NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

nystateofhealth
The Official Health Plan Marketplace

July 12, 2017

The Honorable Tom Price, MD
Secretary
The United States Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Comments on RFI: "Reducing Regulatory Burdens"

Dear Secretary Price:

The NY State of Health and the Department of Financial Services appreciate the opportunity to comment on the request for information entitled *Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients* [CMS-9928-NC] (the RFI). In its solicitation for the RFI, the United States Department of Health and Human Services (HHS) seeks comments in a number of areas including what changes would bring stability to the risk pool; promote continuous coverage; increase the number of younger and healthier consumers purchasing plans; reduce uncertainty and volatility; and encourage uninsured individuals to buy coverage.

New York strongly supports the ACA and HHS should not make any changes that would undermine its success. In general, HHS should provide a solid set of baseline standards that promote the ACA and protect consumers. States should be allowed to regulate so as to provide greater consumer protections than the federal floor. As to the specifics of the RFI, we offer the following:

- **Enforce the Individual Mandate Requirement Set Forth in 26 U.S.C. §5000A**
  By eliminating or failing to enforce the individual mandate, healthy individuals are less likely to enroll in health care coverage, resulting in risk pools comprised of individuals with higher health care needs. In fact, prior to the Affordable Care Act, largely due to an absence of an individual mandate, only 136,000 New Yorkers purchased coverage on the State's individual market at a premium of over $1,500 per month for an individual policy. Today, with the individual mandate in place, enrollment in the individual market including the Basic Health Plan option has increased by over 660 percent to 1.03 million New Yorkers. As the number of people who purchase coverage directly has increased, premiums have fallen by over 50 percent before federal tax credits.

- **Guarantee Continuance of Funds for Cost Sharing Reductions (CSRs) pursuant to Section 1402 of the Patient Protection and Affordable Care Act**
  New York encourages the Administration to guarantee funding for cost-sharing subsidies until pending appropriation questions are resolved. This would reduce uncertainty for

insurers and consumers, help maintain affordability and bring stability to the individual insurance market.

- **Modify the Federal Risk Adjustment Program to Ensure Equitable Results**
  The federal risk adjustment program while in principle intended to ensure that insurers would compete on efficiency and customer service and not attracting healthy individuals, has resulted in a situation in which some insurers in this State are receiving payments out of the risk adjustment program that appear disproportionately large and that are paid by other insurers. New York encourages HHS to modify the federal risk adjustment program to more proportionately adjust risk, including by (1) adequately reflecting the demographic regional diversity in a state, (2) not dissuading insurers from using networks and plan designs that seek to integrate care and deliver value, (3) accurately reflecting how children are counted under state law and rating tier structure and (4) be based on a medical loss ratio formula that more completely includes only claims and not administrative costs and profits.

- **Repeal Federal Regulations that Prescribe Annual Open Enrollment Periods (45 CFR §155.410(e)(2))**
  HHS should repeal regulations that prescribe a national annual open enrollment period and instead allow states as the regulator of their insurance markets to set open enrollment periods based on market conditions and operational considerations. New York found, as did other state Marketplaces, that a shortened open enrollment period would likely result in fewer young healthier enrollees purchasing coverage on the individual marketplace. Feedback received by HHS in response to recent regulations showed no consensus among stakeholders on the length of the open enrollment period. Moreover, any possible advantage of a one-size fits all open enrollment period is far outweighed by the potential worsening of the individual risk pool that would result from cutting the open enrollment period in half.

- **Ensure Affordable Comprehensive Coverage Options for Young Adults in Order to Improve the Risk Pool**
  New York implemented the Basic Health Plan option in 2016 with a premium of $20 per person per month or nothing depending on income. As of March 31, 2017, 39 percent of the over 665,000 people enrolled in the plan were between the ages of 18 and 34. This is 12 percent higher than the percentage of persons age 18-34 in Qualified Health Plans where the monthly premium would be significantly higher even after federal tax credits under the Affordable Care Act. Administrative requirements that make enrolling more burdensome and any change that reduces the financial assistance available to younger adults will discourage enrolling in individual coverage and worsen the risk pool.

- **Do Not Impose Administrative Barriers to Enrollment that Discourage Healthier Individuals from Enrolling**
  Burdensome administrative processes, while well intended, can inadvertently create barriers to enrollment for healthier individuals who are not in immediate need for costly care. For example, by increasing documentation requirements on consumers, pre-enrollment verification may worsen, rather than stabilize the individual market risk pool.

- **<u>Clarify Rules Relating to Professional Employer Organizations (PEOs) and other Employee Leasing Arrangements to Protect the Individual and Small Group Risk Pools.</u>**
  New York has found that, due in part to a lack of clear guidance from HHS and the Department of Labor, PEOs and other employee leasing arrangements are being used to cover healthy individuals in large group coverage while leaving less healthy individuals in small group and individual coverage. This practice works to the detriment of the small group and individual risk pools. We encourage HHS to clarify that coverage issued to PEOs or other employee leasing arrangements be treated like any other association or multiple employer welfare arrangement.

HHS also seeks comments on empowering patients and promoting consumer choice. In response, we offer the following:

- **<u>Maintain the Federal and State Marketplaces as the Clearinghouses for Accurate and Unbiased Information About Insurance Options and Financial Assistance</u>**
  We have found that outside entities, such as web brokers, do not always provide consumers with correct information about state specific program eligibility or financial assistance. More often than not, we find that outside entities do not provide consumers with a full and unbiased menu of plan options and instead offer only those options for which they are compensated for enrollment.

- **<u>Encourage Standard Plan Designs to Provide Greater Transparency for Consumers</u>**
  As we have found in New York, standard plan designs, which cover the same services and have the same cost-sharing at a given metal level regardless of insurer, have made it easier for consumers to compare plans. We encourage HHS to continue to promote the adoption of standard plan designs.

- **<u>Increase Transparency Of Provider Networks</u>**
  New York has recently implemented a public facing tool that allows consumers to search and compare all health plan networks based on preferences such as the languages spoken by the providers' office, gender of the provider and wheelchair accessibility. Bringing this information to one place empowers consumers to shop for health plan options and providers once enrolled. We encourage HHS to promote increased transparency by providing tools to allow consumers to better compare networks based on size and quality.

Thank you for considering New York's comments. We are available to discuss at any time.

Very truly yours,

Maria T. Vullo

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