

COMMISSIONER OF SECURITIES & INSURANCE

MATTHEW M. ROSENDALE, SR.
COMMISSIONER



OFFICE OF THE
MONTANA STATE AUDITOR

March 1, 2017

The Honorable Lamar Alexander
United States Senate
Washington, D.C. 20510

Dear Senator Alexander,

Thank you for your letter soliciting state input on federal actions that could stabilize the health insurance market, in addition to providing long term solutions for the U.S. health care and coverage systems.

In November, 2016, Montana voters elected me to lead the state as Commissioner of Securities and Insurance, in part I believe, as a repudiation of prior policies, including the ACA, that have caused skyrocketing health care and health insurance costs. In December, 2016, you received a response from my predecessor to your solicitation. This letter supersedes that letter and presents a change in the direction my administration intends to lead the State of Montana.

In keeping with my vision for free-market solutions, I offer the following for consideration by the United States Senate:

1. Health care and health insurance must be allowed to function as real markets

Mandates in coverage, encompassed in the ACA, distort the health insurance market and disconnect consumer needs and wants from available products. Congress must repeal mandates that limit care and coverage choices for Montanans.

A. Consumers drive real markets through what they value

Consumers have been excluded from participation in their own health decision-making through multiple avenues of market interference compounded over decades. Misplaced regulation, lack of transparency in pricing, disincentives to compare price and quality of medical care, tax biases, bottlenecks in the new physician pipeline, conglomeration of medical facilities, and a semblance of monopolization in the pharmaceutical industry are some of the factors that inhibit consumer values from driving market pressures.

Congress should not limit what the private sector can safely innovate in either the provision of health care itself, or in types of insurance, contract, or other indemnity arrangements. If patients want house calls, and physicians are willing to provide them, whether for cash or insurance payments, the regulatory structure must be nimble enough to accommodate such market forces.

B. Incentives must empower value-based consumer health care decisions

Congress must remove existing federal tax biases to promote portable, personal health insurance and eliminate the unintended consequence of suppressing wage growth. Federal reform must equalize tax treatment of health insurance plans in order to address this issue. Congress should end the taxable income exclusion for employer coverage.

Once equalized, to then empower value-based consumer decision making, Congress should incent all taxpayers, including low-income taxpayers currently eligible for Medicaid Expansion benefits, with a simple tax relief mechanism for the purchase of health care services and/or health insurance products. Any tax incentive must be instituted in tandem with removal of the employer taxable income exclusion to avoid creation of a massive subsidy rather than implementing a needed solution.

C. Empowered consumers must have more options

The Essential Health Benefits of the ACA were not essential to everyone. Constituents statewide have approached me about the need for catastrophic coverage options, health care cafeteria plans, and restoring robust Health Savings Accounts. To facilitate this type of market selection, Congress must remove the ACA restrictions on high deductible insurance plans and out-of-pocket maximums, and permit both annual limits and lifetime limits.

Health (or Medical) Savings Accounts have proven to be empowering to consumers and useful to downward pressure on health care costs. As a first order of business, Congress should allow anyone to purchase an HSA voluntarily, and should consider pouring the tax incentive created above into HSA's for the Medicaid Expansion population to empower themselves.

Second, the annual contribution limits on HSA's should be substantially raised, allowing individuals to save for their health care needs at their discretion.

Third, Congress should expand allowed HSA expenditures to include any type of health insurance, alternative to health insurance, preventive services, unique health care products or services, and even experimental treatments if the situation warrants.

2. Give flexibility and funding to states to protect their most vulnerable

Our rural state has unique health care needs and it's important that we are given the flexibility to develop Montana-based solutions that protect our most vulnerable populations, including those with high-cost, pre-existing conditions.

A. Medicaid redux

As mentioned above, the Medicaid Expansion population should be empowered through tax incentives to own a Health Savings Account and choose how to best protect themselves and their families via those private funds. Medicaid should be returned to its original purpose with necessary reforms.

Federal assistance to states for both traditional Medicaid and the newly-empowered Expansion population should be via block grant. By giving states like ours more control over how federal dollars are spent on our Medicaid programs, we could develop more efficient and effective health care delivery reforms to protect those in need.

B. High-risk pools with federal reinsurance

Congress must allow for the re-creation of state based high-risk pools. In a painful moment of irony, I just read the minutes of the final meeting of the Board of Directors of Montana's recently-defunct high-risk pool. That entity, the MCHA, was finally wound-up in June of 2016. Nonetheless, the Pool should be re-established, with modifications, to create the safety net needed to support the uninsurable.

In its prior form, the MCHA was not equitably funded. When re-created, Montana needs the flexibility to disburse the costs across a wider spectrum of payers. This may require Congress to relax ERISA pre-emptions with respect to employer health care benefit plans, which represent close to 50% of the Montana market. Congress should not hesitate to allow states to assume some regulatory functions over employer plans, including statewide transparency requirements, in order to drive down costs. These tools will help Montana appropriately fund and govern its high-risk pool.

I strongly disagree with any attempt by Congress to operate a nationwide high-risk pool. Congress cannot efficiently provide for the varying needs of the citizens of 50 states. However, the MCHA at times did struggle with solvency, and it would be appropriate for Congress to consider funding states' access to reinsurance of their high-risk pools.

C. State consumer protection enhancements should provide the oversight of this more relaxed free-market system

In any relaxation of a regulatory regime, there are concerns that the free market will operate to the detriment of some. These concerns are not unfounded, but enforcement

and consumer protection should be concentrated at the state level. States are always likely to be more responsive to their citizens, be it through the regulators or through the court system. In repealing the ACA and reforming federal law, Congress should rely on the states to provide consumer protections that meet the needs of the state.

D. 1332 Innovation Waiver opportunities should remain in place

No matter how Congress chooses to act, states still need expanded flexibility to upgrade their health care and health insurance markets. I strongly encourage Congress to keep 1332 Waivers, and similar waiver options under other federal acts such as HIPAA, accessible to states. As noted earlier, private innovations are dramatically altering the health care environment, and states need to respond timely to improvements in access, provision, and funding of health care needs.

We envision a true marketplace for health care that empowers Montanans with control over their health care spending, lowers the cost of care and offers countless options for quality coverage that meets personal needs and budgets.

Respectfully, we urge your consideration of our proposals.

Sincerely,



Matthew M. Rosendale, Sr.
Commissioner of Securities and Insurance
Montana State Auditor

CC: Senator Steve Daines
United States Senate
Washington, D.C. 20510

Senator Jon Tester
United States Senate
Washington, D.C. 20510