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July 12, 2017

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9928-NC
PO Box 8016
Baltimore, MD 21244-8016

RE: Request for Information CMS-9928-NC

Dear Sirs and Madams:

The Silver State Health Insurance Exchange (hereinafter the Exchange), the Nevada state agency tasked by statute with oversight and operation of Nevada's public health insurance marketplace, would like to commend the U.S. Department of Health and Human Services (HHS) on efforts to reduce regulatory burdens of the Affordable Care Act. As the Executive Director of the Exchange I would offer the following comments related to the Request for Information (RFI); Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients; CMS-9928-NC. The RFI seeks comments in several areas; however my comments will be directed specifically around empowering patients and promoting consumer choice and enhancing affordability.

The Exchange was established in 2011 by *Nevada Revised Statutes (NRS)*, Chapter 695I to create a state-based marketplace where Nevada consumers and small businesses could shop for, compare, and purchase quality health insurance plans. During the first year of operation the Exchange's technology vendor experienced significant eligibility and enrollment technology issues that left the Exchange unable to properly service Nevada's consumers. By the end of May 2014, the Exchange had only enrolled 35,700 people. Enrollment increased to 38,000 by mid-summer, but dropped to 32,460 by mid-October.

With Nevada utilizing the federal technology platform, Healthcare.gov for eligibility and enrollment, the Exchange has been able to focus on consumer advocacy and assistance, without being bogged down by the technological problems that hampered efforts during the 2014 open enrollment period. By the end of the 2015 open enrollment period, 73,596 Nevadans had enrolled in an on-exchange plan—more than double the number of people who had enrolled the previous year. An additional 28,290 Nevada consumers were identified as eligible for Medicaid and referred to the appropriate state agency.

The success of this joint effort continued through the third open enrollment period, during which more than 88,000 Nevadans enrolled in coverage through the Exchange for Plan Year (PY) 2016. This represented a 20% year-over-year increase (one of the largest percentage enrollment increases in the nation). By any reasonable standard the Exchange has overcome its troubled beginnings and has become a sustainable enterprise, providing targeted consumer outreach and education that has significantly reduced Nevada's uninsured population. Specifically, in 2012 Nevada's uninsured rate was 23%, one of the highest in the country, but by 2015 the State's uninsured rate had fallen to just 12%.

The Exchange continued its success in PY 2017 by growing its enrollment numbers to 89,061 under the Affordable Care Act (ACA), a law which received tremendous political turmoil during Nevada's fourth open enrollment season. The exponential success since 2014 is due in large part to the Exchange's flexible and supportive plan management and coordination, collaborative partnerships with state agencies and stakeholders, local affiliations with Navigator grantees, customer service focused call center operations, robust and nimble marketing and educational efforts, along with the Exchange's ability to maximize operational efficiencies. Operating as a state based marketplace utilizing the federal platform (SBM-FP) allows the Exchange the ability to offer Nevadans a level of service that the Centers for Medicare and Medicaid (CMS), understandably could never offer.

One of the most compelling arguments in favor of a state-based exchange is affordability: consumers ultimately pay lower premiums under a state exchange because its cost structure, including the attendant fee charged to participating issuers, is lower than the Federally Facilitated Marketplace (FFM). This argument has undercut much of the weight of anti-ACA/anti-exchange rhetoric in Nevada, as there is a clear and quantifiable economic benefit which flows from having a state-based marketplace.

The issuance of CMS' Notice of Benefit and Payment Parameters for 2017 sets user fees for state-based marketplaces, which utilize the federal eligibility and enrollment infrastructure at 2% for PY18, and 3% for PY19, respectively, of the pre-subsidized premium generated by QHPs and standalone dental plans sold through the Exchange. Since the Nevada Exchange must maintain a lower fee to remain politically viable, the proposed 3% assessment means that our marketplace would have – at most – .49% of premiums to offset all operational expenses, including staff costs, rent, utilities, marketing, consumer outreach and education, and our navigator program. Total on-exchange PY2016 premiums in Nevada were \$321,115,181, and .49% of that would be just over \$1,500,000. Even at our size, with only 13 employees, that will not cover our operational costs.

As a result, Nevada has identified commercially available, proven, less expensive alternatives to the federal technology platform and call center. We have presented solutions built around these alternatives that comply with all applicable policies, rules, and regulations while meeting or exceeding the current level of Medicaid integration provided by Healthcare.gov. However, to date, CMS has not authorized Nevada to move forward with a transition and implement any of these solutions, replying instead that the same level of integration provided by Healthcare.gov is not sufficient for a state-run platform.

CMS itself has noted that "(a) shared eligibility service is not the same as one system... While policies codified in final regulations allow legal authority for eligibility determinations to remain with state Medicaid agencies (for Medicaid) and Exchanges (for premium tax credits and cost-sharing reductions), the underlying business rules and processes are nearly identical, and should—to the maximum extent practical—rely upon a shared IT service(s) and infrastructure." (See <https://www.medicaid.gov/State-Resource-Center/FAQ-Medicaid-and-CHIP-Affordable-Care-Act-Implementation/Downloads/FAQs-by-Topic-Coordination-with-Marketplace.pdf>).

Nevada believes that the language as quoted requires CMS to confer with states to determine the maximum degree of practical integration. Only the state can speak with certainty about what is or is not possible, given its resources. After months of collaboration with Nevada's Medicaid agency, the Exchange believes that the development and implementation of a singular, unified rules engine would not only be cost- and time-prohibitive, but would also introduce an unacceptable risk of disruption to over 637,000 Nevada Medicaid recipients.

CMS has not disputed that Nevada's offered solutions are designed to minimize a consumer's burden and ensure prompt determinations of eligibility and enrollment in the appropriate program through a seamless, streamlined path to coverage. The only point of contention has been the demand that Nevada provide a single, integrated eligibility system – a demand that is not supported or required by any established policy, rule, or regulation.

The stance taken by CMS denying Nevada the option to select and implement a proven, commercially available and less expensive application and enrollment platform represents a level of bureaucratic overreach which is damaging to our consumers. Absent an established policy, rule, or regulation supporting that stance, the denial is arbitrary, variable, an abuse of discretion, and contrary to reducing regulatory burdens that will improve healthcare choices to empower patients.

While the HealthCare.gov technology has remained reliable, the Exchange believes that the lease fees for SBM-FPs does not represent a true market value of the services provided, nor do they offer the data or flexibility the Exchange requires to maximize efficiencies and effectively communicate with consumers. Allowing for Nevada to transition from its reliance on HealthCare.gov to an affordable application and eligibility technology solution that is already being used successfully by one more state-based marketplaces will promote consumer choice while enhancing affordability.

Thank you for your time and thoughtful attention. Please feel free to contact me should you have any questions or desire any more information.

Cordially,

A handwritten signature in black ink that reads "HEATHER KORBOLIC". The signature is written in a cursive, slightly stylized font.

Heather Korbolic
Executive Director
Silver State Health Insurance Exchange