



STATE OF UTAH

OFFICE OF THE GOVERNOR
SALT LAKE CITY, UTAH
84114-2220

GARY R. HERBERT
GOVERNOR

GREG BELL
LIEUTENANT GOVERNOR

May 9, 2013

Department of Health and Human Services
Secretary Kathleen Sebelius
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius,

Thank you for the opportunity to discuss the Utah's health exchange last week. I believe our conversation was very productive, and I trust that our offices will continue to work together, as we prepare an agreement that allows for flexibility to meet the needs of Utah residents.

As a summary of our conversation, I have attached an overview of Utah's marketplace approach to health reform, which details Utah's involvement in the Small Business Health Options Program (SHOP), healthcare plan management, and Medicaid.

Utah remains committed to participating in the bifurcated health exchange model that I proposed to you earlier this year. In this model, Utah state government will run Avenue H as the certified SHOP exchange in the state, servicing small businesses without a competing federal SHOP solution or interjection from the federal government. Utah will maintain oversight over qualified health plans, including certification, recertification, decertification, and compliance. The State will also continue to administer its Medicaid program through its existing Medicaid structure, including functions to determine the final eligibility for Medicaid and Children's Health Insurance Program (CHIP) applicants.

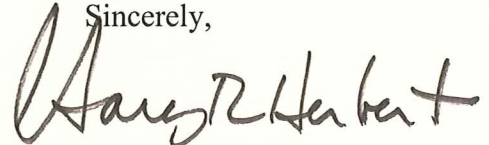
Utah expects that the U.S. Department of Health and Human Services (HHS) will be responsible for operating the individual exchange, conducting precertification for Medicaid and CHIP eligibility, and managing tax credits through the individual exchange.

I have also included a letter from Utah Speaker of the House, Rebecca Lockhart, regarding the issue of the State of Utah sharing collected data with federal agencies. I want to reiterate our mutual position that the State of Utah will not share data about Utah residents or businesses with a federal data hub. Utah law prohibits Avenue H from taking any action that

would facilitate the individual and employer mandate. In order to ensure clarity on this issue, I request that HHS acknowledge Utah's data sharing limitations as part of any agreements to certify Avenue H as a state-based SHOP exchange.

While the above statements of intent are not exhaustive, I believe they highlight our ability to compromise and are critical components to making health reform work for Utah residents. The enclosed documents highlight Utah's commitments on the agreement, as we move forward with the understanding that our staff will work together to develop long-term solutions to these issues.

Sincerely,

A handwritten signature in black ink that reads "Gary R. Herbert". The signature is written in a cursive style with a large, prominent initial "G".

Gary R. Herbert
Governor

cc: Speaker Lockhart
President Niederhauser

Enclosures:
Utah's Marketplace Approach
Letter from Speaker Lockhart to Governor Herbert, May 2, 2013

Utah's Marketplace Approach

Utah's approach to health care reform preserves Utah's state based, private market solution. Under Governor Gary R. Herbert's plan, the state will continue to operate Avenue H as Utah's sole small business health insurance marketplace. The state will also retain oversight of insurance markets and final approval of individuals enrolling in Medicaid. The federal government will begin offering insurance through an exchange for individuals and families and will administer tax credits and the navigator program.

Small Business Health Options Program (SHOP)

- Utah will continue to operate its Avenue H marketplace as the certified state-based small business health options program (SHOP). There will not be a competing federal SHOP solution.
- Avenue H will operate as a state-based solution, with no interfaces to the federal government.
- Small businesses with 1-50 eligible employees (excluding sole proprietors) can apply and enroll online in a variety of qualified health plans (QHPs) available through Avenue H.
- Small businesses and their employees will continue to have their choice of private insurance carriers, provider networks and plans available through an online shopping tool. *(HHS has postponed the employee choice requirement until 2015, but Avenue H has been offering choice since 2010 and will continue to do so.)*
- Avenue H promotes a competitive market-based solution with multiple medical and dental insurers and health savings account administrators participating.
- Avenue H is a defined-contribution marketplace, which means that employers contribute a flat-dollar amount toward their employees' health care costs. Employees use those funds to shop on Avenue H's marketplace for pre-tax health insurance benefits that meet their needs. This approach lets employers contribute an amount their budget will allow, and allows them to mitigate future cost increases.
- Employers pay a single consolidated invoice for their group via ACH transfer to Avenue H, which then pays the appropriate amount to each carrier. *(HHS has postponed the premium consolidation requirement until 2015, but Avenue H has been offering this component since 2010 and will continue to do so.)*
- Small employers may be eligible for the Small Employer Premium Tax Credit that is only available through the certified state-based Avenue H marketplace.
- Avenue H will continue to engage credentialed brokers to assist employers and employees with applying and selecting coverage.
- Avenue H will continue to provide training to brokers, as well as educational outreach and marketing to the community.
- Avenue H will award grants to at least two organizations to act as navigators for small businesses with the limited services of marketing and outreach activities for Avenue H. Prospective licensed navigators will be chosen based upon their proposal for providing outreach and education to small businesses in the state.

- Avenue H will provide English and Spanish versions of the website, marketing materials and call center support.
- The Utah Insurance Department will approve health plans and rates to Avenue H.
- Utah will work with HHS to run a state based risk adjuster model in 2015.

PLAN MANAGEMENT

- The State of Utah, through the Utah Insurance Department will have sole oversight of qualified health plans, including certification, recertification, decertification and compliance. The State will provide oversight to ensure that carriers offer plans that are in the best interests of consumers.
- Utah will provide health plans and rates to Avenue H for small business and to HHS for the individual federal exchange.
- Utah will oversee health plans including rate review (including geographic service areas and rating areas), transparency, marketing and benefit design, accreditation, network adequacy, and essential community providers.
- Utah will manage consumer complaints about issuers, examine potential plan-issuer non-compliance with applicable laws and ensure ongoing compliance with the plan agreement and certification standards.

MEDICAID

- When the federally facilitated individual marketplace assesses that an applicant is likely eligible for Medicaid or Children's Health Insurance Program (CHIP), State Medicaid will receive the marketplace's referral of the qualified application and then make a final determination of Medicaid or CHIP eligibility.
- State Medicaid applications are available in English and Spanish, and are accepted online, by mail, over the phone or at an office.
- State Medicaid will process renewals for all Medicaid and CHIP individuals.
- State Medicaid will hear all appeals related to Medicaid and CHIP decisions.
- State Medicaid and the federally facilitated individual marketplace will enter into a service level agreement that sets standards for services, including accuracy of referrals, customer wait time on phones and system downtimes.



UTAH HOUSE OF REPRESENTATIVES

REBECCA LOCKHART
SPEAKER OF THE HOUSE

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May 2, 2013

Governor Gary Herbert
350 N. State, Ste. 200
Salt Lake City, UT 84114

Dear Governor Herbert,

I appreciate the opportunity to comment on Utah's continued negotiations with the United States Department of Health and Human Services (HHS) regarding Utah's Avenue H health insurance market place for small employers. I am encouraged that HHS has agreed to almost all of Utah's conditions regarding preserving Avenue H as a state based certified SHOP exchange. I understand that you will talk with Secretary Sebelius in the near future to try and finalize the agreement for Avenue H to be certified as a state based SHOP exchange. I am writing because I believe we should not accept any agreements until the question of data sharing between Avenue H and the federal government's data hub has been resolved.

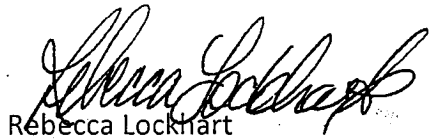
Utah has consistently communicated to HHS that Utah will not share data about Utah citizens or businesses with a federal data hub. Utah's last written communication from your office to HHS on April 9, 2013, stated:

We have significant concerns with the ambiguous statement regarding data reporting for 2015. What data do you anticipate requesting? What is the purpose of the data collection and reporting? How often will you want the data report and in what format? These details are important. Utah has consistently stated that it will not use Avenue H to implement or facilitate the enforcement of the individual or large employer mandate. In addition, we are establishing vendor relationships and technology capabilities that may or may not support the "to be determined" 2015 data feed requirements. We are reluctant to commit the state to an unknown data requirement in 2015, especially with the federal regulation that requires a state that wants to change its exchange model to give HHS 12 months advance notice and enter into a mutually agreed upon – transition agreement. [45 C.F.R. 155.106(b)] If Utah disagreed with the HHS data requirements for 2015, Utah could be stuck with implementing the new data requirements for up to a year during the transition agreement. We want the bifurcated exchange model to work, but do not think we should be bound by unknown data standards in 2015.

(Continued)

Despite Utah's statement of concern regarding the data sharing requirements, HHS remains silent on this issue. HHS data sharing requirements are designed to facilitate communication about employer health plans and individual coverage to the federal data hub, which includes the Internal Revenue Service. The purpose of the communication is to facilitate and enforce the individual and employer mandate. Utah law prohibits Avenue H from taking any action that would facilitate the individual and employer mandate (Utah Code Section 63M-1-2505.5(3)(b)). Sharing data from Avenue H with the federal data hub is not negotiable; it is prohibited by state law. HHS should acknowledge Utah's data sharing limitations as part of the agreement to certify Avenue H as a state based SHOP exchange. One option would be to have a written agreement from HHS stating that if Utah does not agree to the post 2014 data sharing agreements, Utah can enter into the transition agreement with HHS to cease operating a federally certified SHOP exchange without having to implement the data sharing standards.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca Lockhart". The signature is fluid and cursive, with a large initial "R" and "L".

Rebecca Lockhart

Speaker of the House of Representatives