



**STATE OF INDIANA
OFFICE OF THE GOVERNOR**

State House, Second Floor
Indianapolis, Indiana 46204

Mitchell E. Daniels, Jr.
Governor

August 24, 2010

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

Dear Secretary Sebelius:

This letter is in response to your inquiry dated July 12, 2010 regarding the State of Indiana's legal authority to implement the forthcoming September 23, 2010 provisions ("Provisions") of the Patient Protection and Affordable Care Act ("ACA"). The Indiana Department of Insurance ("IDOI") has the legal authority to review policy forms, investigate complaints, and perform market conduct examinations to ensure compliance with the Provisions. Enforcement resources are of greater concern than legal authority. Although Indiana ranks among the top twenty states by insurance premium volume, number of domestic insurers, and number of licensed producers according to the NAIC 2009 Insurance Department Resources Report, Indiana maintains one of the leanest and most efficient staffs in the nation. Historically, however, IDOI has been fully capable of regulating the industry in our State without federal oversight.

Although finalized regulations are still needed, the Provisions of ACA must be implemented by September 23, 2010. Changes to policy language according to Indiana law must be approved by IDOI. In order to meet the stringent deadline imposed by ACA and continue to fulfill the consumer protection obligations placed by the State upon IDOI, companies issuing policies affected by ACA must certify their compliance with ACA. This will remove the burden of policy review for those mandated benefits specific to ACA on every affected policy form and allow policy analysts to remain focused on policy review for compliance with State laws. All approved filings will contain the following statement: "This Department has approved this filing with the certification of the carrier that all portions specific to ACA are compliant. Any policy form issued with this approval that conflicts with the ACA standards, effective September 23, 2010 and thereafter, must be administered consistently with the minimum requirements of such ACA standards. Failure to comply with said ACA standards after certification could result in immediate cessation of use of this product and additional penalties as determined by IDOI."

Does IDOI have sufficient resources to enforce the Provisions?

After the ambiguities in the interim regulations are clarified and finally adopted by HHS, IDOI will objectively evaluate its resource needs. For example, HHS has not clarified the following:

- Whether it expects states to review and analyze whether rebates are necessary if the appropriate medical loss ratios are not met;
- Whether states will be responsible for reviewing and analyzing the necessity of rebates for fully-insured business only, or if reviewing and analyzing self-insured plans is required as well; or

- Whether states will be responsible for identifying which plans, including self-funded, are grandfathered.

Does IDOI have legal authority to conduct policy form reviews to ensure compliance with the Provisions?

Yes. IDOI has the authority to conduct policy form reviews to ensure compliance with the Provisions. Neither ACA nor Indiana's Insurance Code specifically authorize IDOI to carry out the new regulations, however, existing Indiana insurance statutes provide an enforcement framework. Health insurers must file for form or rate approval with IDOI prior to sale of the products.

Does IDOI have legal authority to investigate complaints regarding failure to comply with the Provisions?

Yes. IDOI has authority to investigate complaints involving insurance policies issued in the state under Indiana's Title 27. IDOI's Consumer Complaints division routinely handles consumer complaints for all insurance matters. Indiana Code authorizes IDOI to investigate complaints regarding "any unfair method of competition or any unfair or deceptive act or practice" or "an unfair claim settlement practice", and to investigate complaints regarding the practices of health maintenance organizations. In addition, the Indiana Code provides that "the department has exclusive jurisdiction to investigate any alleged violation" performed by certain insurers regarding discriminatory practices.

Does IDOI have legal authority to conduct market conduct examinations regarding failure to comply with the Provisions?

Yes. IDOI has legal authority to conduct market conduct examinations regarding failure to comply with the Provisions.

In conclusion, with the information we have today from HHS, we believe IDOI has the authority to implement the Provisions, however, we consider this another unfunded mandate on states and, until HHS adopts final regulations, are unable to determine if Indiana has adequate resources needed to implement the Provisions.

Sincerely,



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