NEW YORK STATE
DEPARTMENT of
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Maria T. Vullo
Superintendent

June 28, 2016

The Honorable Sylvia M. Burwell
Secretary of Health and Human Services
United States Department of Secretary of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Andrew Slavitt
Acting Administrator for the Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Burwell and Acting Administrator Slavitt:

The New York State Department of Financial Services (DFS) has worked collaboratively and successfully with the Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) in implementing the Affordable Care Act. As Superintendent, I look forward to continued collaboration.

As you are aware, the Affordable Care Act established a risk adjustment program which requires that issuers whose members have relatively healthy members pay into the risk adjustment pool and those with relatively unhealthy members receive payment from that pool. CMS determines which companies pay into and which receive payment from the pool. DFS is concerned that the risk adjustment program has created inappropriately disparate impacts among health insurance issuers in New York and unintended consequences.

Specifically, it is DFS's understanding that, based on the data accumulated by CMS for the upcoming report on June 30, 2016, new and smaller issuers generally are considered to have had relatively healthy members than their larger and more established competitors. CMS's anticipated determination appears to be unduly impacted by the dates of diagnoses or recording of diagnoses of members' medical conditions rather than actual relative health of the members. This disparity may be because the new and smaller health insurers have not been in operation long enough to have amassed the long term data and records management systems that have helped to allow the large, established health insurers to convince CMS that their members are relatively more unhealthy and, concomitantly, will allow them to receive large payments from the risk adjustment program.

DFS is very concerned that newer and smaller issuers in New York's health insurance market will be expected to pay tens of millions of dollars into the pool. For these issuers, the millions to be paid represent a significant portion of their revenue, and may create a significant financial stress on such issuers. Of course, the risk adjustment program was not intended to risk an insurer's financial health, particularly where certain large insurers are benefitting from the program and may therefore reap additional profit.

Because the risk adjustment program is federally mandated and administered, the states are unable to change its parameters or alter issuers' associated liabilities. As the primary regulator of commercial health insurers in New York, I support immediate changes to the risk adjustment program that will avoid the disparate impact on certain insurers. Ensuring the solvency of all issuers, large and small, will help strengthen the health insurance market, increase competition, and allow consumers to have better, lower cost options for health insurance coverage in New York and the nation.

Thank you in advance for your consideration of New York's concerns. We are available to discuss this further at your convenience.

Sincerely,

Maria T. Vullo
Superintendent of Financial Services
of the State of New York

cc: John Huff, President, National Association of Insurance Commissioners