September 27, 2012

The Honorable Barack Obama
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Obama:

On July 10, 2012, I submitted to you a letter that detailed 30 questions from Republican governors regarding the Patient Protection and Affordable Care Act (PPACA). We continue to wait for answers to most of our questions, and while your administration responded to some of them, the answers were not substantial enough to take responsible action. Today, we write again, hoping that more information will be provided.

As stated several times before, we continue to maintain that the PPACA remains seriously flawed both conceptually and technically. Our explanation isn't new, we believe the law favors dependency over personal responsibility and will ultimately destroy the private insurance market. In its current form, the law will increase health care costs and likely lead to the disruption or discontinuation of millions of Americans' insurance plans. The new federal subsidies anticipated that enable exchanges are unaffordable given the crushing federal budget deficits and record national debt, and states cannot afford significant Medicaid expansions. For most governors, Medicaid growth even before PPACA was exorbitant and consuming a growing share of state budgets. While we strive to balance our budgets at the state level, we do not understand how the federal government can begin to afford to implement PPACA, with deficits

already over $1 trillion in every year of your presidency, and the debt growing $5 trillion in the past 3 years to an outrageous record of nearly $16 trillion.

For emphasis, we will again repeat that we wish you would have stood by your statement three years ago when you correctly told Senate Democrats, "[a]s we move forward on health reform, it is not sufficient for us to simply add more people to Medicare or Medicaid to increase the rolls, to increase coverage in the absence of cost controls and reform. And let me repeat this principle: If we don't get control over costs, then it is going to be very difficult for us to expand coverage. These two things go hand in hand. Another way of putting it is we can't simply put more people into a broken system that doesn't work."

Unfortunately, that is precisely what has been done—PPACA, if implemented by the states, would put more people, 16-20 million individuals, into a broken Medicaid system. A system that lacks real tools and flexibility to afford states the opportunity to be creative and implement true Medicaid reforms. Twice now, we have sent you and Congressional leadership the detailed plan documents to craft such reforms. We continue to wait for a response and have enclosed yet another copy for your team to review.

While believe the best option is to fully repeal and replace the PPACA, states continue to confront numerous deadlines and face major policy decisions in the wake of the Supreme Court decision. Before making any final policy decisions, governors must carefully consider the short and long-term implications of an expanded entitlement program and the consequences of significantly increasing the size of government to manage these programs.

In addition to determining whether Medicaid expansion is in the best interest of its citizens, states face other PPACA-related decisions, like whether to establish a state-based health-insurance exchange, enter into a partnership exchange or accept the default of a federal exchange. As the exchange issue is currently interpreted, states are essentially being tasked with shouldering all the responsibility without any authority.

We respectfully request the Administration provide the detailed work plan that demonstrates how the aggressive deadlines for the creation of a federally-facilitated health insurance exchange deadlines will be met. If they cannot be met, the responsible course would be for HHS to level with us and the American people.

The consequences of governors' decisions will impact our states – and the nation – for decades to come, so we must have all the information needed to choose wisely. We have taken the liberty of listing below some of the critical questions that must have answers before states can determine best how to proceed. You will notice that of the 30 questions originally put forward in the July 10 letter, the vast majority remain unanswered.

Healthcare Exchanges:

1) Please provide a complete list of regulations that will have to be reviewed, revised and re-opened for public comment prior to implementation as a result of the Supreme Court ruling (e.g., the Medicaid eligibility regulations, exchange regulations related to interface with Medicaid). What is the schedule for re-issuing these regulations?

2) When will preliminary and subsequent final rules be issued on essential health benefits, actuarial value and rating areas be issued?

3) The federal government has already extended deadlines for applying for Level 1 and Level 2 Exchange Establishment funding into 2014. Can we expect extensions of the deadlines for implementation given the uncertainty caused by the Supreme Court ruling and the linkage between Medicaid expansion and exchange eligibility and enrollment functions? In addition, will the deadlines change for states implementing a partnership exchange? Will the deadlines be extended for states implementing a federal exchange?

4) When will the details of the federal partnership options be available? These cannot be considered as an option without details including cost estimates. How will the long term funding of the federally-facilitated healthcare exchanges be sustained?

5) States considering a state-based exchange need to know whether there will be a charge to use the federal data hub, advance premium tax credit/cost-sharing reduction service, risk adjustment and transitional reinsurance programs. Will there be a charge? And, if so, how much will it be?

6) When will states learn the details of the operational systems for a federal exchange? The procedural, technical, and architectural requirements for linking to the federal exchange have not been released. It is not feasible to know if a state-based exchange is better for our citizens until we know what the contents of a federal exchange will be. Taking grant money at this time for state exchange creation may be wasted if a federal exchange makes more sense for a particular state.

7) When will information from the establishment of a federal exchange be available for states to use if a state opts to build its own exchange? It is costly for each state to have to start from scratch and still not know how interfaces will work.

8) If states choose to build a state-based exchange, what dollars will the federal government contribute now and in the future? For the federal exchange states, when

will the regulations regarding the imposition of taxes on a state's insurers be released?

9) It has been widely reported that Congressional leaders who have to appropriate money will seek to defund exchanges. Can you explain how the enactment provisions of the law allow the Executive Branch to continue to fund exchanges without Congressional action to appropriate money?

10) What happens to a state that has taken exchange planning and implementation grants if their exchange is not financially viable after 2015? Can a state refuse to increase taxes on either its residents or insurers, thus putting the financial underpinning of an exchange at risk? What penalties does the federal government envision in this case?

11) What happens if a state accepts grant money now to begin to build a state exchange, and subsequently determines that a federal exchange may be better? Will the federal government claw back these grant dollars from the states?

12) The Congressional Budget Office (CBO) has pointed out a provision in the law that reduces exchange subsidies after 2018, which means fewer and fewer people will qualify for subsidies, and the people who do qualify will get a smaller and smaller subsidy. Does the Administration support that change, and if so, how would you pay for it? If you do not, why do you think people should be forced to buy insurance if federal subsidies are shrinking?

13) Alongside the considerable challenge of greatly expanding the Medicaid program, states are charged by the PPACA with creating a single, seamless point of entry for all of the insurance affordability programs affected by the Act--Medicaid, the Children's Health Insurance Program (CHIP), the Basic Health Plan (where offered), advance tax credits for individual and Small Business Health Options Program (SHOP) exchange enrollees. This leaves another major question on the table. What about all of the other social service programs? Will states still be able to create an eligibility system for all social service programs under the 90/10 funding mechanism?

14) In order to minimize disruptions to a state's insurance market, The Office of Personnel Management (OPM) is required to certified multi-state plans that must be included in every exchange. When will the rules be released detailing the requirements and timeline for multi-state plans? How OPM structures these rules can be very disruptive to a state's insurance market.

15) Does the federal government intend to maintain high risk pools and how will they be financed? What actions will they take in a state that has opted not to operate a high risk pool or an exchange?

Medicaid

1) When can we expect to receive updated guidance on Medicaid expansion and related topics?

2) Will states that expand Medicaid coverage up to a level below 138% of the federal poverty level (FPL), for example up to 100% of FPL, still receive the enhanced federal medical assistance percentage (FMAP) available for "newly covered" populations?

3) Will states be allowed to phase in Medicaid coverage up to 138% of FPL (or 100% FPL) years after 2013 and still receive the enhanced FMAP?

4) Does the MOE requirement apply to the expansion population or does it apply only to the current Medicaid population? If a state accepts the expansion, but the federal match goes away, can we drop out of the expansion program? Will you waive the MOE under your 1115 waiver authority? What will be the penalties for failure to comply with MOE requirements? Since the MOE was a direct result of the expansion funding, if a state chooses not to expand is the MOE no longer effective?

5) Regarding the two year increase in Medicaid reimbursement for primary care codes, are you going to issue rules and guidance in time for implementation? Do you plan on extending it? If so, how are you going to pay for it? Congressional Republicans have expressed opposition to any funding for PPACA.

6) How will the federal exchanges utilize the state's criteria for eligibility that will be included in MAGI?

7) If a state expanded Medicaid through a waiver prior to enactment of the PPACA, but then chooses not to expand coverage further, are they still eligible for the 75% to 90% enhanced FMAP for the previously expanded population?

8) Will the federal government support options for the Medicaid expansion population that encourage personal responsibility – cost sharing or accountability provisions, the use of high deductible plans such as Health Savings Accounts, and other options at the state's choice?

9) What specific plans and timeline do you have for enacting the reforms and flexibility options for Medicaid that you spoke of in 2009? When can states give further input on the needed reforms?

10) You have stated that you will not deport undocumented aliens who have not committed a crime. You have also said that these undocumented aliens will be exempt from the individual mandate. How will the state be reimbursed for medical services given to these individuals?

11) Will CMS approve global waivers with an aggregate allotment, state flexibility, and accountability if states are willing to initiate a portion of the expansion?

12) The Disproportionate Share allotments will be reduced every year with a methodology based in the reduction in the number of uninsured. One, when will HHS issue the regulations and methodology for this reduction? Two, for a state that does not see a decrease in its uninsured population will the remaining state absorb the full reduction? In addition, can a state implement a new DSH Diversion program as part of the optional expansion? Can a state implement new DSH Diversion programs for services to the uninsured/uncompensated care services?

There will inevitably be more questions that will arise as additional guidance flows from your Administration. With just 15 months until the anticipated implementation date of PPACA, we would appreciate prompt answers.

Thank you for your attention to this important matter facing states and the country. We look forward to learning from your responses.

Sincerely,

Governor Bob McDonnell, RGA Chairman
Commonwealth of Virginia