

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
Center for Consumer Information and Insurance Oversight
200 Independence Avenue SW
Washington, DC 20201



May 10, 2013

The Honorable Governor Gary Herbert
Utah State Capitol Complex
350 North State Street, Suite 200
PO Box 142220
Salt Lake City, Utah 84114-2220

Dear Governor Herbert:

Thank you for your letter to Secretary Sebelius regarding Utah's Federally-facilitated Marketplace. She has asked me to respond to you directly. We are pleased to have reached a common understanding of the regulatory amendments that would allow Utah to build on the framework of Avenue H to continue to serve eligible small employers in Utah, while ensuring Utahns in the individual market have access to high quality, affordable coverage through the Federally-facilitated Marketplace starting with the open enrollment period that begins on October 1, 2013.

As you are aware, the Department of Health and Human Services (HHS) provided conditional approval on January 3, 2013, for Utah to run a State-based Exchange, or Marketplace, starting in 2014. Since that time, HHS and Utah have had a series of discussions regarding the conditions of that approval, and Utah has requested flexibility in implementing the State-based Marketplace to allow the State to operate only the Small Business Health Options Program (SHOP) starting in 2014 given its experience operating Avenue H, which was in existence before the passage of the Affordable Care Act. Ensuing conversations have addressed the policy and operational issues related to this proposal, as we work toward a solution that would meet our shared goals of providing high quality, affordable health insurance options to Utahns.

CMS intends to propose an amendment to its Exchanges Final Rule (45 CFR 155) that, if finalized, would permit Utah to operate a State-based SHOP-only Marketplace starting in 2014, building on the framework of Utah's existing small business exchange, Avenue H, while the federal government operates the Federally-facilitated Marketplace for the individual market for 2014. In addition, under proposed amendments to our regulations, Utah would run a SHOP-specific Navigator program, would fund a minimum of two Navigators for the State-based SHOP-only Marketplace and would be provided the choice to limit the role of the SHOP-specific Navigators to performing consumer outreach and education functions. The proposed amendments would also enable the Federally-facilitated Marketplace to fund and operate a Navigator program for the Utah individual market Marketplace that would be run consistent with the Navigator provisions set forth in the current rules.

Additionally, as we have discussed, Utah would perform plan management activities relating to the certification of the Qualified Health Plans (QHPs) that will be offered in the Marketplaces starting with the open enrollment period that begins on October 1, 2013. First, Utah would have sole responsibility for certification of QHPs to be offered through the SHOP. Second, you have attested that Utah has the legal authority and operational capacity to perform the plan management activities listed in Section II (4.0) of the Blueprint for Approval of Affordable State-Based and State Partnership Insurance Exchanges, including the activities required to support the certification and oversight of QHP issuers consistent with 45 CFR 155.1010(a), in time for the 2013 QHP selection process. Assuming Utah acts in accordance with its attestations, CMS would rely on Utah's recommendations in certifying QHPs for the Federally-facilitated individual Marketplace. CMS, however, would ultimately maintain its legal responsibility for ensuring that the recommended QHPs in the individual market meet all QHP certification standards for the Federally-facilitated Marketplace.

Under the proposed amendments to our regulations, in 2014 reporting by SHOPs of detailed enrollment information would be optional. SHOPs would be required to report only aggregated data that contains no information that identifies an individual or an employer. Like other Exchanges, Utah could decide on an annual basis whether or not to run a SHOP-only Exchange, and would have sufficient notice of the Exchange data reporting requirements to make decisions about participation.

Under the amended rules, similarly situated states would have the same opportunities as Utah.

We look forward to our continued work with Utah to seek to make it possible for Avenue H to operate as a State-based SHOP starting in 2014.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary Cohen", is written over the typed name.

Gary Cohen, Director

Center for Consumer Information and Insurance Oversight