



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C. 20201

July 29, 2010

Dear Governor:

Over the past several weeks, my Department's senior staff has been considering the applicability of the provisions of the Affordable Care Act to the territories. I appreciate the efforts that you, and other governors and members of Congress have made to share the perspective of the territories on this important matter, and was glad to have the opportunity to hear from some of you directly during my visit to the summer meeting of the National Governors Association in Boston. After careful consideration of those views and the provisions of the law, we are now able to answer some questions about how the Affordable Care Act's policies that are being implemented this year affect the territories. There is no uniform "one-size fits all" approach to the territories in the law, so we want to take this opportunity to provide clarification regarding several of the key consumer protection provisions.

As you may know, section 1304(d) of the Affordable Care Act provides that, "in this title" [i.e., Title I of the Affordable Care Act], the term "State" includes only the 50 States and the District of Columbia. In contrast, the definition of "State" in section 2791(d)(14) of the Public Health Service Act (PHSA) includes the territories. Because Title I of the Affordable Care Act amends Title XXVII of the PHSA, there is ambiguity as to which definition applies to the provisions of Title XXVII of the PHSA that were added or modified by the Affordable Care Act. I have concluded that, with respect to the provisions at issue, the territories are included in the definition of "State."

Therefore, the territories are eligible for the grant programs in the Affordable Care Act that are codified in Title XXVII of the PHSA. Specifically, they are eligible for the Consumer Assistance Grants and the Rate Review Grants. As you know, the territories are eligible to submit applications in response to the Consumer Assistance Grant solicitation which was released last week. The Rate Review Grant solicitation will be reopened to ensure the Territories have an opportunity to apply. However, the Territories are not eligible to apply for the Exchange Planning Grants whose solicitation was announced today. This is because this grant program falls outside of the PHSA and therefore the applicable definition of "State" is the definition in section 1304(d) of the Affordable Care Act. However, under section 1323 of the Affordable Care Act, each territory has the option to receive funds to make coverage affordable through an Exchange starting in 2014. As we develop guidance for exchanges, we will work closely with the territories to address their unique characteristics.

July 29, 2010  
Page 2

In addition, in consultation with other agencies with relevant enforcement jurisdiction in the territories, I have concluded that the insurance market reforms in Title XXVII of the PHSA, such as those involving coverage for adult children up to age 26, rescissions, and a prohibition on lifetime limits, also apply to health insurance issuers in the territories. On July 12, 2010, I wrote a letter to state governors about my interest in working with them to enforce the new insurance requirements. I extend that offer to you: I am hoping that you will assess your laws and other specific considerations in order to determine whether your territory has the ability to substantially enforce these consumer protections beginning on September 23, 2010. Among the factors that could affect your ability to enforce the Affordable Care Act's protections are sufficient regulatory resources, legal authority to conduct policy form review and market conduct examinations, legal authority to investigate complaints, and a commitment to employ these resources on behalf of consumers. After you have assessed your territory's ability to enforce these new protections, I hope you will share with me your thoughts.

I look forward to working with you to implement these important improvements to our health care system, and I remain committed to answering questions about the applicability of various provisions of the Affordable Care Act to the territories.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is written in a cursive, flowing style with some loops and flourishes.

Kathleen Sebelius