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United States Senate

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April 25, 2013

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Sebelius:

In a letter to the Division of Insurance under the Office of Consumer Affairs and Business Regulations in Massachusetts the Center for Consumer Information and Insurance Oversight (CCIIO) provided the state a transition period of three years to eliminate the use of certain rating factors currently used and allowed under state law.

The correspondence identifies Section 1321(e) of the Patient Protection and Affordable Care Act (PPACA) as the authority to implement transition periods for already established exchanges, but as you note, this provision does not apply to Subtitles A and C of PPACA; including the new rating requirements that will take effect January 1, 2014. However, the Administration has concluded that due to the relationship between rating requirements under Section 2701 of the Public Health Service Act (PHSA) and the operational concerns identified under Section 1321(e) it is appropriate to afford Massachusetts a transition period.

The Administration's conclusion to provide the transition period, even though Section 1321 specifically exempts Subtitles A and C, suggests that the legal authority to do so is provided through general authorities that the Department of Health and Human Services (the Department) has to implement the law. It seems only reasonable then that the Department has the same authority to offer flexibility to all states, regardless of whether or not the states had an established exchange prior to January 1, 2010. State regulators throughout the country have expressed to you their concerns about the impact of rating reforms on the operations of their markets and have requested a similar transition as the one given to Massachusetts

I respectfully request the Department provide the following:

1. The specific legal authority to grant a transition period for rating requirements;

2. Whether similar transition periods will be provided under the same legal authority to states expressing similar concerns related to the new rating requirements and operational capabilities of an exchange; and
3. An explanation for why the Department stated in the final rule implementing rating requirements that it did “not have the legal authority to provide for a phase-in of certain rating provisions such as the 3:1 age factor,” but was then able to provide for a transition period for the state of Massachusetts.

I appreciate your timely response to this request. Please feel free to contact my staff, Hayden Rhudy at 202-224-5251 should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Orrin Hatch", with a large circular flourish at the beginning.

Orrin G. Hatch
Ranking Member