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May 6, 2019

Alex M. Azar, II
Secretary
Department of Health and Human Services
200 Independence Ave., SW
Washington, DC 20201

Seema Verma
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

**Re: CMS-9921-NC – Patient Protection and Affordable Care Act; Increasing Consumer Choice through the Sale of Individual Coverage Across State Lines Through Health Care Choice Compacts**
84 Fed. Reg. 8657 (March 11, 2019)

Dear Secretary Azar and Administrator Verma:

The American Cancer Society Cancer Action Network (ACS CAN), appreciates the opportunity to comment on the Request for Information (RFI) on increasing consumer choice through the sale of individual coverage across state lines through health care choice compacts. ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. ACS CAN empowers advocates across the country to make their voices heard and influence evidence-based public policy change as well as legislative and regulatory solutions that will reduce the cancer burden.

Having adequate and affordable health insurance coverage is a key determinant for surviving cancer. Research from the American Cancer Society shows that uninsured Americans are less likely to get screened for cancer and thus are more likely to have their cancer diagnosed at an advanced stage when survival is less likely and the cost of care more expensive.[1] This not only impacts the nearly 1.8 million Americans who will be diagnosed with cancer this year, but also the 15.5 million Americans living today who have a history of cancer.[2]

ACS CAN is strongly concerned that interstate sale of health insurance, absent strong oversight and consumer protections could jeopardize cancer patients' access to critical coverage. We would caution HHS against promoting interstate sale of insurance. The Affordable Care Act (ACA)[3] already permits the inter-state sale of health insurance provided certain requirements are met, most notably by allowing interested states to enter into a health care choice compact. This requires states to work together to establish guidelines for market conduct, network adequacy, consumer protection standards, dispute resolution, and other requirements in advance of the sale of insurance between states.[4] To date, 21 states

[1] E Ward et al, "Association of Insurance with Cancer Care Utilization and Outcomes," *CA: A Cancer Journal for Clinicians* 58:1 (Jan./Feb. 2008), http://www.cancer.org/cancer/news/report-links-health-insurance-status-with-cancer-care.
[2] American Cancer Society. *Cancer Facts & Figures 2019.* Atlanta: American Cancer Society; 2019.
[3] ACA Section 1333.
[4] 42. U.S.C. § 18053(a).

have introduced legislation to allow for the sale of insurance across state lines, but only five states[5] have passed laws that would permit this. ACS CAN would be seriously concerned about any proposal that expands issuers' ability to sell individual insurance plans across state lines beyond this current ability.

**A. EXPANDING INSURANCE ACROSS STATE LINES**

*1. What are the practical advantages and disadvantages of allowing health insurance issuers to sell individual health insurance coverage across state lines through Health care Choice Compacts?*

ACS CAN opposes the interstate sale of insurance without adequate consumer protections. Historically, states regulated health insurance, including coverage standards. Prior to the enactment of the ACA, states would often require health plans to provide coverage for certain items and services by imposing state coverage mandates. As a result, the robustness of coverage varied from state to state. There are still some coverage variations under the ACA, based on the state's chosen Essential Health Benefit (EHB) benchmark and its coverage mandates. States also impose their own standards on issuers operating within their states. These standards include not only coverage of state mandated health benefits, and network adequacy standards, but also traditional insurance standards such as licensing and solvency requirements.

But allowing the interstate sale of insurance creates a financial incentive for issuers to sell less comprehensive products that are allowed in less-regulated states to citizens of other states that would have stricter standards. This creates what is known as a "race to the bottom" – the proliferation of plans that do not provide robust coverage or strong consumer protections.

Healthier individuals could be more likely to enroll in the skinnier policies offered by the out-of-state issuer, leaving older, sicker individuals in the more comprehensive plans, driving up the cost of those plans. As a result, policies that cancer patients need – those that provide more robust coverage of products and services – would become more expensive over time.

Selling across state lines may not yield significant savings for consumers for other reasons as well. According to the American Academy of Actuaries, health insurance premiums often reflect the local cost of health care.[6] For example, the cost of living in Miami is higher than the cost of living in rural Minnesota, so premium costs would be higher there as well.

*5. How would the sale of individual health insurance coverage across state lines through Health Care Compacts impact access to QHPs? We are particularly interested in the impact on counties that do not have many options for QHP coverage in their current markets and whether the sale of health insurance coverage across state lines would increase or decrease the number of issuers offering QHPs in these counties?*

ACS CAN shares the Administration's stated goal of expanding access to QHPs, particularly, as the question notes, in areas of the country for which consumers have few options. Cancer patients and survivors need access to QHP coverage because these products provide EHBs such as prescription drug

[5] Three states – Maine, Kentucky, and Georgia – enacted laws after the enactment of the ACA. Three states – Rhode Island, Washington, and Wyoming – passed laws prior to the enactment of the ACA.
[6] American Academy of Actuaries. Issue Brief: Selling Insurance Across State Lines. Feb. 2017. Available at https://www.actuary.org/files/publications/AcrossStateLines_021317.pdf.

coverage, hospitalizations, and physician services cancer patients need. In addition, QHP coverage also prohibits the use of lifetime and annual limits on EHB services, which ensures cancer patients and survivors do not face arbitrary caps on coverage, as occurred before the enactment of the ACA.

We do not believe that promoting the interstate sale of health insurance – particularly non-comprehensive health plans – is an appropriate or impactful solution to addressing the lack of competition for QHP coverage in some parts of the country. Rather, the Administration should look to identify possible hinderances to QHP market entry and work to remove those barriers. This would ensure that consumers in these areas of the country are offered the comprehensive coverage options they need, rather than sub-standard plans from another state.

Research has shown that expansion of non-compliant coverage options results in higher costs for QHP coverage. For example, a recent Urban Institute report noted that the premiums for ACA-compliant nongroup market health plans are estimated to increase by more than 18 percent in states that have not taken action to limit or prohibit the sale of short-term, limited-duration health plans[7] as provided under a recently-enacted final regulation.[8] We urge the Administration to examine – and in some cases re-examine – policies that would limit the availability and affordability of non-QHP coverage.

6. *Are there mechanisms, such as memoranda of understanding or other contractual arrangements, other than Health Care Choice Compacts established pursuant to section 1333 of the PPACA, that states could utilize to facilitate the sale of individual health insurance coverage across state lines? Would selling health insurance coverage such as short-term, limited-duration insurance; state-regulated farm bureau coverage; or insurance licenses by a state as defined under section 2791(d)(14) of the Public Health Service Act (PHS Act) to individuals pursuant to such state agreements help facilitate the sale of individual health insurance coverage across state lines? Consider whether the type of coverage is relevant to, or would impact, the form or nature of the agreements utilized by states.*

ACS CAN supports policies that encourage the sale of comprehensive health insurance coverage options. Non-comprehensive coverage options may have lower premiums than other plans on the market, but these policies are often costlier to the consumer in the long-run because these plans are exempt from many of the key requirements that provide comprehensive coverage and protect consumers from high out-of-pocket costs.

*Short-term, limited-duration health plans*: Expanding access to short-term, limited-duration health plans by selling these products across state lines is not in the interest of consumers. Short-term, limited-duration plans are permitted to discriminate based on a person's health status and pre-existing conditions, which often makes it impossible for cancer patients to obtain insurance. Thus, an insurer can

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[7] Blumberg LJ, Buettgens M, Want R. Updated estimates of the potential impact of short-term, limited duration policies. Urban Instit. Aug. 2018. Available at https://www.urban.org/sites/default/files/publication/98903/2001951_updated-estimates-of-the-potential-impact-of-stld-policies_0.pdf.

[8] Department of Health and Human Services, Department of the Treasury, and Department of Labor. Short-Term, Limited-Duration Insurance. Final Rule. 83 Fed. Reg. 38212 (Aug. 3, 2018).

choose to deny coverage, charge higher premiums, or not cover certain benefits for individuals based on their health history.

Unlike ACA-compliant plans, short-term plans also do not have to provide coverage for EHBs. Individuals with cancer and cancer survivors have unique health care needs and require access to a wide range of products and services, like oncology care, chemotherapy, radiation, prescription drugs, and hospital services. Consumers who enroll in health coverage expect their plan to cover these necessary products and services. If cancer patients do not have access to cancer treatment services through their health insurance coverage, they are forced to pay out-of-pocket for their treatment, which can often be prohibitively expensive. Individuals who have been diagnosed with cancer need access to specific treatments; delaying these treatments can lead to negative health outcomes.

Short term plans can also impose lifetime and annual limits on coverage which will directly impact cancer patients. Cancer treatment can be expensive and as a result cancer patients and survivors can exceed an annual or lifetime cap on covered services. According to one study, prior to the enactment of the ACA, one in ten cancer patients responding to the survey reached the limit of what their insurance plan would pay for their cancer treatment.[9] Short term plans are also not subject to limits on the amount of out-of-pocket costs and deductibles they can impose on enrollees for covered in-network services. For an individual in active cancer treatment the low caps and high out-of-pocket requirements essentially render coverage meaningless, particularly given that nearly half of all American adults report being unable to cover an emergency medical expense costing $400 without having to borrow or sell something to do so.[10]

*Farm bureau coverage*: To date several states have considered – and in some cases, enacted[11] – state legislation that would allow the Farm Bureau to sell unregulated health plans. Farm Bureau plans are concerning because they can deny coverage for individuals with pre-existing conditions or can charge individuals with pre-existing conditions higher premiums. Such practices existed and caused serious problems for cancer patients and survivors prior to 2014. A survey conducted before these exclusions were prohibited found that 36 percent of those who tried to purchase health insurance directly from an insurance company in the individual insurance market were turned down, were charged more, or had a

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[9] USA Today, Kaiser Family Foundation, Harvard School of Public Health. National Survey of Households Affected by Cancer. Kaiser Family Foundation, November 2006. Available at https://www.kff.org/health-costs/poll-finding/usa-todaykaiser-family-foundationharvard-school-of-public-2/.

[10] Board of Governors of the Federal Reserve. Report on the Economic Well-Being of U.S. Households in 2015. May 2016. Available at https://www.federalreserve.gov/2015-report-economic-well-being-us-households-201605.pdf.

[11] In 2018, Iowa passed legislation that would allow for the sale of farm bureau plans. Tony Leys. "Cheaper Farm Bureau health policies could turn applicants away for pre-existing conditions," *Des Moines Register*, Oct. 3, 2018, available at https://www.desmoinesregister.com/story/news/health/2018/10/03/iowa-farm-bureau-health-coverage-pre-existing-conditions-obamacare-affordable-care-act/1509879002/. The state of Tennessee has allowed Farm Bureau plans since the 1990s. Kevin Lucia and Sabrina Corlette. What's going on in Tennessee? One possible reason for its Affordable Care Act challenges. Georgetown University Center on Health Insurance Reforms. Apr. 11, 2017, available at http://chirblog.org/whats-going-tennessee-one-possible-reason-affordable-care-act-challenges/.

specific health problem excluded from their coverage.[12] For example, the Tennessee Farm Bureau application is quite lengthy and asks a series of health history questions, with a seven-year lookback period; even babies are required to complete medical history information before being enrolled.[13] Given that these plans engage in discriminatory practices against individuals with pre-existing conditions, we oppose expanding these policies by allowing issuers to sell them across state lines.

**B. OPERATIONALIZING THE SALE OF HEALTH INSURANCE ACROSS STATE LINES**

*2. How difficult is it for small and/or regional health insurance issuers to develop provider networks in multiple states that could be used for health insurance coverage sold pursuant to Health care choice Compacts, and what are the causes of any such difficulties? For individual market health insurance issuers that already have a national provider network, what are the challenges for selling individual health insurance coverage across state lines through Health Care Choice Compacts? In what ways could the federal government facilitate expanding and strengthening provider networks?*

We note that interstate sale of health insurance is problematic given the use of provider networks, as noted by the Association of Health Insurance Plans .[14]. There is no guarantee that out-of-state health plans could develop in-state provider networks and negotiate provider discounts. This means cancer patients might buy an insurance plan that has very few, if any, in-network doctors or facilities in their home state. Cancer patients often receive treatment from multiple specialists and multiple sites of care – it is unlikely that an out-of-state insurer would be able to provide the robust provider network that a cancer patient needs. A cancer patient enrolled in an out-of-state plan could need to travel to another state for every cancer treatment and appointment. This would be financially and physically challenging for any consumer, but can be especially challenging for a patient undergoing cancer treatment.

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[12] Doty MM, Collins SR, Nicholson JL et al. *Failure to Protect: Why the Individual Insurance Market is not a Viable Option for Most US Families.* The Commonwealth Fund, July 2009. Available at http://www.commonwealthfund.org/~/media/Files/Publications/Issue%20Brief/2009/Jul/Failure%20to%20Protect/1300_Doty_failure_to_protect_individual_ins_market_ib_v2.pdf.

[13] Sarah Lueck. Kansas bill would harm people with pre-existing conditions. Center on Budget and Policy Priorities. Apr. 10, 2019, available at https://www.cbpp.org/blog/kansas-bill-would-harm-people-with-pre-existing-conditions.

[14] Association of Health Insurance Plans. Insurance Across State Lines. Feb. 2017. Available at https://www.ahip.org/wp-content/uploads/2017/02/AHIP_StateLines.pdf.

4. *What new and existing consumer protections are needed to protect policyholders that reside in one state but purchase individual health insurance coverage from a health insurance issuer in another state pursuant to the Health Care Choice Compact? How would allowing health insurance issuers to sell individual health insurance coverage across state lines impact the ability of state regulators to assist consumers or impact the ability of state courts to resolve legal disputes when the policyholder resides in a state other than that in which the policy is written, pursuant to a Health Care Choice Compact?*

Interstate sale of health insurance creates uncertainty regarding enforcement of insurance rules and regulations. As the National Association of Insurance Commissioners (NAIC) notes,[15] regulators in one state have no authority to enforce the laws of another state. This means a cancer patient who needs to appeal a coverage decision outside of her health plan or make a complaint might have to do so with the regulator of a state in which she does not live – and therefore to a regulator who does not have incentive to help her – leaving the consumer with few viable options

**CONCLUSION**

Thank you for the opportunity to comment on the RFI on increasing consumer choice through the sale of individual coverage across state lines through health care choice compacts. If you have any questions, please feel free to contact me or have your staff contact Anna Schwamlein Howard, Policy Principal, Access and Quality of Care at Anna.Howard@cancer.org.

Sincerely,

Kirsten Sloan
Vice President, Public Policy
American Cancer Society Cancer Action Network

[15] National Association of Insurance Commissioners. Interstate Health Insurance Sales: Myth vs. Reality. Available at http://www.naic.org/documents/topics_interstate_sales_myths.pdf.