



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

February 24, 2011

Dear Governor:

Thank you for your letter urging more flexibility in implementing the Affordable Care Act, and in particular the provisions of the law that call for the establishment of state-based health insurance exchanges. I appreciate the opportunity to address your concerns.

As a former governor, I can appreciate your interest in having flexibility to establish an exchange that meets the unique needs of your state and its residents. In my former role, I saw up close the urgent need for health care reform, but I also recognized that some of the problems in my state were not the same as those in other states, and I sought solutions that were tailored to the specific interests of my state.

The Affordable Care Act is built on the belief that states understand their health insurance markets better than anyone else. As such, it puts the states in the driver's seat to lead the process.

States have tremendous new opportunities to build on this foundation with the establishment of health insurance exchanges, the state-based marketplaces that will allow individuals and small businesses to pool their purchasing power and expand their benefit choices, much as large employers do today. The Affordable Care Act also establishes common-sense consumer protections, some of which have already been implemented, and requires insurers to operate in a more transparent manner than they do today. Fair rules and transparency are the foundation to an insurance market in which consumers rather than insurers are in charge.

These rules, coupled with the health insurance exchanges, give states a strong foundation upon which to increase competition and expand consumer choices. When they are implemented in 2014, the exchanges will be dynamic new marketplaces in which health insurers will compete on price and quality. Consumers will be able to compare and select the best deal for their families, and states will be able to shape their exchanges to local market conditions, with a governance structure and operational philosophy that is unique to each state.

Your letter identified four areas for greater state flexibility. Specifically, you called for the ability to (1) exercise maximum flexibility to operate exchanges, and in particular to select the insurers that will participate in the exchange, (2) give states authority to determine essential health benefits that participating plans must offer, (3) waive provisions that might inhibit the availability of consumer-driven plans and health savings accounts (HSAs), and (4) enroll Medicaid beneficiaries into private plans without HHS approval. In each of these areas, the Affordable Care Act offers better opportunities than the current marketplace and gives governors and legislatures broad flexibility to capitalize on those opportunities in reshaping state marketplaces for the 21st century.

- Selection of Qualified Plans in the Exchanges. In a majority of states today, a small number of health insurance issuers dominate the market, sometimes offering only a single plan or product. In implementing their exchanges, states have the option to allow all insurers to participate in the exchanges (the Utah model), or they can be more active purchasers in shaping available choices (the Massachusetts model). Either way, the exchanges will stimulate broader competition, and consumers will end up with more and better choices.
- Essential Health Benefits. In today's market, many individuals and families have limited health insurance options available to them. The number and quality of options typically depend on applicants' age and health status, and employees of small businesses often have only a single choice. Exchanges will expand consumer choice and give consumers the information they need to comparison shop among their expanded choices. All plans in the individual and small group markets – inside or outside of the exchanges – will provide essential health benefits, which, by law, will be modeled after what a typical employer currently provides today in the private sector. But the law and how states implement it allow a diversity of plan types and benefit designs in exchanges, and states continue to have the option to require coverage of specific, additional benefits.
- Consumer-Driven Plans. Low-cost, high-deductible plans, including those coupled with HSAs, are growing in popularity. The cost sharing limits required by the essential health benefits package mirror the current out-of-pocket maximum for HSAs under the Internal Revenue Code. Exchanges will offer new choices for consumers because health insurance issuers may offer a variety of plans with broad parameters; consumers who are willing to accept higher cost-sharing in exchange for lower premiums may purchase different levels of coverage. The “bronze” plans and catastrophic coverage for young adults will provide opportunities for expanding enrollment in consumer-driven plans coupled with HSAs. At the same time, exchanges will also improve consumer awareness of options by making it easier to compare plans.
- Medicaid Flexibility. The Affordable Care Act expands and simplifies Medicaid coverage and provides states with more opportunities to align Medicaid with private health insurance. More specifically, the law permits states to restructure Medicaid coverage to look more like typical private employer coverage, as Medicaid managed care organizations and commercial insurers move into each other's markets and create new opportunities to enhance continuity of care across Medicaid and commercial populations.

In addition to the four areas you mention in your letter regarding state flexibility, states have broad discretion in the operation of their exchanges. Further, Section 1332 of the Affordable Care Act provides states with the ability to seek a waiver for state innovation. Guidance on this section is forthcoming.

Your letter also asks for assurances that the federal government will fund the development of exchange eligibility systems. The law is clear that the federal government is responsible for all

state expenses to establish state exchanges through 2014, including information technology (IT) expenses related to eligibility and other exchange functions, by authorizing significant grants to states for these purposes. Already, 48 states and the District of Columbia have applied for and received \$1 million exchange planning grants, and today a 49th state application has been approved. On January 20, we announced the opportunity for states to apply for a new round of grants to move from planning exchanges to implementation. We also recently awarded \$241 million in “early innovator” IT grants to seven states that will develop prototypes that will be shared with other states. At the same time, the federal government is developing a “data services hub” that will provide one-stop service for states to verify income and manage other data-related exchange functions. Finally, we have proposed a 90 percent federal match for Medicaid eligibility systems that enhance state efficiency in implementing the Affordable Care Act.

Your letter also asks for “objective” information on coverage expansions and costs under the Affordable Care Act. The traditional source for objective information about the costs of federal legislation is the non-partisan Congressional Budget Office, which has estimated that the Affordable Care Act will extend health coverage to 32 million uninsured Americans and reduce the federal deficit by \$230 billion over the next 10 years.

I continue to welcome ideas about how to improve the law and implement it more effectively, and I look forward to working with you to take the next steps toward building a strong insurance marketplace in your state. I encourage you to take the initiative to use the resources and options in the Affordable Care Act to provide affordable and accessible health coverage to the citizens of your state.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is fluid and cursive, with a large initial "K" and "S".

Kathleen Sebelius