumer claims.

Pre-ACA, the Wisconsin market was certainly not the least expensive in the country; however, we typically landed in the lowest third of states. While the medical care provided in Wisconsin is high quality, it is not inexpensive. The medical costs in our market are relatively higher than other states. In fact, a U.S. Government Accountability Office (GAO) report released in the early 2000s named eight Wisconsin cities among the 10 most expensive medical areas in the country. However, our competitive health insurance market ensured Wisconsin consumers paid relatively low rates despite the relatively high medical costs.

Wisconsin consumers in both the individual and small group markets had a large number of insurers and plans to choose from. They could choose from large national companies or small regional insurers, a managed care plan with a narrow network or a plan with limited managed care and a broad network, or a for-profit company or not-for-profit company. In some areas of the state, consumers could choose to participate in one of Wisconsin's two pre-ACA co-ops.

Wisconsin also had a number of other important consumer protections. Wisconsin – in fact all states – included guaranteed renewability requirements in their laws. Many of these laws predated the 1997 HIPAA law, and required insurers to continue to cover all individuals and groups at the option of the insured– regardless of their health status. It meant consumer coverage could **not** be cancelled as a result of a health condition. The small group market included guaranteed issue, pre-existing condition credit, and rate limits. The individual market included pre-existing

condition limits, and guaranteed issue requirements for HIPAA-eligible individuals. In some states, it was true that individuals could be declined for private coverage due to their health status, but in most cases these individuals were provided with alternative coverage.

For consumers that could not qualify for private coverage, Wisconsin had a high-risk pool called the Wisconsin Health Insurance Risk-Sharing Plan (HIRSP) Authority. HIRSP provided comprehensive coverage to consumers with the ability to choose any medical provider practicing in Wisconsin. It was funded by premiums from consumers, assessments on insurers, and contributions from medical providers. Consumers could choose from a variety of plan options, and for the most impoverished consumers, further subsidies were made available. The cost of coverage closely mirrored the cost of private coverage in the state.

Many other issues were dealt with at the state level. Some states limited the permissible age bands (while not as narrowly as the age bands in the ACA which proposed a 3 to 1 ratio), though few, if any, needed to prescribe a specific curve as required by current federal rules. In the pre-ACA market, the age curve varied from insurer to insurer, allowing consumers some advantage in shopping for coverage. There was very little need to create an artificial process for a special enrollment period especially when consumers could purchase coverage throughout the year. Rules were established by law or regulation and insurers were required to follow those rules or face significant regulatory penalties. Ultimately, all issues were dealt with more efficiently by not inserting an additional layer of bureaucracy through a government entity – like the federal exchange – interfering in the relationship between an insurer and its customer. It is ludicrous that a consumer should need to receive the “OK” from any federal bureaucracy to add their spouse or

newborn child to their policy. This delay adds to the frustration of consumers with the ACA, as their insurers are forced to send their requests to the federal exchange for approval. It is the proper role of government to set rules, and to ensure insurers are complying not to add an expensive and inefficient bureaucracy.

Overall, pre-ACA, Wisconsin had a well-functioning health insurance market that protected consumers, guaranteed access to affordable health insurance for the most vulnerable, and had significant state authority to enforce our laws.

The ACA made a number of changes to the rules governing health insurance markets across the country. These “one-size-fits-all” changes have impacted rates, consumer choice, and the ability for a free market to operate. A one-size-fits-all approach does not work in health insurance policy. The ACA forced the nation to spend years and billions of taxpayer dollars trying to centralize health care coverage at the federal level. Federal bureaucrats dictated complex rules and inconsistent “sub-regulatory guidance” to state insurance commissioners, and left us in a difficult position to balance mounting mandates with consumer protections. Ultimately, our job is to serve the citizens of Wisconsin and not the federal government.

While we did not agree with the market destabilizing approach of the ACA, when the Supreme Court affirmed its legality, Wisconsin operationalized the law. Wisconsin has fared better than most states, thanks in part to our decisions to minimize consumer harm and our efforts to protect a competitive health insurance market. Still, Wisconsin consumers have suffered under the ACA.

In Wisconsin's individual market alone, we have seen: premiums double, plan designs dictated by federal bureaucrats to meet political goals rather than meet consumer needs, and loss of competition in the health insurance market. The unprecedented federal encroachment over a consumer's freedom to make decisions such as individual mandate and more recently the auto re-enrollment process, which allows federal government to choose a health care plan for individuals if they do not choose one for themselves, sent the message that citizens cannot be trusted to take care of themselves. Government should never substitute its judgement for the judgement of its citizens.

Healthcare is inherently personal and local. Someone from Rhinelander, Wisconsin should not have their health care choices dictated to them from somebody in Washington. What may work for Wisconsin may not work for New York and California. In the insurance market, it is not our job to design health plans and dictate to insurers the products they must offer. For the consumer, it is not our job to force individuals to spend their money on a product the federal government deemed appropriate as a condition of receiving a federal subsidy. Our job in government is to pursue solutions that remove barriers and set appropriate parameters to allow the private health insurance market the ability to offer affordable products designed to address a variety of consumer needs, based on individual circumstances. Vulnerable consumers need protections available from the law, but they also need to access a functioning health insurance market.

I want to particularly note that repeal does not mean an unregulated health insurance market. It means a return of control back to the states to allow for a health insurance market that is responsive to consumer needs. It means states can design solutions to protect the vulnerable.

Centralizing authority in the federal government and in exchanges has not made the markets better and has not improved the consumer experience as evidenced by state insurance markets near collapse, the loss of capital in health insurance markets, and a number of insurers looking to exit the individual market.

ACA Impact on Wisconsin Health Insurance Rates

With the enactment of the ACA came guaranteed issue, new rate bands that increased costs for the young and healthy, additional coverage mandates, and the elimination of HIRSP, Wisconsin's high-risk pool. Wisconsin insurers were quickly faced with an uncertain influx of individuals with serious health conditions; 20,000 alone from HIRSP. They were also faced with vague regulations from the federal Department of Health and Human Services (HHS) that changed constantly and were not communicated consistently from HHS. The special enrollment period definitions were initially vague, and HHS choose not to apply the rules uniformly i.e., consumers using certain "magic words" received an SEP regardless of circumstances while others were rejected despite their status. In short, insurers wanting to continue to participate in the Wisconsin health insurance market ultimately had no choice but to increase rates. The net result was that Wisconsin consumers paid more for coverage, including those individuals who previously received coverage through HIRSP.

To offset the increased risk insurers would take on under the ACA, HHS issued regulations creating risk adjustment, reinsurance, and risk corridor programs, i.e., the "three Rs." Each of these programs was to have either state components or to be managed entirely by the states. However, in one of their first acts of ignoring state concerns, HHS changed course and modified

regulations to allow the federal government to take over the “three Rs” from states.

Unfortunately for Wisconsin consumers, this change would negatively impact them as insurers struggled to plan for and capture their estimated risk and receive their fair share of funding from these programs. HHS continues to struggle to manage these programs in a way that fairly compensates insurers taking on a significant portion of the risk.

Rising health care costs and adjusting to the fundamental market changes the ACA imposed both continue to drive up the cost of health insurance. These pressures are further exacerbated by uncertainty related to the risk pool, federal funding, and federal regulations that constantly change without significant notice. Insurers are operating in a turbulent environment and many are struggling to remain profitable and offer affordable coverage that meets consumer needs.

Detailed Impact of the ACA on Wisconsin Health Insurance Rates

In an effort to prepare consumers for the coming market, OCI issued a press release in 2013 to highlight the expected increases. The chart used in the release is below:

Percent Increase From Pre to Post 2014, Average Per Area								
Age	Milwaukee	Eau Claire	Green Bay	Madison	Appleton	Wausau	Kenosha	La Crosse
21	78.11	68.75	53.73	124.85	54.18	77.44	37.59	88.53
40	40.85	48.35	53.73	73.43	36.75	35.03	15.15	41.58
63	45.48	58.12	22.54	70.04	32.01	26.07	9.72	37.29

The chart shows increases varied from a low of almost 10 percent for a 63-year-old in Kenosha to almost 89 percent for a 21-year-old in La Crosse. For purposes of comparison, we used a \$2,000 deductible plan pre- and post-ACA. Male and female rates were averaged pre-ACA. In many cases, the post-ACA plan had a higher deductible but we attempted to match the plan design as close as possible. When multiple plans were available, the rates were averaged. Below are the premium tables used to develop the percentages:

Pre 1/1/2014

	Milwaukee Pre 1/1/14	Eau Claire Pre 1/1/14	Green Bay Pre 1/1/14	Dodgeville Pre 1/1/14	Madison Pre 1/1/14
21	\$155.98	\$176.79	\$162.71	\$102.41	\$116.95
40	252.07	257.02	240.85	172.38	193.78
50	376.72	358.56	364.56	266.39	282.66
63	563.70	556.99	579.86	408.21	449.88
Family	716.57	753.46	682.23	466.62	546.25

Post 1/1/2014

	Milwaukee Post 1/1/14	Eau Claire Post 1/1/14	Green Bay Post 1/1/14	Dodgeville Post 1/1/14	Madison Post 1/1/2014
21	\$277.81	\$298.34	\$250.13	\$311.05	\$262.96
40	355.04	381.28	319.67	397.52	336.06
50	496.16	532.83	446.74	555.53	469.65
63	820.09	880.69	738.39	918.21	764.96
Family	1,062.90	1,141.44	957.00	1,190.08	1,001.22

Pre-ACA, Wisconsin was able to offer a guaranteed access environment that kept private market coverage affordable with many insurers and plan options to choose from. Pooling the high-risk individuals together and managing their needs separately was a huge factor in the state's success in offering a competitive insurance market that was able to respond to consumer needs; both

those in the private market and those in the high-risk pool. HIRSP rates were comparable to private market rates, with many plan options that offered deductibles ranging from \$1,000 to \$7,500, and a broad network that allowed members to choose from any medical provider in Wisconsin. With the implementation of the ACA, the impact on our HIRSP members—our most vulnerable citizens—was more pronounced. Their coverage was replaced with more expensive coverage, limited plan design options, and limited access to their choice of providers.

Listed in the table below are the 2013 HIRSP rates without subsidies applied. Individuals with household incomes between \$0 and \$34,000 were eligible for both deductible discounts (not on the HSA-eligible plans) and premium discounts (between 15 percent - 43 percent, depending on income). The premiums reflected under HIRSP Federal were possible as a result of federal dollars sent to states as a means to transition from a pre- to post-ACA marketplace. They are included to demonstrate the impact federal high-risk pool block grant assistance may have on offering rates to high-risk pool members that are comparable to similar plan options in the private marketplace.

HIRSP Plan Options Comparable to those used in the Private Market Examples			
Age	HIRSP 2500 ¹	HIRSP 2500 HSA	HIRSP Federal
21	\$220.50	\$196.50	\$119.00
40	368.00	326.50	202.00
50	535.00	474.50	310.00
63	775.00	689.50	445.00

¹ 2500 Refers to the deductible level. For more information on HIRSP visit: https://docs.legis.wisconsin.gov/misc/lfb/informational_papers/january_2013/0053_health_insurance_risk_sharing_plan_informational_paper_53.pdf

Since 2014, the market rates have continued to increase annually. The years 2015 and 2016 saw relatively moderate average increases of almost 3.8 percent and 8.3 percent, respectively, though many consumers received much higher or lower increases depending on their particular plan. The increase on the federal exchange in 2017 averages roughly 16 percent with a high of 37 percent and a decrease of more than 10 percent. Wisconsin's increases are likely more moderate than what is seen in other states due to the highly competitive nature of our market. It takes 17 insurers to comprise an 80 percent share of the individual health insurance market. That said, the challenges imposed by the ACA have led to individual market exits which reduce consumer choice; and if continued as a trend for future years, threaten the ability of our market to prevent rates from reaching levels seen in other states. Wisconsin's competitive market is a saving grace for consumers as a means for holding down what would be even higher increases. Insurers in our state are fighting an uphill battle to adhere to ACA regulations and still remain viable enough to offer competitive products.

The Impact of Special Enrollment Periods

Wisconsin serves as chair of the NAIC Health Care Reform Alternatives Working Group and after hearing about numerous problems, we asked for feedback. What we found was extremely problematic. Consumers faced significant uncertainty in applying for a Special Enrollment Period (SEP). We were told it took weeks for consumers to get proper permission from the federal exchange, if they received permission at all. In other cases, the industry highlighted consumers were provided coverage without any documentation or proof of eligibility for an SEP. The rules were vague, and the exchange staff, at the time, was not properly trained. Insurers highlighted loss ratios exceeding 150 percent on their SEP business. Even more problematic, it

was clear many consumers were using the process to receive costly medical care and then immediately dropping coverage. HHS acknowledged the issues and has promised to seek more documentation, though at this point it appears HHS will only review 50 percent of cases.

Consumer Choice and Interfering with a Free Market Model

So far, for plan year 2017, Wisconsin has had several insurers exit the individual market completely, leave the federal exchange, or reduce the number of counties they are willing to serve. As a result, there were over 37,000 individuals enrolled in a plan offered by an insurer that will not be available to them in 2017. These numbers may pale in comparison to other states, but for affected consumers the issue is serious. The HHS solution was to “auto re-enroll” these individuals into a new plan with a new insurer. While federal regulations indicate this can only occur if permitted under state law, HHS was unwilling to change course in light of several states, including Wisconsin, indicating the auto re-enrollment process violates several state laws. Wisconsin was required to issue new bulletins and requirements on insurers, and hold public sessions to inform the public of the problematic issue.

Auto re-enrollment is impacting consumer choice at the market level as well. HHS is cherry picking which insurers will get additional business. This is interfering with a free market which has successfully offered affordable choice meeting consumer demand. HHS added lives to insurers who, in some cases, were given a leg up in growing their business and for others unanticipated additional lives may result in financial harm. When insurers were made aware two months out from the open enrollment period that several thousand lives are now anticipated in

being auto-enrolled with them, they are faced with significant rating and operational considerations.

A Look Ahead; Impact of Transitional Plans

It is important to remember the volume of consumers covered under transitional plans in the individual and small group markets. In Wisconsin, as of December 31, 2015, there were 203,587 covered lives under transitional plans. In 2018, when these plans are no longer available, consumers, in particular employers, will experience rate increases as they are forced to purchase coverage meeting all ACA requirements.

Conclusion

In conclusion, Wisconsin had a strong health insurance market offering products responding to consumer needs prior to the ACA. Since the passage of the ACA, insurers struggle to continue to stay viable and offer affordable coverage to Wisconsin consumers. Rates continue to increase and an insurer's ability to predict risk from year to year remains difficult in light of an unstable federal regulatory environment where the rules keep changing without attention to the diverse insurance markets that exist across the country. Each state is unique. Forcing health insurance markets into a standardized set of federal regulations adds an unnecessary layer of complexity that stifles both an insurer's and state regulator's ability to be innovative and have the flexibility necessary to meet consumer needs.