



**State of New York  
Executive Chamber**  
Albany 12224

**David A. Paterson**  
GOVERNOR

August 5, 2010

The Honorable Kathleen Sebelius  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Ave, SW  
Washington, D.C. 20201

**Re: Affordable Care Act Consumer Protections Enforcement in New York**

Dear Secretary Sebelius:

I am responding to your letter, dated July 12, 2010, regarding New York's ability to substantially enforce the consumer protections of the Patient Protection and Affordable Care Act (ACA), which take effect beginning on September 23, 2010. I am pleased to report that New York does have the ability to substantially enforce such consumer protections as they relate to health insurance policies.

You have identified several factors that could affect a state's ability to substantially enforce the consumer protections in the ACA. With respect to those factors, we have assessed New York's laws and regulations, as well as our capabilities, as follows:

- **Existing Staff.** The Insurance Department's existing staff of attorneys, examiners and actuaries will be able to assume the additional responsibility of enforcing the consumer protection provisions of the ACA as they relate to health insurance policies, which take effect beginning on September 23, 2010.
- **Policy Forms.** New York has prior approval authority for both the language of the forms and the premium rates. Insurance Law §§ 3201(b)(1) and 4308(a) provide that, in order for a policy form to be issued in New York, insurers must file with, and obtain the approval of, the Superintendent of Insurance. The Superintendent's review is to ensure conformance with the Insurance Law and *any other provision of applicable law*. Thus, the Superintendent has the authority to require that the policy forms comply with the consumer protection requirements of the ACA that apply to

health insurance policies. Insurance Department staff have been meeting with representatives of the health insurance industry and have developed model language to be added to health insurance policies to comply with the September 2010 provisions of the ACA. New York will also require insurers to use a modified version of the ACA checklist that was developed by the NAIC for use with ACA policy form and rate filings.

- **Investigations and Examinations.** New York regulators possess the legal authority to investigate complaints and, if necessary, conduct examination of insurers. Insurance Law § 308 gives the Superintendent broad authority to make an inquiry to any Health Maintenance Organization or insurer in relation to its transactions or condition. In addition, Insurance Law § 309 gives the Superintendent the authority to examine any insurer doing or authorized to do insurance business in this state. New York statute and regulations provide direct examination authority to the Superintendent of Insurance and indirect authority, as an assigned representative of the Commissioner of Health, with respect to managed care organizations (e.g. HMOs) (New York Public Health Law § 4409; 10 NYCRR 98-1.17).

Notwithstanding the foregoing, New York will give consideration to introducing legislation in the 2011 legislative session to amend our state's laws so that they meet or exceed the requirements under the ACA. For many of the new consumer protections of the ACA that take effect beginning on September 23, 2010, New York's existing statutes already address such protections. In developing new legislation to conform New York's statutes to the federal requirements, we would likely integrate the existing State standards that currently exceed the federal standards and are more favorable to consumers. We believe that such action will facilitate compliance by having the applicable requirements set forth in a single place that combines the federal and State requirements.

If you need any additional information regarding New York's enforcement of the consumer protections of the ACA, please feel free to contact Wendy Saunders, Deputy Secretary for Health, Medicaid & Oversight, at (518) 408-2500. New York looks forward to partnering with you in implementing the Affordable Care Act.

Sincerely,



David A. Paterson

c: James Wrynn