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The Honorable Kevin McCarthy
Majority Leader
United States House of Representatives
H-107, U.S. Capitol Building
Washington, D.C. 20515

Dear Majority Leader McCarthy:

I want to personally thank you for reaching out to states for their input on potential health care reforms. As was noted in your letter dated December 2, 2016, Obamacare has created fewer choices, higher costs, and burdensome mandates. That has indeed been the case here in Kentucky where we have witnessed the number of on-exchange insurance carriers decrease from 7 insurers to 3 insurers (1 statewide) and average premium increases of 25 percent. The myriad of mandates created by Obamacare are burdening employers and providers alike. Additionally, as a result of Medicaid expansion authorized under the ACA, nearly one in three Kentuckians are now enrolled in Medicaid. We need a more sustainable solution focused less on mere enrollment and more on actually improving health outcomes.

We are very encouraged to know that Congress, along with the incoming Trump Administration, is now well-positioned to pursue health care reforms that will improve quality while curbing the cost curve of delivering health care in this country.

As a general matter, I would encourage Congress to ensure any reforms maximize state flexibility to design policies that address the unique needs of our states' distinct populations and demographics.

The one-size-fits-all approach in Obamacare is failing our country—states must be empowered to be the epicenters of innovation. This was the objective of certain established waiver programs such as Section 1115 and Section 1332 waivers. However, such waivers have been interpreted in a very limiting manner by the Obama administration, thereby effectively handcuffing the ability of states to develop and receive approval for creative and innovative health policies aimed at lowering cost and improving health outcomes. It's time for the federal government to get out of the insurance business and return management of this industry to the states.

Below you will find detailed answers to specific questions posed in your December 2 letter.

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1. What changes should Congress consider to grant more flexibility to states to provide insurance options that expand choices and lower premiums?

Congress should repeal the ACA in its entirety and permit Kentucky to return to regulating the health insurance market under its existing state authority, the Kentucky Insurance Code (KRS Chapter 304), that was preempted by the ACA. The ACA has created unprecedented market volatility and in several cases has caused insurance companies to withdraw from market participation altogether. Elements such as tiered medal plans, rigid rate filing deadlines, the unfunded risk corridor program, the uncertainties of the risk adjustment program, 9010 fees and other unknown contingencies, increased essential health benefits and federal minimum medical loss ratios have contributed to fewer options and increased premiums for Kentuckians and should be repealed as soon as possible. The individual mandate is not working as intended, and the employer mandate is a disincentive for small businesses to grow. The ACA is a collection of poorly incentivized policies that are wreaking havoc on insurance markets in Kentucky and across the country.

States should be given maximum flexibility to regulate insurance companies and to promote and manage our insurance markets to meet the unique needs of our populations—to design plans tailored to the needs of individual purchasers, to makes costs more affordable by maximizing consumer-driven options, and to develop strategies to mitigate risk and stabilize markets.

2. What legislative and regulatory reforms should Congress and the incoming administration consider to stabilize your individual, small group and large group health insurance markets?

States understand the unique challenges and demographics of their own populations, so repealing the cumbersome one-size-fits-all ACA and allowing states the flexibility to develop their own regulatory framework for insurance markets will allow states to be nimble and respond to changes in market conditions. It should also allow the states to decide how best to mitigate risk in the markets, whether that means establishing a high-risk pool, a reinsurance program or some other strategy.

Finally, federal financial incentives (such as premium tax credits and cost-sharing reductions) should be used to increase the use of consumer-driven health plans and other consumer-focused elements, such as price transparency measures, so that consumers are encouraged to, and given the tools to, act as consumers when obtaining healthcare goods and services.

3. What are key administrative, regulatory, or legislative changes you believe would help you reduce costs and improve health outcomes in your Medicaid program, while still delivering high quality care for the most vulnerable?

Medicaid expansion is not affordable as currently structured by the ACA. In Kentucky, additional state funding of $1.2 billion will be needed over the next five years to finance Medicaid expansion. This could potentially crowd out state match dollars for the coverage of the aged and disabled population who depend on Medicaid for their daily existence. At a minimum, the Medicaid expansion population should be converted to a block grant program. But consideration should also be given to allowing block grant authority to be used, for example, to combine the expansion

population with the CHIP population in order to promote family coverage across those who are at or below the poverty line.

Preferably, Medicaid eligibility for the non-disabled population should be limited to those with income at or below 100 percent FPL since Medicaid was always intended to be a poverty program; and anyone above FPL should be eligible for gradually decreasing subsidies to the extent Congress decides to keep premium subsidies and cost-sharing reductions.

Kentucky is currently pursuing a Section 1115 demonstration waiver known as "Kentucky HEALTH"—targeted for the 430,000 Medicaid expansion group and other able bodied adults covered by Medicaid. This waiver request is designed to accomplish the twin goals of reducing cost while improving health outcomes. The program redesigns how Kentucky plans to administer Medicaid in our state, with a focus on consumer-driven policies and incentives that will increase member engagement in their own health, education, employment and communities.

States should be given maximum flexibility to design Medicaid programs that address the unique needs of their populations. To this end, states should be given guardrails, but wide latitude, to design such programs and remove requirements to get permission for minor changes that have been approved for other states so long as they are within the established guardrails of the program. Initiatives which have been approved by HHS in waiver applications should be given fast-track approvals in subsequent waiver applications submitted by other states.

Finally, similar flexibility should also extend to other federally funded, state administered health and human service programs. For example, states should have the flexibility to develop strategies to create consistency and efficiencies among Medicaid, SNAP and TANF, which have similar, but sometimes inconsistent, requirements for eligibility and administration.

4. What can Congress do to preserve employer-sponsored insurance coverage and reduce costs for the millions of Americans who receive health coverage through their jobs?

Congress can repeal the cumbersome and burdensome requirements of the ACA that apply to employers in order to give more flexibility to employers to define the employer-sponsored health plan options that make sense for their business model and employees.

5. What key long-term reforms would improve affordability for patients?

Congress and the Trump Administration should shift the current focus of simply trying to enroll people in government funded or subsidized health care to instead implement policy reforms that focus more on actually improving health outcomes and creating greater price transparency for consumers. We must create more consumer-driven health policies that better engage our population in their own health, wellness, education and employment. States should have maximum flexibility to approve health plans in order to maximize choices for consumers. Doing so should ultimately shift spending to lower cost preventive care instead of the more costly treatment of chronic conditions and more serious ailments in the future. It is important that Congress consider the supply-and-demand economics of the underlying cost of health care in order to realize any significant deductions in the cost of health insurance.

6. Does your state currently have or plan to enact authority to utilize a Section 1332 Waiver for State Innovation beginning January 1, 2017?

Currently, the Kentucky legislature has not given express authority to utilize a Section 1332 waiver. However, with the understanding it may be some time before the ACA can be repealed in its entirety, we plan to pursue such authority in the current legislative session in order to have the tool available. While formulating our Kentucky HEALTH Section 1115 waiver for Medicaid, we also explored utilization of a Section 1332 waiver; however, we found their utility very limited as written in the ACA and further interpreted by regulations issued by the Obama administration.

If Congress and the Trump Administration modify the Section 1332 waiver to give it more flexibility, Kentucky would certainly consider utilizing the 1332 waiver to complement our 1115 waiver. Certainly, it would be of benefit if a coordinated waiver application/review process was in place to review and approve Section 1115 and Section 1332 waivers together, rather than separately. This is especially the case since elements of one waiver may be dependent on parts of the other.

It would also be helpful if states had the option to have cost neutrality determinations made across joint 1115 and 1332 waiver proposals. This would allow states to have more flexibility and pursue more innovative strategies across multiple programs.

Finally, because pursuing waivers can be resource intensive to develop and implement, it would be helpful if Congress and the Trump Administration could develop pre-approved template options for 1115 and 1332 waivers that will allow for states to pursue changes that will receive a streamlined review and approval process. Kentucky, and I suspect other states, will be hesitant to dedicate major resources to a comprehensive and time intensive 1332 waiver with the understanding that such efforts may only be a temporary bridge to an ACA replacement at a future uncertain date.

7. As part of returning more choice, control and access to the states and your constituents, would your state pursue the establishment of a high-risk pool if federal law were changed to allow one?

Prior to the ACA, Kentucky had a high-risk pool under KRS 304.17B ("Kentucky Access") and has retained the statutory framework to easily re-establish a high-risk pool if the ACA is repealed. Certainly, some of the federal savings from repealing ineffective provisions of the ACA could be passed along to the states to establish a risk mitigation mechanism, such as high-risk pools, to stabilize markets that are now highly volatile as a result of the ACA. Consideration should also be given to authorize states to create shared risk pools across state lines to better allocate risk across larger populations.

8. What timing issues, such as budget deadlines, your legislative calendar, and any consumer notification and insurance rate and form review requirements, should we consider while making changes?

Kentucky legislative sessions commence in January of each year, with 30-day sessions in odd number years, and 60-day sessions (which are budget sessions) in even numbered years. Initial rate submissions and reviews begin in the spring prior to the plan year in which the offering is made. While we would encourage quick action to repeal and replace the ACA, changes that would

preempt state law should allow adequate transition time for states to update statutes, regulations and policies to comply with new federal law.

9. Has your state adopted any of the 2010 federal reforms into state law? If so, which ones? What impact would repeal have on these state law changes?

During the previous gubernatorial administration, Kentucky expanded Medicaid and went through the process of establishing a costly and duplicative state based exchange known as "kynect." However, these changes were not made legislatively so Kentucky has flexibility to very quickly respond to changes to the ACA. In fact, my administration has already transitioned from "kynect" to the Healtcare.gov platform which will save the state millions of dollars each year.

In addition, Kentucky law still provides a robust framework for regulation of insurance products, including elements such as minimum loss ratio and provisions for guaranteed issue/guaranteed renewable policy requirements and other elements of standard health benefit plans. Therefore, a repeal of the ACA would allow existing Kentucky law to again be effective and controlling.

Thank you for your time, consideration, and for giving states a voice in this important discussion. For any feedback, meeting arrangements, or further discussion of what was included in this response, please contact Adam Meier, Deputy Chief of Staff for Policy, at (502) 564-2611 or adam.meier@ky.gov.

Sincerely,

Matthew G. Bevin
Governor

cc: The Honorable Kevin Brady, Chairman, House Committee on Ways and Means
The Honorable Fred Upton, Chairman, House Committee on Energy and Commerce
The Honorable John Kline, Chairman, House Committee on Education and the Workforce
The Honorable Greg Walden, Chair-Elect, House Committee on Energy and Commerce
The Honorable, Virginia Foxx, Chair-Elect, House Committee on Education and the Workforce