

Department of Health & Human Services  
Centers for Medicare & Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Suite 738G  
Washington, DC 20201

**Center for Consumer Information and  
Insurance Oversight**

August 18, 2011

Montana Legislature  
Economic Affairs Interim Committee  
P.O. Box 201706  
Helena, MT 59620-1706

Dear Committee Members:

Thank you for your letter dated July 8, 2011 addressing some of the questions you have about Affordable Insurance Exchanges. As Montana's Economic Affairs Interim Committee explores whether a state-based or regional-based Affordable Insurance Exchange could be an option for the State, we appreciate the opportunity to offer our input.

An Exchange is a State-based competitive marketplace where individuals and small businesses will be able to purchase affordable private health insurance. We realized that there is no one-size fits-all approach, and each state needs flexibility to tailor its Exchange to meet its needs. On July 11, 2011, the U.S. Department of Health and Human Services (HHS) issued two Notices of Proposed Rulemaking (NPRM), one on Affordable Insurance Exchanges, and the other on reinsurance, risk corridors, and risk adjustment to provide further details and guidance on the purpose, scope and operation of Exchanges; these NPRMs allow an opportunity for all interested parties to comment on the contents of the proposed rules. We anticipate modifying the proposed rules after we receive comments. States have great flexibility in the design of State-based Exchanges, and in order to ensure a process that is simplified, streamlined, and standardized across the country, the Exchange NPRM establishes standards for consumer protections in all Exchanges. We encourage you to review the NPRMs and provide your comments.

You raised several questions about State-based Exchanges and how a Federally-facilitated Exchange might operate in Montana. While we cannot provide specific answers to each question, we recognize that each state has different needs and goals, and with this in mind, HHS proposes to give states the flexibility to design and implement an Exchange that works best for their citizens and small businesses. As you study Affordable Insurance Exchanges in Montana, please consider the timelines discussed in the Affordable Care Act and in the proposed rules. The NPRM offers the option for a state that is not approved to operate an Exchange by January 1, 2013, to submit an Exchange plan for approval at a later date, on an annual basis. A state may also receive conditional approval for 2014 if it is not ready for full certification on January 1, 2013. CMS would appreciate the Committee's comments on the proposed flexibility and how that flexibility might work for Montana.

The NPRM also indicates that a state electing to seek initial approval of its Exchange later than January 1, 2013, must comply with the state Exchange approval requirements set forth in section 155.105 of the proposed rule and have in effect an approved, or conditionally approved, Exchange Plan and operational readiness assessment



at least 12 months prior to the Exchange's first effective date of coverage. Again, we welcome your comments on this flexibility.

The Affordable Care Act requires HHS to establish and operate a Federally-facilitated Exchange if a state does not have an approved or conditionally approved Exchange by January 1, 2013; the statutory standard for approval is whether the State-based Exchange will be operational by January 1, 2014. We are currently seeking comments on how a Federally-facilitated Exchange or an Exchange in which States and CMS work in partnership can best meet the needs of states not electing to establish and operate their own Exchanges.

Sec. 1311(d)(5)(A) of the Affordable Care Act allows States to collect a user fee to fund the Exchange. CMS anticipates assessing a user fee to fund its costs of operating a Federally-facilitated Exchange. Although Sec. 1311(d)(5)(A) does not expressly provide the Federal government authority to collect user fees when it operates a Federally-facilitated Exchange on behalf of a state, the Federal government has general user fee authority (31 USC § 9701) that could be utilized.

I am encouraged that you have been so thoughtful with all your questions regarding the Federally-facilitated Exchange. We are still exploring these questions with our Policy Team and Legal Counsel and welcome any feedback that you may have regarding the Federally-facilitated Exchange as we make these policy decisions. Rest assured that we are working to make sure individuals in Montana and all other states can purchase affordable health care insurance while giving states as much flexibility as possible.

The proposed regulations can be found here: <http://www.federalregister.gov/articles/2011/07/15>.

For more information on Exchanges, including fact sheets, visit <http://www.healthcare.gov/exchanges>.

If you have additional questions or concerns, please feel free to contact me.

Sincerely,



Joel Ario, Director  
Office of Insurance Exchanges  
Center for Consumer Information and Insurance Oversight

cc: Monica J. Lindeen, Commissioner of Securities and Insurance

