



FEB - 8 2016

Administrator
Washington, DC 20201

The Honorable John Cornyn
United States Senate
Washington, DC 20510

Dear Senator Cornyn:

Thank you for your letter regarding the grants awarded to states under section 1311 of the Affordable Care Act (ACA) for the purpose of establishing State-based Marketplaces (SBMs). SBMs have played a critical role in the ACA's important success by enrolling consumers across the country into affordable, high-quality, private health insurance plans, while allowing states the option to offer local control over key Marketplace functions.

Millions of Americans now rely on the health and financial security that comes from the affordable coverage made available through the Marketplaces. As of September 30, 2015, about 9.3 million consumers had effectuated Health Insurance Marketplace coverage, which means those individuals paid their premiums and had an active policy at the end of September.¹ Of those consumers, about 2.7 million consumers had effectuated coverage through the SBMs. Additionally, the SBMs have been smoothly enrolling consumers into private health plans throughout the Open Enrollment period that began on November 1, 2015. As of January 7, 2016, over 2.7 million consumers have selected or been automatically reenrolled in private health plans through the SBMs.²

The Centers for Medicare & Medicaid Services (CMS) is committed to strong ongoing oversight of the SBMs that protects taxpayer funds. CMS uses established oversight mechanisms to monitor the use of section 1311 grants by the SBMs. This federal oversight follows the requirements of applicable guidance and law, including Office of Management and Budget circulars and Department of Health and Human Services (HHS) grant regulations. CMS continues to oversee and monitor each SBM's performance through reporting requirements that demonstrate a SBM's adherence to program requirements.

As with other federal grant recipients, states that receive section 1311 grants are subject to a post-award, ongoing monitoring process to examine whether they are meeting the grant's terms and conditions and to provide technical support. For example, CMS aids SBMs in improving their vendor selection process, establishing better contract administration practices, and refining contractor-monitoring activities so that SBMs are fulfilling the terms and conditions of federal grants and contractors are fulfilling their respective requirements. This post-award monitoring process also includes the grant recipient's submission of semi-annual progress reports, quarterly financial reports, and monthly budget reports. CMS requires SBMs to submit to CMS a State-based Marketplace Annual Reporting Tool (SMART), which provides a compilation of key regulatory reporting requirements. CMS also imposes corrective action.

¹ September 30, 2015 Effectuated Enrollment Snapshot:

<https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-12-22-2.html>

² January Enrollment Report: <https://aspe.hhs.gov/sites/default/files/pdf/167981/MarketPlaceEnrollJan2016.pdf>

plans to address deficiencies in programmatic and grant requirements. CMS has also denied or reduced SBMs' requests for restricted IT funds based on results from these oversight mechanisms.

In your letter, you asked about SBMs' use of 1311 funds. As you know, beginning January 1, 2015, SBMs must be financially self-sustaining by having a source of funding – other than 1311 funds – in place for ongoing operations. After January 1, 2015, 1311 funds may not be used for ongoing SBM operations. No new 1311 grants were awarded after January 1, 2015, consistent with the statute.

Specifically, you asked about CMS's guidance to states on appropriate use of 1311 funds. To enforce the appropriate use of section 1311 grants on or after January 1, 2015, CMS provides extensive technical assistance to clarify the difference between operational and establishment costs, including through webinars and phone conferences tailored to individual SBMs. CMS posted written guidance on section 1311 grants in March and September 2014.³ In June 2015, consistent with the recommendation of the HHS Office of the Inspector General (OIG), CMS issued further guidance to provide clarification on the difference between operational and establishment costs, including specific examples for states to consider.⁴ In July 2015, CMS hosted an in-person workshop that was attended by SBM leadership from across the country during which appropriate grant fund use was discussed.

If SBMs use grant funds for unallowable costs or for activities that are not authorized according to the terms of the grant, CMS will work to return appropriate funds to the federal government consistent with HHS grant regulations and policies and section 1311 of the ACA. For example, as part of CMS's routine federal oversight of SBMs, CMS found that the Arkansas SBM spent approximately \$1 million of the state's federal grant funding for activities that are not allowed under regulations. CMS notified the state and they are working cooperatively to return the funds to the federal government. Additionally, as you referenced in your letter, in Maryland, Noridian will pay back \$45 million that it had received from the SBM, of which CMS will receive approximately \$32 million. CMS is working with the Maryland SBM so that funds are returned to the federal government. If a SBM reaches a similar settlement with their vendor, CMS will ensure that the federal government will recover its fair portion.

Thank you for your attention to these important issues. Please contact me further should you have additional questions. I look forward to working with you on this important matter. I will also provide this response to the cosigners of your letter.

Sincerely,



Andrew M. Slavitt
Acting Administrator

³<https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/no-cost-extension-faqs-3-14-14.pdf>
https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FAQ_1311_project_FAQs_periods.pdf
⁴ <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FINAL-1311-FAQ-06-08-15.pdf>