Health, Education, Labor and Pension Committee
September 12th

Good Morning Senators Alexander and Murray,

Thank you for holding this hearing—and the hearings you convened last week on this important topic. Stabilizing the individual insurance market is the first step we can take to ensure citizens in every state have access to health insurance.

It is my perception that members of this committee, in general terms, share an aspiration for citizens of the United States to have access to affordable and high-quality health insurance. I sense there is agreement that both the states and the federal government have a role in that effort. So, the age-old dilemma of how to divide responsibility between state government and the federal government seems to be very much at play here. The question that always seems to create tension is, "how much flexibility should the states have."

Having served as a Governor and a Cabinet Officer I have come to understand that both the state and federal government view flexibility differently. For a governor, flexibility means a preference for the federal government leaving money on a stump in the woods at night. However, as a federal official, I came to clearly understand that state partnerships require accountability. I dealt with this dilemma constantly because both the Department of Health and Human Services and the EPA were heavily dependent on state partnerships to carry out their mission.

Based on that experience, I want to recommend an overarching strategy and three specific policy suggestions.

The overarching strategy can be stated in four words: "National Standards, State Solutions."

On matters related to health, the federal government excels at two things: Setting expectations and the collection and distribution of money. As a practical matter, the federal government is challenged to execute uniformly across the entirety of this large diverse nation, and thus roles should be assigned with care. With those limitations, the federal government is highly dependent on states for execution of expectations.

Twelve years and nineteen days ago, Hurricane Katrina struck, creating a devastation similar to what is faced this morning by communities caught in the paths of Hurricanes Harvey and Irma. I was United States Secretary of Health and Human Services at the time. Our Department's role was to aid victims after their evacuation or rescue. I quickly came to understand that the emergency response system of the federal government is in large measure an aggregation of the state emergency response capacity operating under federal coordination. Emergency response was done differently in Arkansas than in Texas, or Florida. But in their own way, the states got it done. If we

had insisted on absolute uniformity, the effort would have failed. National standards, State Solutions.

Shortly after Katrina, we were required to prepare the nation for a potential pandemic influenza. Once again, it became evident that the nation's public health capacity was the aggregation of state and local public health organizations, acting with federal coordination. Each state aligned their assets. Were some better than others? Yes. But the federal government simply does not and should not have sufficient capacity to deploy everywhere. National standards, State solutions.

On January 1, 2007 HHS rolled out Medicare Part D, the prescription drug benefit to 43 million people. Even though it was a federal program, our only way to execute on the mission was to harness the collective capacity of states, and the community assets they engaged. There were significant differences in the ways states and their local communities approached this. There had to be. They had different assets, cultures and traditions. There was flexibility built into the program to allow for those variations. It has been a profound success. National standards, State solutions.

I came to understand that the Environmental Protection Agency is at heart, a health organization. Once again, the federal government establishes expectations that span the United States, and help with funding. When it comes to executing those priorities, the EPA is highly dependent on states. But the standards with the most compliance are those where flexibility is provided to accommodate differences in approach. National standard, State solutions.

The purpose of this hearing is to discuss how to assure Americans under-65 have access to affordable insurance policies in situations where coverage is not available through an employer. I am a republican. Long before the ACA, I was a strong and vocal advocate of insurance exchanges in the individual insurance market. I did so because they represent a market solution. I think exchange marketplaces are a fundamental tool to facilitate increased competition and consumer choice in a private insurance market. The failure of insurance marketplaces will inevitably generate momentum toward the expansion of federal government coverage for this population.

Though I was not a supporter of the ACA, after it passed, I advocated forcefully for states to take responsibility to operate the exchanges. Why? Because of my belief in the notion of "national standards, state solutions." I know in the long run states execute better than the federal government. States can find solutions that deal with the diverse culture, values and circumstances of their communities. Time has and will prove that to be correct.

Many states choose to let the federal government operate the exchanges. In large part, those decisions were affected by political controversy and uncertainty. The execution in rolling them out was predictably flawed. While the mechanisms are still clunky and unstable, it has improved with time.

Insurance marketplaces are very fragile right now, and the window for fixing them is closing. At this point, no one is well served by their collapse.

The ACA provides a vehicle to adopt a national standard, state solutions strategy. The 1332 waiver process is part of the law already and provides a framework of national standards and a vehicle to give states the flexibility required to allow state solutions.

Alaska's 1332 waiver is a great example of this principle in action—Alaska's state-established reinsurance program is a success story in reducing costs and increasing access to insurance for Alaska's resident. It is an approach other states could and should copy and improve.

My first specific suggestion is consistent with what you have heard in last week's hearings with governors. Earlier I mentioned Hurricane Katrina. While I was Secretary of HHS, we recognized a need for consistency and speed in permitting states that adopted displaced residents to apply for Medicaid coverage for those residents. To meet this need, the Agency issued model waivers that consisted of a series of Medicaid templates to ease the burden of the application process for the affected states and to provide them with greater certainty of the expectations and outcome for approval. I recommend that CMS work with states to create a series of model 1332 waivers that states can choose from to accelerate solutions. By doing so, the federal government creates national standards, but allows states to develop state solutions. There could be a set of standard waivers related to risk stabilization programs, re-defining marketplace products or benefits, or alternative private exchange portals. This fosters collaboration and investment in the waiver process—as well as to expedite the application process.

My second suggestion is for the federal government to clarify that interdependent waivers (for instance, 1115 waivers and 1332 waivers) can be evaluated based on the merit of their singular proposal. The need for transformative changes in insurance marketplaces in coordination with other federal programs, like Medicaid is undeniably logical. What isn't defendable is forcing separate processes that consume time and money, and which foreclose the opportunity of states to accrue joint savings from a flexible arrangement in both programs. Often the authorities sought under these programs are interdependent. So, a lag on one defers critical progress on both.

Finally, may I suggest a re-evaluation of the current budget neutrality requirements of the 1332 waiver that would permit states to show budget neutrality over a longer timeframe. The current requirement for budget neutrality in each year of the waiver demonstration restricts up-front investment and state flexibility. You know from the budget process in Congress, it is not always realistic to recapture value from an investment in one year. Moving to a budget neutrality requirement over a longer time horizon will support innovation and state control—under a reasonable national standard.

Likewise, certainty is required on CSR payments. Congressional appropriations need to signal that the market can count on these at least until 2018 or 2019. Given the business

cycle requirements under which plans operate, this is a requirement, in my judgement. States are offering differing guidance to plans for how to account for the availability of CSR funding in rate setting. This unpredictability causes insurers to be unable to accurately predict the regulatory environment. It has been noted, but bears repeating, that in fact funding CSRs will prevent premium rates from rising even higher, creating an increase in federal spending through the increase in the amounts of the Advanced Premium Tax Credits (APTCs).

I will conclude as I began. The key principle is "National Standards, State Solutions."

Thank you for the opportunity to testify today.