Utah State Legislature

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December 17, 2012

Health System Reform Task Force
Utah Legislature
Salt Lake City, Utah

To the Health System Reform Task Force,

At the onset, we would like to thank the chairs and our colleagues on the Health System Reform Task Force for the work that has been conducted this interim. We compliment the efforts made in the various workgroups and in our general task force meetings to incorporate our input, as well as the contributions of other, nonlegislator stakeholders, as we all attempt to wrestle with the quandaries posed in complying with the Affordable Care Act (ACA). We are particularly pleased with the information brought forth and the recommendations made in several areas:

- Reinsurance—operating our own reinsurance plan (although we recognize this recommendation is undermined by the recent HHS proposal to nationalize the collection and distribution of the funds).
- EHB—designating our own essential health benefits benchmark.
- Risk—evaluating changes in risk the individual and small group markets will face in 2014.
- Behavioral Health—pursuing an integrated plan for addressing mental health and substance abuse challenges in the context of expanded health care coverage and access.
- Health Care Compact—asserting Utah's ability to keep the interests of our residents paramount in any future discussions on the compact.

That said, as the task force wraps up its work for the interim, we propose that it recommend the State of Utah take the following actions:

1. Establish a state-based ACA compliant health insurance exchange.
2. Expand Medicaid eligibility to cover all persons up to 133% of the federal poverty level (FPL).
3. Reauthorize the task force for the 2013 and 2014 interims.

Our reasons for recommending each of these actions is summarized below.

RECOMMENDATION 1
ESTABLISH A STATE-BASED ACA COMPLIANT HEALTH INSURANCE EXCHANGE

The Affordable Care Act requires the establishment of an ACA compliant exchange in each state. The real question for Utah is not, "Who should establish and operate the exchange?" but "Do we want to retain maximum policymaking and regulatory authority over Utah's insurance market?" Past experience with the federal government makes the answer clear—YES!

Utah has an enviable record of health care innovation, both in the private and public sectors. The development, implementation, and refinement of Avenue H is but one example. Utah should take advantage of federal funding available only through 2014 and use it to create an exchange that meets Utahns' needs, is built on Utahns' values, and preserves state flexibility for future innovation.

A recent letter from one of Utah's major carriers highlights the importance of not ceding regulatory authority over our local insurance industry to the federal government:

> ....[Regence BlueCross BlueShield of Utah] continues to support Utah moving forward building a federally compliant exchange to ensure our state retains control of the costs, services, and insurance regulations of plans within the exchange. A robust state exchange will prevent Washington DC bureaucrats [from] controlling every detail of how medical services are provided in [a] Utah federal exchange.
>
> We believe a real prospect exists for Utah to control its destiny and structure an Exchange through a private sector approach that is cost effective, self-sustaining, [and] market driven, and provides real value to the consumer.

We agree!

Speaking to the National Governors Association a year and a half ago, former U.S. Health and Human Services Secretary Michael O. Leavitt urged states to move forward with the development of state health insurance exchanges, even though some governors were reluctant to do so. The *Wall Street Journal* reported that in substance he said,

> If all 50 states move forward, they will compel the federal Department of Health and Human Services to give them the flexibility to tailor their exchanges to their state needs. If only 20 move forward, the other 30 will "give license" to HHS to be inflexible in designing regulations governing the exchanges.

Again, we agree! And although many states have not heeded Mr. Leavitt's counsel, we should not sit back and "give license" to further HHS inflexibility by refusing to develop an exchange that best reflects our own values and priorities.

RECOMMENDATION 2
EXPAND MEDICAID ELIGIBILITY TO COVER ALL PERSONS UP TO 133% FPL

As a result of the U.S. Supreme Court decision earlier this year, the state may elect how persons up to 133% FPL obtain greater access to affordable coverage under the ACA.

If the state does nothing, individuals who are above 100% FPL and don't have an offer of affordable employer coverage may be eligible for subsidies in a health insurance exchange, although even with subsidies many may still find it difficult to afford insurance and comply with the ACA's coverage mandate. Those under 100% FPL will not be eligible for subsidies or other assistance unless they are already eligible for one of the public coverage programs (Medicaid, CHIP, or Medicare).

Alternatively, the state may choose to expand Medicaid, thus providing a more affordable path to coverage for both those under and those over 100% FPL.

While expanding Medicaid would require a state funding match, and relying only on federal subsidies in the exchange would not, this should not be the reason for dismissing a Medicaid expansion. Here's why:

Federal Funding Pays for Nearly All of the Expansion and Preserves Limited State Resources. Expanding Medicaid eligibility to 133% FPL requires *no* state match for the first three years. Then, over the next four years, the state match ramps up to only 10%. No other option the state could pursue expands coverage to so many people at so little cost! Taking advantage of generous federal funding will allow the state to focus its limited financial resources on the development of payment and delivery reforms that have the potential to improve affordable coverage opportunities for all Utahns, including the expansion population. Expanding sooner, rather than later, multiplies the effect.

The Expansion Match Is a Small Percentage of Total Medicaid Funding. The state's match for an expansion to 133% FPL is only 5% in 2017, 6% in 2018, 7% in 2019, and 10% in 2020 and beyond. Even when fully phased in, the expansion match represents only a small percentage of total state spending for Medicaid.

Existing Medicaid Enrollees Can be Recategorized and Funded at the Higher Match Rate in Some Cases. Under an expansion, the state will be able to move some Medicaid enrollees from an existing eligibility category (e.g., breast or cervical cancer) to the expansion category and receive a much higher federal match rate.

Expansion Is Not Necessarily Permanent. If at any time the state determines the benefits of expansion are not worth the match, it may withdraw, allowing the expansion population to return to employers or the individual market—including the exchange—for coverage. Though we believe every effort should be made to not withdraw optional benefits, we recognize the Legislature's willingness to do so when necessary (e.g.,

optional dental benefits). For this reason, fears of future fiscal impacts should not prevent coverage of persons with present needs.

The Number of Uninsured Will Decrease More under a Medicaid Expansion. One recent analysis estimates that without an expansion, the number of uninsured in Utah would be reduced by 163,000 (37%). With an expansion, the number would be reduced by 239,000 (54%), an additional 76,000 persons.

Expansion Will Lead to Reductions in Other State and Local Government Spending. We acknowledge that administrative costs associated with the expansion will be paid for with federal funds at the ordinary match rate rather than the enhanced match rate. However, we should balance any costs the state may incur for either administration or actual services with the various benefits an expansion will create. Although a more complete picture won't be available until the Department of Health releases an updated analysis in January 2013, at least several areas of positive economic impact seem apparent:

- Under a Medicaid expansion, state and local spending on non-Medicaid services (e.g., law enforcement, child abuse investigations, jails, prisons, courts, Utah State Hospital, general assistance, and foster care) for persons with substance abuse or mental health issues is likely to decrease as more individuals gain timely access to treatment.
- Uncompensated care by hospitals is likely to decrease.
- Increased federal funding in Utah will spur economic activity and lead to growth in state revenues.

Expansion Will Improve Individuals' Lives. As important as reductions in government spending or increases in economic activity are, far greater will be the value of improvements in individual health, productive capacity, and self-reliance; the decrease in domestic violence and child abuse related to untreated mental health and substance use disorders; and the decline in family disruption due to medical bankruptcies. In many instances, individuals benefitting from the expansion will be empowered to obtain or retain meaningful employment.

RECOMMENDATION 3
REAUTHORIZE THE TASK FORCE FOR THE 2013 AND 2014 INTERIMS

Finally, we recommend that the Health System Reform Task Force be reauthorized for the next two years to ensure full and proper consideration of the many policy questions related to implementation of the ACA. Ideally, the task force will also devote time to further develop reforms that have the potential to improve the affordability and quality of health care for all Utahns.

IN CONCLUSION

We strongly encourage this task force to move forward with our recommendations, which in our estimation will benefit Utahns in the long term by improving their health and increasing their capacity to contribute to their communities. At a minimum, we respectfully request that our recommendations be included with any reports provided by the task force to either the Legislature or the Governor.

Sincerely,

Senator Gene Davis

Representative Rebecca Chavez-Houck

Representative Brian Doughty