

Congress of the United States
House of Representatives
Washington, DC 20515

August 6, 2013

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

Dear Secretary Sebelius:

I write today to inquire about how the Department of Health and Human Services (“HHS”) will answer the question of whether “qualified health plans” (“QHPs”) represent “federal health care programs” for purposes of participating in the federally-facilitated exchanges and the state-based exchanges (for purposes of this letter, the federally-facilitated exchanges and the state-based exchanges will be referred to collectively as “Exchanges”).

As you know, individuals are eligible to receive premium tax credits and cost-sharing subsidies to enable them to purchase health insurance in the Exchanges. Whether the government’s contribution in making such assistance available thereby means that the Exchanges, and/or QHPs offered on the Exchanges, qualify as federal health care programs, is a question that HHS has yet to answer. Through this letter, I am hoping to obtain guidance on this issue as soon as is practicable; I am certain that HHS appreciates the urgency of this issue, since the Exchanges will be open for business effective October 1, 2013.

In providing the requested guidance on this issue, I am hopeful that HHS will specifically address the following related issues:

1. In the event a QHP is deemed a federal health care program, will a QHP offered on the Exchange then be permitted to offer certain beneficiary inducements, such as nominal rewards for maintaining blood pressure within a certain range, which would otherwise be proscribed under the Anti-Kickback Statute and/or the Civil Monetary Penalty statute?
2. In the event a QHP is deemed a federal health care program, will this status impact downstream contractual arrangements? For example, if a QHP offered on the Exchange

contracts with a hospital, will the hospital be required to structure its contracts with employed physicians in any particular way?

3. In the event QHPs are not deemed federal health care programs, what tools will be available to HHS to ensure that such QHPs operate in a manner that ensures compliance with laws, rules, and regulations deemed essential to protecting consumers and the solvency of the federally-funded programs?

I appreciate your attention and prompt response to this request. Thank you for your continued hard work in making the Affordable Care Act a success.

Regards,



Jim McDermott
Member of Congress

cc: Mr. Gregory Demske, Chief Counsel to the Inspector General, Office of the Inspector General, Department of Health and Human Services
Ms. Marilyn Tavenner, Administrator, Centers for Medicare and Medicaid Services