

LETTERS RELATED TO DESIGNATION OF AN EXCHANGE MODEL

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GARY R. HERBERT
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR

GREG BELL
LIEUTENANT GOVERNOR

November 19, 2012

Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius,

I remain firmly convinced that meaningful healthcare reform is most effective when developed and implemented at the state level. As you are aware, since long before the passage of the Patient Protection and Affordable Care Act, the State of Utah has operated a health insurance exchange, part of a larger state healthcare reform initiative. Secretary, because I fervently intend to move forward in the best interests of Utahns and their families, I will continue to pursue all of Utah's state-based reforms, including our version of an exchange based on defined contribution, consumer choice, and free markets.

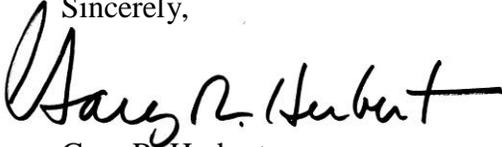
While I appreciate the extension of the federal deadline for states to determine an appropriate course regarding an insurance exchange, there remain far too many unanswered questions about the federal alternative. In fact, I have attached the ten most critical questions from Utah's perspective. In light of these and numerous other uncertainties, making any reasoned determination about the future of Utah's exchange or a federal exchange is virtually impossible; more time without answers accomplishes nothing. Ultimately, I will have to make a final decision based on how your answers to these and other critical questions impact Utah's budgets and markets.

Secretary, as a former governor yourself, surely you understand my earnest desire to make decisions in my state's best interest based on solid data and facts. That has never held more true than in the realm of healthcare reform. Without answers, it will be impossible to determine the best outcome for Utah's taxpayers, families, and small businesses.

In addition to the need for more information, I hope you can appreciate my desire to consult with the Utah State Legislature. They also have vested interest and I anticipate that proper implementation of either option will require changes in state statute. However, our legislature does not meet again in regular session until January 2013.

Given these factors, the best course for Utah is to preserve all options and flexibility for state policy makers. However, while I presently intend to maintain course with Utah's version of a health insurance exchange, this decision could change as we receive more information and answers to critical questions.

I look forward to your prompt response to these important questions.

Sincerely,

Gary R. Herbert
Governor
State of Utah

Top Ten Unanswered Questions About Federal Exchanges

1. How much will it cost the state to participate in a Federal Exchange, including the government, taxpayers, and the private sector?
 - Who will set the user fee and what will those be?
 - Are there any other assessments planned?
 - If the Federal Exchange is not self-sustaining, how do they intend to make up the lack of funds?
2. If a state chooses to provide some services to the Federal Exchange (such as reinsurance), how will we be reimbursed for those administrative costs?
3. Under a Federal Exchange, will state policy makers be allowed to give advice or information, and influence key operational decisions? How will that happen?
4. What is the process to ensure that a Federal Exchange accurately incorporates all state-specific procedures and laws?
5. Under a Federal Exchange, what restrictions or limitations will there be on a state regulator's authority to enforce state laws? Will we retain our ability to take actions to protect consumers?
 - How can we ensure that multi-state plans compete on a level playing field and are compliant with state laws?
 - How will the Federal Exchange promote the viability and stability of our insurance markets?
6. How will HHS work with Utah's private sector stakeholders, such as consumers, providers, insurers, employers, etc. to make sure that the Federal Exchange takes into account and meets their needs?
 - How will the Federal Exchange provide consumer assistance in a way that takes into account Utah-specific information?
 - Will customer support personnel be familiar with Utah's markets and appropriately licensed to advise consumers?

7. How will a Federal Exchange determine how many and what type of Navigators to have for Utah?
 - How much extra cost will that program add to the system?
 - Who will monitor the Navigators to prevent fraud, waste, and abuse?
8. We responded to the deadline on Essential Health Benefits in September, but we still don't have final guidance on essential health benefits, actuarial value, and rating, which our insurance companies need to be able to start preparing plans and prices. When will we have final rules so insurers can start plan development?
9. What are the procedural, technical, and architectural requirements for our existing systems to link to the Federal Exchange?
 - Will the Federal Exchange require a full Medicaid denial for every family that wants to get a premium tax credit? Can we automate the denial process to reduce work load on our Medicaid program?
 - What type of data package will be sent to the Utah Medicaid system? Will that information be customized so we don't have to manually process every application?
 - What information is the Federal Exchange expecting to receive back from our system and what is the time frame required for us to respond?
10. How will the Federal Exchange present consumers with their options?
 - Will they be able to see all of their options and make a choice, or will the Federal Exchange only show them the option that has been determined to be “best” for them?
 - What about people who are technically eligible but may wish to purchase private insurance? Will the Federal Exchange “push” people to Medicaid?
 - How will the Federal Exchange handle appeals by people who disagree with their premium tax credit amounts?



GARY R. HERBERT
GOVERNOR

STATE OF UTAH
OFFICE OF THE GOVERNOR

GREG BELL
LIEUTENANT GOVERNOR

December 10, 2012

The Honorable Barack H. Obama
President of the United States of America
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. President,

I want to personally thank you for meeting with members of the NGA Executive Committee and me last week. I think all who participated believe it was a productive and helpful dialogue. I also believe this can be the beginning of a meaningful process of working with states and their governors to find solutions to the challenges we face in this country. We face a number of critical issues, but I would like to specifically address two: the “fiscal cliff” and health care reform.

All of us — federal and state officials alike — must find solutions that represent the best interests of America, and our ongoing efforts to restore our economy. Utah is one of the states in America experiencing great progress in our economic recovery. To suffer a substantial setback because federal officials cannot find a compromise economic solution would simply be an unwarranted tragedy.

Mr. President, now is the time for bold leadership to protect our economy, our nation, and our future. I recognize the need to reduce spending as part of the solution. These spending reductions should be accompanied by increased flexibility for states to implement programs. States have demonstrated the ability to do more with less and still meet the goals and objectives set forth in federal programs.

I appreciate that you mentioned the Utah health exchange in our meeting last week, saying you want us to work with Secretary Kathleen Sebelius to make sure it is successful. Before the ACA passed, Utah carefully and thoughtfully created a market-based, consumer-oriented vision for health insurance market reforms, including exchanges. This was done consistent with Utah’s unique values, demographics, markets, and needs. The Utah model is innovative in its simplicity. Our goal is to give expanded access to information and choice of private healthcare plans to employers, employees, and consumers. Our exchange is now fully functional, offering a choice of 140 health insurance plans to 7,646 individuals in 318 small businesses throughout Utah. We are now embarking on a dramatic expansion of our exchange to more small businesses and we plan to include individuals and larger businesses in our exchange in the near future.

Of course, we are committed to helping those who need the support of the Medicaid and CHIP programs. However, we never intended for our exchange to administer Medicaid, enforce the individual mandate, or distribute federal tax credits.

I believe HHS officials' current interpretation of the ACA is to require states to take a more government-centric, standardized approach to exchanges. This results in less choice and more reliance on public programs.

Mr. President, I want the Utah exchange to survive and thrive as we originally envisioned it. In fact, I hope it becomes a model for other states to use as a platform for their own versions regarding healthcare reform. Therefore, I have a simple request for you: Please instruct the Department of Health and Human Services to certify the current Utah version of an exchange as compliant with the Affordable Care Act. You have supported giving flexibility for states. Certifying our current exchange will give us that flexibility.

Furthermore, I respectfully request that you instruct HHS to declare the Utah exchange model as the minimum federal standard for ACA compliant exchanges. I am confident that if you make this change, several other states will join Utah and request certification for "state based exchanges" based on our model, thus spreading a proven approach that lowers costs and increases access. I am committed to our model, and I will continue to pursue a Utah solution to Utah challenges.

Mr. President, I am required to notify HHS of Utah's plan regarding a federal exchange option by December 14. Time is short. In order for Utah to move forward, I need help from you regarding these requests before that deadline.

Utah has also been at the forefront of innovation and cost-cutting in our state Medicaid program. Medicaid was originally designed as a partnership between the states and the federal government. Unfortunately, the federal government has created too many restrictive rules, which make it difficult for states to meet local needs. Under the current system, states must seek permission from HHS before implementing changes or making improvements. This results in the federal government holding all the bargaining chips and threatens a complete loss of federal funding if states don't adhere to strict federal control. This is not the "give and take" of a true partnership.

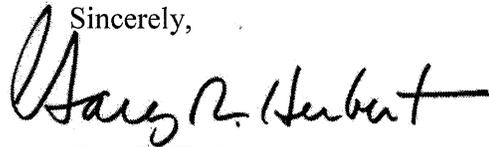
Over the past several years Utah has developed several innovative proposals to reduce costs, increase quality, and ensure maximum access to healthcare services for Medicaid recipients. Unfortunately, when we submitted these waiver requests, HHS officials met them with either reluctance or rejection.

Attached to this letter is a list of all Medicaid waiver requests the State of Utah has submitted to HHS since 2007. Of the nine requests submitted, initially only two were granted. Thanks to your personal involvement, we were able to get two of these denials reversed – one allowing paperless Medicaid applications and one providing incentives for healthy behaviors.

When HHS cherry-picks parts they favor and rejects other vital plan components, it becomes impossible to accomplish our overall objectives. Mr. President, we need you to instruct HHS to accept the waiver requests submitted by Utah because they meet the overall objectives of the program and we are in the best position to run our state program. With that flexibility we will be free to do what we do best – innovate solutions that reduce costs, increase efficiency, and improve quality.

Thank you, again, for working with the State of Utah, and for taking the time to include states in the discussions to fortify our nation's fiscal health. I am optimistic that this constructive dialogue can continue, and I look forward to meeting and discussing these issues with you as we work together on behalf of the people of Utah and the nation.

Sincerely,

A handwritten signature in black ink that reads "Gary R. Herbert". The signature is written in a cursive style with a long horizontal stroke at the end.

Gary R. Herbert
Governor
State of Utah

Medicaid Flexibility

Federal Government has Denied Several Requests to Improve Utah Medicaid

When states elect to offer Medicaid, the program comes with a long list of federal rules, regulations, and restrictions. In an attempt to bring some innovation to the program, states can request demonstration waivers to pursue alternative ways to provide this coverage.

In recent years, Utah has applied for several different demonstration waivers or amendments. The majority of these requests have been denied by the federal government.

1. **Accountable Care Organizations** – The State wanted to change managed care in a way that brought more accountability to health plans, medical providers, and clients. The federal government denied three of the five changes requested by the State:
 - a. Allow the State to charge slightly higher co-pays for some services (e.g., charging \$5 for a preferred generic drug). **[DENIED – Requires a change in federal law]**
 - b. Allow the State to use a prioritized list of services when implementing cuts during budget shortfalls (i.e., the lowest priority services would be cut first). This request was modeled after the approved practice in Oregon’s Medicaid. **[DENIED]**
 - c. Allow clients to have the option to receive premium assistance for enrolling in their employer’s health plan (or COBRA plan) rather than receiving direct coverage through Medicaid. **[DENIED]**
 - d. Allow the State to encourage plans to change their reimbursement to providers away from the traditional fee for service arrangement. **[APPROVED]**
 - e. Allow the State to contract with plans to offer incentives to clients when they complete certain healthy behavior activities. [Originally **DENIED** then **APPROVED**]

2. **Community Service** – The State wanted to permit some applicants early admission to the Primary Care Network (PCN) program if they completed a certain number of community service hours each month. **[DENIED]**

3. **Premium Assistance** – The State wanted to expand the use of its premium assistance program (Utah’s Premium Partnership for Health Insurance), which would allow more clients the option to move from traditional state health insurance programs to the private health insurance market. The State sought two changes in this area:
 - a. Allow the State to increase coverage to 200 percent of the federal poverty level for parents of CHIP children and other adults. **[APPROVED]**
 - b. Allow the State to offer premium assistance to families if they opted to purchase coverage in the individual, non-group insurance market. **[DENIED]**

4. **Paperless Application** – The State wanted to allow individuals to elect to apply for Medicaid coverage via an electronic application process, rather than by using paper applications. [Originally **DENIED** then **APPROVED**]



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

December 13, 2012

The Honorable Gary R. Herbert
Governor of Utah
Salt Lake City, UT 84114-2220

Dear Governor Herbert,

Thank you for your thoughtful letter to the President on December 10th on the fiscal cliff and implementation of the Affordable Care Act. He asked me to respond to your requests regarding implementation of the Affordable Care Act.

I appreciate your questions to me in your letter of November 19th regarding the standards and operation of exchanges. I believe that the Frequently Asked Questions we released earlier this week and the proposed rules issued in November respond to your questions.

As you mentioned in your letter to the President, Utah was among the first states to establish a health insurance exchange, and did so prior to the passage of the ACA. I share your goal to give expanded access to information and choice of private healthcare plans to employers, employees, and consumers, and am pleased that you plan to include individuals and larger businesses in your exchange in the near future. We look forward to working with you toward certifying the Utah exchange, ensuring that consumers and small businesses have access to affordable, high-quality coverage.

As you continue implementation of this new insurance marketplace, I look forward to working with you to establish an exchange for both individuals and businesses. My staff is eager to provide additional assistance to help you complete the work that you have begun. Please contact Gary Cohen, Center for Consumer Information and Insurance Oversight, at gary.cohen@cms.hhs.gov for additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is fluid and cursive.

Kathleen Sebelius



STATE OF UTAH

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

GARY R. HERBERT
GOVERNOR

GREG BELL
LIEUTENANT GOVERNOR

December 14, 2012

Kathleen Sebelius
Secretary of the Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Madame Secretary,

Thank you for your prompt reply to my letter addressed to President Obama. I am encouraged by your offer to work together to find ways to succeed. I also appreciate your agency's release of guidance, proposed rules, and answers to questions since my letter dated November 19, 2012. While it has been informative and helpful, I continue to have questions and major concerns about the level of state flexibility under either a federal or state-based exchange approach.

It is becoming increasingly clear that there are many potentially detrimental federal exchange features. Generally, I would prefer a state-based approach if I were to have the flexibility to stay true to Utah principles. Consequently, I intend to move forward with Utah's version of an exchange and am requesting that you certify Utah's version of an exchange as ACA compliant. In fact, Utah's version should serve as the minimum standard for all federally compliant health exchanges.

I have instructed Patty Conner from our team to prepare and submit detailed documentation of the Utah version so you can see how it compares to the requirements of the Affordable Care Act (ACA). I hope you will closely examine what we are doing, Madame Secretary. I am confident that when you do, you will find it meets the broad goals and objectives of the ACA. (An executive summary of that documentation is attached.)

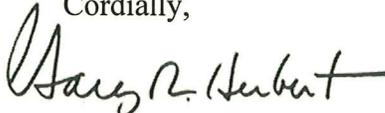
As you noted, I referenced our pre-ACA exchange in my letter to the President. Utah is indeed atypical because we had already developed a working, consumer-focused, free market-based plan for health reform, including our version of an exchange that addresses Utah's unique demographics, systems, and needs before the ACA was passed. While our small business

defined contribution program is still in its infancy, the principles on which it is founded give this approach great potential. Our plan encompasses several key areas, some of which are also covered by the ACA.

Key features of Utah's plan:

- 1 Insurance Markets - Our reform efforts are intended to provide the general market effective protection from adverse selection and premium spirals, such as maintaining an effective high risk pool and appropriate rating guidelines.
- 2 Individual Insurance - We want to encourage consumer engagement and competition by facilitating online shopping tools that provide consumers side-by-side comparisons and allow them to apply and enroll electronically in their plan of choice.
- 3 Small Businesses - For our small businesses, we have created Avenue H, an online, market-based tool that incorporates the concepts of defined contribution and consumer choice. We are making significant progress on our goal of helping this entity become a self-sustaining, private sector-based solution.
- 4 Medicaid - In addition to the general goal of reforming the core Medicaid program through waiver requests, we have automated the application process, using electronic databases and information to provide a much faster and more accurate eligibility determination. We also intend to provide a simple pre-screening tool to help people know if they might qualify for public assistance before they complete a full application. This pre-screening tool could be made available through the individual market's online shopping tool to help ensure access for those needing assistance to pay for coverage.
- 5 Premium Aggregation - We intend to build the functionality to allow people to pull together funding from various sources in order to purchase a single policy for their families, including premium assistance programs.
- 6 Consumer Assistance - The most efficient outcomes are achieved when informed and empowered consumers participate in the marketplace. It is our goal to provide consumers with information, enabling them to make informed decisions about what is best for their families. At the same time, we wish to provide opportunities for insurance producers and other qualified sales entities to serve the public and compete for their business.

I believe that if you consider the Utah version of an exchange in its entirety, you will see we can provide the services Utah needs in a manner that reflects our local markets, people, and needs.

Cordially,


Gary R. Herbert
Governor

Utah's Version of an Exchange

The concept of “exchange” as envisioned in the Affordable Care Act (ACA) is not the same as how we typically use the term in Utah. This requires us to differentiate between the Utah version and the Federal (ACA) version.

The ACA version is a complex network of systems that provides a variety of functions, covering both the public and private sectors. In contrast, the Utah version is a much narrower enterprise that focuses exclusively on supporting choice and competition in the insurance market.

While some of the functions of the ACA version overlap with the Utah version, there are many that belong to other entities or systems. The Utah version is a major component of Utah’s overall plan for health system reform.

The following table demonstrates how the Utah version and approach compares to an ACA exchange. It should also be understood that this represents a high level policy position and there are many details involved that must be considered separately.

Key Functions of an ACA Exchange	The Utah Version
<p>1. Tax on the Uninsured The exchange must issue certificates of exemption from this tax, and assist the IRS in enforcing and collecting the tax</p>	<p>The Affordable Care Act contains provisions for imposing a tax penalty on people who do not maintain acceptable health insurance coverage. Since this tax is a federal tax, it is not the proper role of the states to be involved in determining who owes the tax, the collection of the tax from individuals, or the enforcement of the payment of the tax. This function belongs to the federal government and they are primarily responsible for providing tools and solutions.</p>
<p>2. Premium Tax Credits and Cost Sharing Reductions The exchange must be able to determine if a person is eligible and if so calculate the amounts</p>	<p>We do not oppose allowing eligible individuals to use premium tax credits for the purchase of private health insurance. However, we do not believe that it is the proper role of the states to get involved in eligibility decisions for federal tax credits. This function belongs to the federal government and they should provide tools and solutions for consumers seeking them.</p>
<p>3. Plan Management The exchange must license insurers and approve plans/rates, in compliance with state and federal law. The exchange must also certify/decertify Qualified Health Plans and “metal” ratings. The exchange must create an electronic system to publish plan information.</p>	<p>It is the proper role of the states to regulate insurers and ensure compliance with both state and federal law relating to health insurance. We are currently working with the National Association of Insurance Commissioners to develop a common tool that all states can use to make it easier to review and certify health plans under the new provisions of the ACA. We intend to keep this role as a state. This function belongs to the Utah Insurance Department.</p>
<p>4. Medicaid/CHIP Eligibility Determination The exchange must determine if people are eligible for Medicaid or CHIP and allow those who are eligible to enroll.</p>	<p>We agree that it is the proper role of the states to assist people who need the support of Medicaid and CHIP to enroll in those programs. We have a state-of-the-art eligibility system that has the capacity to comply with the new eligibility requirements of the ACA. We are planning to perform necessary updates of our system so that any person applying for Medicaid or CHIP under the new rules will get an accurate and timely decision. This function belongs to the Utah Departments of Health and Workforce Services</p>
<p>5. Business Office The exchange must have a business office to oversee administrative activities and contracts and to develop standards for private entities</p>	<p>Any state exchange will have administrative and business needs. To the extent that those needs do not appropriately belong to an existing state agency, we will continue to use the same staff and organizational structure that oversees the Avenue H tool to take care of these functions. This function belongs to the Utah Office of Consumer Health Services</p>
<p>6. Small Business Tool (SHOP)</p>	<p>Helping small businesses is the first priority of our exchange program. We have developed a tool that is capable of supporting a defined</p>

<p>The exchange must provide a tool for small businesses to comparison shop health plans for their employees and enroll.</p>	<p>contribution approach to health benefits for small employers (with 2-50 employees) and providing employee choice. This tool is now functional and fully scalable. This function belongs to Avenue H, with oversight by the Office of Consumer Health Services</p>
<p>7. Individual Shopping Tool The exchange must provide a comparison shopping tool for individuals seeking enrollment in Qualified Health Plans. The tool must also integrate information about premium tax credits for those who are eligible.</p>	<p>From the beginning of our reforms, we included a comparison shopping tool for individuals as one of our goals. Under the current market rules, this functionality is plentifully available in the private market, so we have not had much need to engage in development. By 2014, we need to find a solution that will also allow individuals to shop using premium tax credits. This functions belongs to Avenue H, with oversight by the Office of Consumer Health Services</p>
<p>8. Consumer Assistance Program The exchange must create a program to support and regulate navigators, brokers, and in-person assisters as they support consumers using the system. The exchange must provide other support as required by HHS, such as toll-free phone lines and other support.</p>	<p>As a state, we have engaged in consumer assistance in a variety of settings. We support private sector resources (such as insurance producers) in their efforts to reach out to diverse communities. We also have a robust system for providing in-person assistance to people seeking Medicaid or CHIP and Avenue H has its own assistance-by-phone program for small businesses and employees. However, we recognize that these programs can be quite expensive. We believe that if we had true flexibility, we could provide an adequate level of assistance to virtually all of our patrons, but we do not believe that the onerous requirements of federal rules are helpful or realistic. These functions are shared by the Utah Insurance Department, the Medicaid/CHIP programs, and Avenue H.</p>
<p>9. The Integrated User-Oriented Portal The exchange must maintain a web-site to present people with various options for obtaining health coverage. The exchange's web-site must also facilitate or support application and enrollment in the various programs that a person may wish to apply for.</p>	<p>We always intended to host a consumer-facing web-site (or portal) where consumers could get access to information about their health, health insurance, and health care options. This portal would also provide seamless access to other components of the system, including assisting people as they apply for public or private insurance. This function belongs to Avenue H. However, the Department of Workforce Services may provide an alternative access point through their web services to those seeking primarily public assistance.</p>