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The Honorable Kathleen Sebelius
Secretary
United States Department of Health and Human Services
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention CMS-9957-P
PO Box 8010
Baltimore, MD 21244-8010

Re: Comment to Proposed Rule CMS-9957P

Dear Madam Secretary;

On behalf of legislative leadership and the Health Reform Task Force, and in collaboration with the Utah Department of Insurance, we submit the following comments on the proposed federal rule “Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards” (Proposed Rule) published in the federal register on June 19, 2013. The proposed rule generally sets forth financial integrity and oversight standards with respect to Affordable Insurance Exchanges; qualified health plan (QHP) issuers in federally-facilitated exchanges (FFE); and states with regard to the operation of risk adjustment and reinsurance programs. In particular, the rule asks for comments on the issue of “whether a State that elects to operate a SHOP but not an individual market Exchange under the proposed approach...should be eligible to establish a risk adjustment program only for the small group market or should be required to establish the program for both markets.” (Fed. Reg. Vol. 78, No.118, pg. 37045)

We appreciate the opportunity to comment on the Proposed Rule. Utah is uniquely situated to comment on the question of a state based risk adjustment program because Utah has received approval to operate the SHOP exchange while the federal government operates the individual exchange in Utah. Utah supports a rule that would provide a state that is operating a SHOP-only exchange the opportunity to operate a state specific risk adjustment program for both the small employer market and the individual market. We understand that a state specific risk adjustment program is subject to standards regarding rigor, quality, and actuarial soundness. The comments in this letter will focus on a state based risk adjustment program for both markets.

1. The Affordable Care Act permits a state to run a state based risk adjustment program in both the individual and small group markets.

Section 1343 of the Affordable Care Act instructs the states to run the risk adjustment program and does not condition the state based risk adjustment program on a state’s decision to establish a state based exchange. The federal rules require a state to establish “an exchange” in order for the state to elect to run a state based risk adjuster program (45 CFR 153.310(a)). Any state that elects to run a SHOP-only exchange, like Utah, has met the threshold requirement of establishing “an exchange” and should be provided the opportunity to run a state based risk adjustment program in both insurance markets. Denying a state that opportunity is not supported by either the Affordable Care Act or the existing federal rules.

2. Risk adjustment is a state based insurance market function, not an exchange function.

Risk adjustment is an insurance market-wide function that has been artificially tied to the operation of an exchange. There is not a compelling reason to tie the requirement to run a state based exchange with allowing a state to run its own risk adjustment program for the state's insurance market. A state run risk adjustment program in both the individual and small group market creates greater stability and efficiencies in the state insurance marketplace. State insurance departments currently regulate their state markets and are better situated to respond effectively to state needs.

3. A state based risk adjustment program in both the individual and small group markets creates better economies of scale than a state based risk adjustment program in one market in the state.

A quality risk adjustment program should be actuarially sound and rigorous, as well as efficient, with appropriate but limited reporting requirements for insurers. Due to the complexity of a risk adjustment program, it would create an unfair regulatory burden on insurers and potentially increase premiums in the state if the insurers had to develop rates based on two different risk adjustment methodologies, one for the individual market and one for the small group market. In addition, a separate risk adjustment program for the individual and small group markets would most likely lead to higher fees for the program. If a state is permitted to run only the small employer risk adjustment program, the state would lose economies of scale and need to charge fees that would potentially be higher than the national fees due to the smaller number of participants in the small group market. Efficiencies and economy of scale support allowing a state that operates a SHOP exchange to run a state based risk adjustment program for both the individual and small group markets.

We appreciate the decision to allow Utah to run its Avenue H SHOP exchange as a state based solution for Utah's small employers while the individual exchange, with premium subsidies and the individual mandate, will be operated by the federal government. Utah also appreciates the chance to comment on the need for a state that operates an exchange to preserve state control over its own insurance markets by operating a state based risk adjustment program for both the small group and individual insurance markets.

Sincerely;



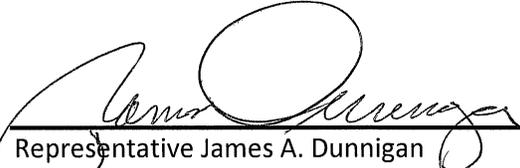
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Speaker Rebecca D. Lockhart



Senator Allen M. Christensen
Cochair, Health Reform Task Force



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