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State of Wisconsin

Office of Free Market Health Care

January 19, 2012

Mr. Steve Larsen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
7501 Wisconsin Avenue
Bethesda, MD 20814

Dear Deputy Administrator Larsen:

As you know from our extensive comments on the proposed federal regulations regarding exchanges and Medicaid eligibility, Wisconsin has been strongly critical of the approach to exchanges taken by the Centers for Medicare and Medicaid Services (CMS). Based on public comments from a variety of federal officials, we have been hopeful that states would in fact be provided with maximum flexibility to administer a state exchange as possible under the statutory provisions of the Patient Protection and Affordable Care Act (PPACA).

The functions of an exchange are not foreign nor particularly onerous to states. It is the proposed regulations and guidance that are objectionable and are making the pursuit of state exchanges apparently futile. What limited guidance HHS has provided, including the latest proposed regulation, CMS-10415: Information Collection Request, State Exchange Certification Application, and the State Exchange Implementation Questions and Answers released by CMS on November 29, 2011, have led us to regrettably conclude that true state exchanges will not be allowed to exist. Each step taken by the federal government seeks to mandate a one size fits all approach, and assume control over state programs and health insurance markets. The competitive nature of Wisconsin's health insurance market is critical in keeping coverage affordable and ensuring sufficient choice for our residents and small employers.

We have urged the federal government to focus on operational success. The success of an exchange should be based on a single outcome—can the exchange facilitate the transaction between a buyer and a seller? Unfortunately, CMS is bogged down in process and micromanagement. Collectively, the proposed regulations and guidance from CMS has set states up for failure. At this late date, states still do not know what federal standards must be met to ensure compliance. The application, for example, asks for an attestation that a state-based exchange "will not establish standards that conflict with those promulgated" by HHS. No state official can confidently make such an attestation, as the U.S. Department of Health and Human Services (DHHS) and the Internal Revenue Service (IRS) still have not issued guidance on over 40 areas, which the federal government itself states will be forthcoming.

CMS has confused giving states additional ways to spend grant dollars with true flexibility. To be successful, states require flexibility in the management and operation of their exchanges. CMS awarded an early innovator grant to Wisconsin presumably because of our leadership in health care innovation. Wisconsin has been a leader and innovator in health care reform for more than two decades. What's more, we have achieved this high level of coverage, while maintaining a robust and competitive insurance market, without the mandates required under the Patient Protection and Affordable Care Act (PPACA). It is illogical to make these awards then basically ignore what was learned. Whatever we accomplish is apparently going to be over-ridden by federal mandates regardless.

Willfully or not, CMS is setting states up for failure. We will not facilitate that lamentable outcome. Because CMS has adopted its federalization of exchanges approach, Wisconsin will discontinue all exchange activity effective immediately.

Sincerely,

Ted Nickel
Commissioner
Office of Commissioner of Insurance

Dennis G. Smith
Secretary
Department of Health Services