December 5, 2019

Seema Verma, Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Washington, DC 20201

Dear Administrator Verma:

Thank you for inviting consultation from the National Association of Insurance Commissioners (NAIC) on the implementation of section 1333 of the Affordable Care Act. NAIC offers the following comments on behalf of its members, the chief insurance regulators in the 50 states, the District of Columbia, and the United States territories.

Although we share your interest in providing consumers high quality care at affordable prices, we recommend that the federal government not establish standards or requirements for interstate compacts for the sale of health insurance across state lines. Such action is unnecessary because states already have full authority to establish such compacts and determine the appropriate standards to protect their consumers and their markets. In fact, we believe any such actions by the federal government could interfere with state efforts and cause regulatory confusion.

Section 1333 contemplates a regulatory framework that facilitates the sale of health insurance coverage across state lines. However, no additional rules are necessary to further this goal because no federal law prohibits the sale of health insurance across state lines. States already have authority to permit sales of non-domiciled plans to their residents. Establishing the rules for such sales should be up to any states that choose to enter into a compact, not the federal government. As we wrote in comments in response to the request for information (RFI) on the sale of individual health insurance coverage across state lines, “we believe that states should remain in the driver’s seat with regard to allowing or promoting interstate sales and that no further action by the federal government is warranted.”

Although we have opposed federally mandated standards, several states have recognized that opening their individual insurance market to issuers licensed in another state could potentially have benefits for certain consumers. States regulate their insurance markets to manage these risks and states remain the most appropriate entities to weigh the risks and benefits of interstate sales. States willing to allow interstate sales to make more affordable plans available to some consumers can do so—as long as they can find other states willing to partner with them. Each state must be able to evaluate the risks and benefits of interstate sales on its own terms. No matter how well intended, federal regulations that aim to facilitate interstate sales run the risk of distorting state choices.

While they have not adopted laws to create Health Care Choice Compacts as envisioned by the ACA, as noted, a number of states have enacted laws to permit sales of health insurance across state lines, demonstrating that there is no legal barrier at the federal level to doing so. These states have each taken a different approach, none of which has, to date, resulted in insurers offering comprehensive health insurance in a state in which it is not licensed. This shows that the impediments to interstate sales are not in federal law or the result of unnecessary state barriers, but are inherent to the business of health insurance. The challenges of contracting with provider networks, managing risk pools and costs, and providing customer service to consumers in states in which the insurer is not licensed are considerable – and obtaining a license is not difficult for qualified issuers.
We also note that any effort to preempt state laws and permit federally-directed sales of health insurance coverage across state lines would frustrate the ability of state insurance regulators to fulfill one of their central obligations—to provide protection and counsel to insurance consumers in their states. This is directly counter to the strong history of local, accountable, state-level consumer protection. Allowing interstate sales only when considered and authorized by the laws of the states involved (as already permitted) preserves the ability of state regulators to develop interstate enforcement and consumer protection agreements that keep consumers protected.

Section 1333 itself recognizes the importance of home state consumer protection and at Section 1333(a)(3)(E) disallows compacts that weaken enforcement of consumer protection standards (including standards relating to rating). State regulators believe that any new federal facilitation of interstate sales is unnecessary and could weaken consumer protection standards, as well as states’ ability to enforce market conduct laws. Therefore, we recommend that no further action be taken by the federal government to establish standards for interstate compacts for the sale of health insurance across state lines under Section 1333 of the ACA.

Thank you for this opportunity to consult on this important issue.

Sincerely,

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