

To: All Idaho Legislators and citizens
Subject: Utah's rejection of a state exchange
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Why Utah abandoned its quest for a state exchange

When the Affordable Care Act (ACA or Obamacare) became law in 2010, Utah was one of only two states (the other being Massachusetts) that already had an insurance exchange operating within the state. This exchange, called Avenue H, was designed to help small businesses obtain coverage for their employees.

The success of this program is debatable, however. Despite having 140 health plans and 789 insurance brokers in the exchange and about 60,000 small businesses¹ within the state, only 326 businesses have actually purchased insurance through the exchange.²

When Utah asked the federal government for permission to build an individual insurance exchange on top of its existing platform, it received "conditional approval," but only if the state complied with a long and exacting list of mandatory changes. Patty Conner, who serves as Utah Gov. Gary Herbert's exchange chief, said that the list of changes "wasn't what we wanted to hear. We wanted to hear that they would approve the exchange that we have. I think we have a different definition of flexible."³

Erin Shields Britt, a spokeswoman for the U. S. Health and Human Services Department (HHS), said the agency wants to be "as flexible as possible within the confines of the law."⁴ Considering that the "law" in question is nearly 3,000 pages long and includes at least 10 times that number of pages in regulations,⁵ the "confines" in question are restrictive to the point where any "flexibility" is purely theoretical. One rule issued last year took 18 pages to define a "full time employee."⁶

Ultimately, Utah was forced to conclude that attempting to work within the confines of the federal requirements was far too onerous and has now requested that the federal government take on the task of building an individual state exchange and merely allow the state to continue running its existing exchange for businesses.⁷ Even that request could be denied, however, as the federal government continues its push to micromanage the advertisement and delivery of health care products.

¹ Small business is defined as businesses with fewer than 500 employees according to the U.S. Small Business Administration.

² "Utah's Health Insurance Exchange in Limbo," Stateline, Jan. 11, 2013, <http://tinyurl.com/d4lx5sc>.

³ Ibid.

⁴ "Utah changes course, seeks health exchange pairing," CacheValleyDaily.com, Feb. 5, 2013, <http://tinyurl.com/a7omrop>.

⁵ "Special Alert: New Federal Health Care Reform Legislation - Its Impact on Employers and Employee Benefit Plans," <http://tinyurl.com/bfhhmxxp>.

⁶ "The Avalanche Of New Obamacare Rules Will Come In January, 2013," Forbes, Oct. 28, 2012, <http://tinyurl.com/chukqjh>.

⁷ "Utah retreats from all-in-one health exchange, pitches business-only model," Salt Lake Tribune, Feb. 5 2013, <http://tinyurl.com/a66swaf>.

Kelly Atkinson, a lobbyist for the insurance industry, summed up why his industry is not particularly concerned with who runs the exchange. "If you were to ask insurers, they would say it really doesn't matter to them who runs the exchanges. Either way, even when you have the state run it, you have to abide by federal rules."⁸

Last month, Utah Lt. Gov. Greg Bell said that the governor's proposal to create and run an individual state insurance exchange was receiving support even from some conservatives because "they sense our good faith and want us to succeed."⁹ Unfortunately "good faith" is no match for federal bureaucracy, and now the governor admits that allowing the feds to run the exchange is the decision that actually "allows Utah to stay true to its principles and objectives."¹⁰

Ally Isom, the governor's deputy chief of staff, said that "all along the governor has been requesting answers to questions. As we received more information, we've been able to evaluate more of what the Affordable Care Act and HHS require, and determine what is best for the people of Utah."¹¹ As it turns out, relinquishing its quest to set up a state exchange is ultimately "what is best for the people of Utah."

Today, other states—including Idaho—are still struggling with the question of how to proceed on the issue of insurance exchanges. The positions being taken are not always along traditional party lines and the frequent debates over the issue often occur under the shadow of an agreed aversion to the Affordable Care Act.

In Utah, the rationale for refusing take on the arduous task of setting up a federal-compliant state exchange was summed up by House Speaker Becky Lockhart, R-Provo, when she said, "The people of Utah did not want this law. ... It's a federal law. They should take responsibility for it, and they should implement it."¹²

Milton Friedman once said that "one of the great mistakes is to judge policies and programs by their intentions rather than their results."¹³ As Idaho continues to examine this issue, it would be wise to keep that in mind. As noble as the intentions behind creating a state exchange might be, the result is the subjugation of the state to myriad federal rules and the deputizing of the state and its resources to implement and maintain a federal boondoggle. Utah has recognized that fact. Will Idaho show the same level of prudence and foresight or will we instead have to learn it the hard way?

⁸ Ibid.

⁹ "Utah's Avenue H better than federal exchange plan, health leaders say," Salt Lake Tribune, Jan. 24 2013, <http://tinyurl.com/bhqwk8p>.

¹⁰ "Utah retreats from all-in-one health exchange, pitches business-only mode," Salt Lake Tribune, Feb. 5 2013, <http://tinyurl.com/a66swaf>.

¹¹ "Gov. Herbert now wants feds to run individual health insurance exchange in Utah," Deseret News, Feb. 5, 2013, <http://tinyurl.com/bhakbv7>.

¹² Ibid.

¹³ "Milton Friedman In His Own Words," The Becker Friedman Institute for Research in Economics, University of Chicago, <http://tinyurl.com/ab24eek>.