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January 13, 2017

The Honorable Kevin McCarthy
Majority Leader
United States House of Representatives
H-107, U.X. Capitol Building
Washington, D.C. 20515

Dear Majority Leader McCarthy:

Thank you for the opportunity to provide input regarding national health care reform. The responses to your questions are enclosed. My principal request is to move forward carefully and provide as much flexibility and support as possible for individual states to implement and/or maintain health care systems that meet localized needs.

The Patient Protection and Affordable Care Act (ACA) has created both some challenges and opportunities for Alaska. I am hopeful that adjustments are carefully evaluated and timed to allow for organized transitions to avoid negative impacts on individuals, health care delivery systems, and industry stakeholders. States like Alaska have invested significant resources on ACA compliance and we are concerned that rapid changes without workable alternatives could have damaging long-term effects on the people of Alaska and our economy.

Over 17,000 Alaskans are now covered through ACA individual marketplace health plans, and over 27,000 Alaskans are covered through Medicaid expansion. The vast majority of these Alaskans would be unable to afford health care coverage without the current ACA provisions. To ensure the recent gains in health care access are not compromised any changes to the existing provisions should maintain current access and funding levels.

To avoid negative impacts on individual Alaskans and their families and Alaska's health care and insurance industries, any ACA adjustments must be made thoughtfully and with adequate time to transition into a new system.

Sincerely,

Bill Walker
Governor

Enclosure

cc: The Honorable Mitch McConnell, Majority Leader, United States Senate
The Honorable Kevin Brady, Chairman, House Committee on Ways and Means
The Honorable Fred Upton, Chairman, House Committee on Energy and Commerce
The Honorable John Kline, Chairman, House Committee on Education and the Workforce
The Honorable Greg Walden, Chair-Elect, House Committee on Energy and Commerce
The Honorable Virginia Foxx, Chair-Elect, House Committee on Education and the Workforce
The Honorable Lisa Murkowski, United States Senate
The Honorable Dan Sullivan, United States Senate
The Honorable Don Young, United States House of Representatives
The Honorable Valerie Davidson, Commissioner, Alaska Department of Health and Social Services
The Honorable Chris Hladick, Commissioner, Alaska Department of Commerce, Community, and Economic Development
Lori Wing-Heier, Director, Alaska Division of Insurance

Alaska's Responses to Affordable Care Act Questions – January 13, 2017

1) **What changes should Congress consider to grant more flexibility to states to provide insurance options that expand choices and lower premiums?**
   - Change the benchmark plan from an employer-based plan to a state individual market plan prior to 2014.
   - Allow wider range of max out-of-pocket limits (allow higher deductibles).
   - Provide access to catastrophic plans for all consumers, not just those under age 30.
   - Allow annual limits (e.g. $2 million).
   - Eliminate the $2,000/$4,000 deductible limit on small employer plans.
   - Provide flexibility for Health Savings Accounts (HSA) and Health Reimbursement Arrangements (HRA) for employer plans.
   - Reduce restrictions on association based plans – allow more flexibility around rating for employers and associations if the association meets state requirements.
   - Continue to ensure subsidies take geographical cost into account.
   - Allow high deductible health plans to set different deductibles for medical and pharmaceutical benefits.

2) **What legislative and regulatory reforms should Congress and the incoming administration consider to stabilize your individual, small group, and large group health insurance markets?**
   - Provide federal funding for state high risk pools or other state based reinsurance programs. Allow for an equivalent transfer of high risk claims.
   - Eliminate the Cadillac tax or modify the tax to account for geographical cost differences.
   - Eliminate federally defined age ratio and age curve, and allow states to use appropriate ratios and curves for their markets (the current 3-to-1 ratio means that younger, healthier people are subsidizing people over age 50, creating a disincentive for younger people to enroll in coverage).

3) **What are key administrative, regulatory, or legislative changes you believe would help you reduce costs and improve health outcomes in your Medicaid program, while still delivering high quality care for the most vulnerable?**
   - Alaska opposes Medicaid block grant allocation due to unique access-to-care issues and travel costs that would disproportionately impact large, sparsely populated states like Alaska. If block grants are considered, the unique federal trust responsibility for American Indians and Alaska Natives should be exempt from the block grant formula.
   - Retain Medicaid Expansion authority and associated Federal Medical Assistance Percentage (FMAP) rates under the ACA.
   - Reduce federal oversight audits and reviews. Current audits include the Payment Error Rate Measurement (PERM process), audits through the Centers for Medicare & Medicaid Services (CMS) Center for Program Integrity, regional financial management reviews, annual federal compliance audits, and special purpose audits conducted by both CMS and the Office of Inspector General. In addition, states are required to retain recovery audit contractors, and CMS conducts audits of state Medicaid providers directly through the Medicaid Integrity contractors.

- Retain mental health parity provisions. Federal mental health parity regulations enacted in March 2016 established standards to ensure behavioral health disorders are adequately treated and provide tools to assist children through the Children's Health Insurance Program (CHIP) and reduce criminal recidivism by filling behavioral health treatment gaps.
- Retain Section 1915(k) option for states to implement innovative programs for home and community based services. Alaska is currently in the process of implementing systems to improve home-based care in lieu of more costly nursing home facilities.
- Retain Section 1945. Alaska plans to implement the Section 1945 option to strengthen primary care services for Alaskans with chronic health conditions by establishing Health Homes in July 2018.
- Retain American Indian/Alaska Native protections. According to the U.S. Census Bureau's American Community Survey, American Indians and Alaska Natives represented 19.5 percent of Alaska's population in 2015. Federal law recognizes the special trust relationship between the federal government and American Indians and Alaska Natives. Alaska supports retaining ACA health care protections for American Indians and Alaska Natives. These include exemptions from Medicaid cost-sharing provisions and 100 percent federal funding for American Indians and Alaska Native Medicaid enrollees for care received through an Indian Health Service facility or tribally operated facility. Alaska Tribal and non-tribal health organizations have entered into agreements that allow better collaboration, increased efficiency and improved health care access. Nationally, 34 states with significant tribal populations could benefit from such collaborations to avoid duplication of health services.
- Provide states with additional flexibility in administering their Medicaid programs and services.

4) **What can Congress do to preserve employer-sponsored insurance coverage and reduce costs for the millions of Americans who receive health coverage through their jobs?**
   - Eliminate the Cadillac tax or modify the tax to account for geographic cost differences.
   - Simplify the 1095 reporting process for seasonal, temporary, and part-time workers.
   - Maintain current Medicare eligibility age. Any increase in Medicare age eligibility will shift costs from the federal government to employers currently providing health coverage.
   - Eliminate the $2,000/$4,000 deductible limit on small employer plans.
   - Provide flexibility for HSA and HRA for employer plans.
   - Ensure federal corporate tax credits continue for employer-sponsored insurance coverage.
   - Continue tax exempt status of employee health insurance coverage.
   - Reduce restrictions on association-based plans – allow more flexibility around rating for employers and associations if the association meets state requirements.
   - Allow for nation-wide and localized negotiations of drug pricing.
   - Provide for better consumer protections for balance billing and network adequacy.
   - If ACA is repealed or significantly modified, work with states to implement Small Business Health Option Program (SHOP) or other state reforms that model Hawaii's employer coverage provisions.

5) **What key long-term reforms would improve affordability for patients?**
   - Encourage or incentivize insurers to provide disease management and prevention services. These services typically reduce costs and improve care and outcomes.
   - Encourage or incentivize insurers to provide participants with incentives to encourage and reward healthy lifestyle choices that lead to low claim activity.
   - Establish balance billing protections – require health care providers to accept reasonable offer of payment from an insurer and prohibit provider from billing the remainder to the patient.
   - Require hospitals and other medical facilities to provide a patient with a list of all providers who will be billing for services prior to delivering a medical service.
   - Allow state flexibility with regard to determining network adequacy.
   - Implement cost-containment measures with the support of state regulators.
   - Incentivize health care providers to contract with insurers to establish agreed upon charges.
   - Require health care providers to contract with companies if the offer is reasonable.
   - Allow for negotiations of drug pricing by Medicare or state health care officials. Require public disclosure of negotiated drug pricing. Establish pricing controls based on regional cost considerations. Create incentives for pharmaceutical companies to produce low-cost generic equivalent drug options.
   - Prohibit providers from charging or collecting different fees for the same services based on type of insurance.
   - Establish federal regulations for the maximum allowable charges for every medical procedure.

6) **Does your state currently have or plan to enact authority to utilize a Section 1332 Waiver for State Innovation beginning January 1, 2017?**
   - Alaska submitted its application for a Section 1332 waiver on January 3, 2017. The State's waiver will provide an innovative solution for containing costs and stabilizing the individual health care market through the Alaska Reinsurance Program for high risk participants, which will be maintained through Advanced Premium Tax Credit reductions and corresponding federal pass-through funding

   a. **If allowed, would your state utilize a coordinated waiver application process for both 1115 Medicaid and 1332 State Innovation Waivers for benefit year 2017?**
      - No. The two state agencies are at different stages of development for waivers. In January of 2017, the State of Alaska submitted a Behavioral Health Reform 1115 Waiver Concept Paper to CMS.

   b. **If allowed would your state utilize a model waiver for expedited review and approval similar to the Medicare Part D transition and assistance for Hurricane Katrina evacuees?**
      - Yes, if it allowed adequate flexibility to address state-specific concerns. We would not want to use a standardized waiver that harmed the Alaska market.

   c. **If allowed which requirements would your state seek to waive under a 1332 waiver?**
      - The Section 1332 waiver submitted on January 3, waived Section 1301, CO-OP and Community Health Option, and requested pass-through funding via 36B of Internal Revenue Code.

- We may consider other waivers for the following depending on the results of the actuarial and economic study:
  - Section 1302(d)3 Levels of Coverage, Allowable Variance
  - Section 1302(a)2C Actuarial Value of Optional Service Coverage
  - Section 1302(c) Catastrophic Plans

d. If allowed-and if applicable- what changes would be necessary to current guidance to accelerate your state's ability to pursue a 1332 waiver?

- Eliminate or adjust the strict requirements that a waiver must be federal deficit neutral and result in coverage that is as comprehensive, accessible and affordable as existing ACA requirements. Instead, these factors should be balanced to determine whether post-waiver coverage is at least as effective overall. For example, a waiver resulting in significant accessibility improvement and a minor reduction in comprehensiveness or affordability should not be summarily denied.
- Use waivers as a tool for states to develop and subsidize funding of high risk-reinsurance programs. For instance, allow states to submit a waiver simply requesting pass-through funding for a viable high-risk pool reinsurance program as Alaska did without waiving a technicality that does not have any impact on the market.
- Accelerate the process for setting up federal revenue streams so that states may receive immediate federal funding for waivers that reduce other federal liabilities while promoting a stable, competitive and affordable market.
- Reduce the 180 day timeline for federal approval to 60 days.

7) As part of returning more choice, control and access to the states and your constituents, would your state pursue the establishment of a high-risk pool if federal law were changed to allow one?

- Yes. Alaska continues to operate a high-risk pool, which is currently serving primarily Alaskans with health conditions who are seeking Medicare Supplement Insurance. The Alaska Division of Insurance can immediately support enrollment of high-risk individuals.

8) What timing issues, such as budget deadlines, your legislative calendar, and any consumer notification and insurance rate and form review requirements, should we consider while making changes?

- Alaska's Legislative session is limited by law to 90 days from mid-January through mid-April.
- Alaska requires 45-day notice to consumers prior to changes to health care insurance premiums or benefits. Ninety-day notice is required prior to cancellation of a health plan, and 180-day notice is require for withdrawal from the Alaska insurance market.
- Rates must be filed at least 45 days prior to their implementation. Combined with the requirement that consumers be provided 45-day notice prior to rate changes, rates should be filed at least 90-day prior to their effective date.
- Permit states who have rate review authority to establish their own filing deadlines and transparency requirements as allowed by state law.
- Recognize that ACA repeal may require state statutory and regulatory adjustments, computer system changes, and staff training. Substantial changes may take years for full implementation, as states await federal final rules and guidance and significant federal funding to implement the changes.

9) **Has your state adopted any of the 2010 federal reforms into state law? If so, which ones?**

- Alaska allows insurers in the individual market to enroll dependents up to age 26. There is no state mandate that dependents be covered to age 26.
- Alaska passed legislation to bring its external review process up to National Association of Insurance Commissioners (NAIC) standards. The changes are not directly tied to the Affordable Care Act. The process improves Alaska's regulation of insurers and transparency for consumers during an external review process. Because of the cost associated with start-up of the new process, the Division of Insurance sought and was awarded a $630,000 federal grant. Alaska's use of these federal funds will not be affected by the ACA and, therefore, the federal grant agreement should continue to be honored despite any actions to repeal the ACA.
- AS 21.51.060 (Grace Period) was revised to accommodate the 3-month grace period for subsidy of eligible plans on the exchange. The statute was drafted in a way that ACA repeal would have no effect on state administration.
- AS 21.42.422 provides for telemedicine services when mental health services are covered under a plan. Repeal of ACA would eliminate the mandate for mental health services, so telemedicine for mental health services would be eliminated on plans without coverage for mental health services.
- Rate filing regulations require insurers to provide documentation related to rebates required by the ACA and risk adjustment and reinsurance programs under the ACA. This is a non-issue as the companies will be allowed to indicate that the information requirement is obsolete.
- The Alaska Reinsurance Program regulations timeline are based on the federal risk adjustment program timelines and federal rate filing timelines. There is no reason why the timelines would need to change even if the programs end.
- On September 1, 2015, the State of Alaska started accepting applications under Medicaid expansion provisions of the ACA. As of December 28, 2016, more than 27,000 Alaskans have gained healthcare coverage under Medicaid expansion.
- In 2016, Alaska passed a criminal justice reform bill and a Medicaid redesign bill. ACA Medicaid expansion is essential for these efforts. Criminal justice reform success hinges on continuing access to prescription medications and substance use disorder services, which were made more widely available through Medicaid expansion.

a. **What impact would repeal have on these state law changes?**

- Repeal of the ACA would not have an undue hardship on the Division of Insurance. Insurance laws were carefully worded so that they are not dependent on the ACA.
- Repeal of ACA Medicaid expansion would have a significant impact on the more than 27,000 Alaskans covered and State of Alaska's ability to maintain criminal justice reform laws aimed at reducing criminal recidivism, homelessness and other healthcare issues. Hospital emergency departments, the criminal justice system, and the child welfare system would be negatively impacted.

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