



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

October 30, 2013

The Honorable Jim McDermott
U.S. House of Representatives
Washington, DC 20515

Dear Representative McDermott:

Thank you for your letter regarding whether qualified health plans (QHPs) are considered federal health care programs under section 1128B of the Social Security Act. Section 1128B(f) of the Social Security Act defines “Federal health care program” as “any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government...or any State health care program....”

The Department of Health and Human Services does not consider QHPs, other programs related to the Federally-facilitated Marketplace, and other programs under Title I of the Affordable Care Act to be federal health care programs. This includes the State-based and Federally-facilitated Marketplaces; the cost-sharing reductions and advance payments of the premium tax credit; Navigators for the Federally-facilitated Marketplaces and other federally funded consumer assistance programs; consumer-oriented and operated health insurance plans; and the risk adjustment, reinsurance, and risk corridors programs. This conclusion was based upon a careful review of the definition of “Federal health care program” and an assessment of the various aspects of each program under Title I of the Affordable Care Act and consultation with the Department of Justice.

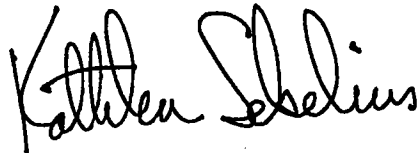
The Department is taking strong measures to protect consumers and to ensure robust oversight of these critical Affordable Care Act programs. For example, on June 19, 2013, the Department proposed an oversight regulation governing these programs entitled *Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards* (78 FR 37032). On August 30, 2013, the Department finalized the first set of compliance standards from that proposed rule in a final rule entitled *Program Integrity: Exchange, SHOP, and Eligibility Appeals* (78 FR 54070). The oversight provisions in this rule include requirements for decertification of QHPs and the imposition of civil money penalties against non-compliant issuers who have plans in the Federally-facilitated Marketplace.

In addition to these oversight provisions, the OIG has jurisdiction, under the Inspector General Act of 1978 (5 U.S.C. appx.), to audit, investigate, and evaluate the HHS-administered programs in Title I of the Affordable Care Act. Further, section 1313 of the Affordable Care Act authorizes HHS and the OIG to investigate the “affairs of an Exchange.” Congress also expressly provided that the False Claim Act applies to any “payments made by through, or in connection with an Exchange if the payments include Federal funds.” Finally, depending on the specific conduct in question, there may be additional federal and state criminal or civil

authorities that apply. To effectively exercise these authorities and coordinate oversight of the programs in Title I of the Affordable Care Act, the Department will continue to work closely with the OIG, the DOJ, the Federal Trade Commission, and state departments of insurance.

Thank you for your interest in the implementation of the Affordable Care Act and in the Department's efforts to ensure access to health care for millions of Americans. Please do not hesitate to contact me with any further thoughts or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Sebelius". The signature is written in a cursive style with a large initial "K".

Kathleen Sebelius