DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850



Center for Medicaid and CHIP Services

December 9, 2011

Secretary Dennis Smith
Department of Health Services
1 West Wilson Street
PO Box 309
Madison, WI 53701-0309

Dear Mr. Smith:

The Centers for Medicare & Medicaid Services (CMS) is reviewing the State of Wisconsin's request for a new section 1115 demonstration, entitled "Medicaid 2014 Waiver," and related amendment requests to the State's existing BadgerCare and BadgerCare Plus for Childless Adults section 1115 Demonstrations which we received on November 10, 2011. You requested that CMS make final determinations on all of these requests by December 31, 2011, and suggested that without such approval the State would consider terminating eligibility for approximately 53,000 adults who are now covered under the BadgerCare and BadgerCare Plus Demonstrations.

The State's proposals would make dramatic changes to the State's current Medicaid and Children's Health Insurance Program's (CHIP) eligibility standards, methods and procedures, affecting an estimated 64,000 individuals. The proposals include changes that would apply to children and adults who are the subject of the Affordable Care Act's maintenance of effort (MOE) provisions.

These proposals require time for review and careful consideration. During the review process, CMS must determine whether the conditions for approval under the Social Security Act are met. To make this determination, CMS and the State need to work together to more precisely describe the proposals, CMS must analyze how the proposals align with or differ from the provisions of the law that the demonstration proposes to test, and we will need to consider the impact on the children and adults now covered under Wisconsin's Medicaid program. In addition, as is true with any section 1115 demonstration, we will need to evaluate the proposal for budget neutrality, negotiate agreement on each policy proposal, and finalize terms and conditions.

We have moved ahead aggressively with the review process through several meetings, as well as by sending questions to help us further understand the State's proposals. You and your staff have been generous with your time and expeditious in your responses, but considerable work remains. In addition, we continue to work with you on the state's submission of certain budget

documents pertaining to its current demonstration that are a prerequisite to amending the BadgerCare Demonstration. As you know, the BadgerCare Demonstration's Special Terms and Conditions stipulate that the State must complete the budget neutrality reconciliation process before CMS can approve any amendment request. Once we have received the State's complete information we will also need review to ensure it is satisfactory.

For these reasons, while we will continue to work diligently with you and your staff as we move forward in our review of Wisconsin's proposals, we want to advise you that it is unlikely we will be able to meet the State's requested approval date of December 31, 2011, for all of these proposed sweeping changes to its programs.

We share the State's desire to avoid using the budget deficit certification flexibility provision in the Affordable Care Act in a way that results in the loss of coverage to approximately 53,000 low-income adults who may not have any alternative source of affordable health insurance coverage. In order to prevent such a substantial loss of coverage we have determined that some of the proposals you have made, as modified in the ways described below, can be approved because they are consistent with the Affordable Care Act flexibility permitted to States that certify that they have a budget deficit. Thus, we are prepared to approve the following proposals as applied to non-disabled, non-pregnant adults with income above 133 percent of the FPL:

- Application of the 9.5 percent affordability test with respect to employer sponsored insurance that meets minimum benefit standards;
- Premium increase for the adult family members up to 5 percent of family income (this item, as proposed by the State, would be for non-disabled, non-pregnant adults with income above 150 percent of the FPL); and
- A 12-month restrictive re-enrollment period for Medicaid eligibility for the adults who fail to make a premium payment.

As we have noted in our previous MOE guidance, States that submit certifications of a budget deficit can either fully eliminate eligibility for non-disabled, non-pregnant adults with incomes over 133 percent of the FPL or they can design targeted restrictions in eligibility for such adults. For this reason, Wisconsin has the flexibility to implement the proposals above without an MOE waiver. In addition, we are prepared to approve the State's request to end coverage for beneficiaries who the State has determined are ineligible 10 days after they have received an adverse action notice (rather than extending coverage through the end of the month as is the State's current practice). We have concluded that, because these individuals are no longer eligible for Medicaid, a waiver of MOE is not necessary for this change as well.

Should the State wish to take advantage of these flexibilities as described above, we commit to completing the necessary steps to reach agreement on these matters (which will need to be accomplished through an amendment to your BadgerCare demonstration) by the end of the year, assuming the State provides the necessary budget certification and can provide the completed budget documentation needed for an amendment to BadgerCare as described above.

In addition, as Wisconsin moves forward with the planned improvements to its Medicaid eligibility system, we would like to further discuss the State's proposal to replace presumptive

eligibility for children with real-time eligibility determinations in order to better understand whether this system is able to maintain access to coverage and timely access to care for all eligible children.

CMS looks forward to continuing to work in partnership with Wisconsin to ensure an expeditious resolution to the State's requests. I hope to speak with you soon so that we can determine whether the described approach is of interest to the State. We are committed to working closely with you as we continue our important dialogue on coverage and progress toward 2014.

Sincerely,
/s/
Cindy Mann