DC Health Benefit Exchange Authority

May 3, 2019

Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-9921-NC
P.O. Box 8016
Baltimore, Maryland 21244-8016

Re: CMS -9921-NC, Patient Protection and Affordable Care Act; Increasing Consumer Choice through the Sale of Individual Health Insurance Coverage Across State Lines Through Health Care Choice Compacts

To Whom It May Concern:

The District of Columbia Health Benefit Exchange Authority (HBX) appreciates your consideration of our comments on the above referenced Request for Information (RFI), issued by the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services.

By way of background, HBX is a private-public partnership established by the District of Columbia (District) to develop and operate the District's on-line health insurance marketplace, DC Health Link (DCHealthLink.com). Since we opened for business, we have cut the uninsured rate by 50% and now more than 96% of District residents have health coverage – we rank second in the nation with the lowest uninsured rate. District residents have 25 health plan options from two insurers and small businesses have 152 health plan options from United, Aetna, CareFirst, and Kaiser. DC Health Link fosters competition and transparency in the private health insurance market, enabling individuals and small businesses to compare health insurance prices and benefits and to purchase affordable, quality health insurance.

HBX and other state-based marketplaces rely on insurance regulators to oversee health insurance companies selling coverage through our on-line marketplaces. We strongly oppose any proposals allowing for the sale of individual health insurance across state lines as it undermines the long-held authority of states to protect their consumers, a hallmark of state insurance regulation. Unlike other goods or services that consumers receive immediately, health insurance is a promise to pay claims later. In other words, unlike a commodity, a consumer gets a card with a promise to pay later. State insurance regulators play a major role in protecting and enforcing this promise by requiring health insurers meet state licensure and solvency requirements, regulating health insurer products and health plans, and making sure that claims get paid and consumers get access to medical care.

Proposals to sell insurance across state lines also undermine the progress of the Affordable Care Act (ACA), particularly the stability of individual and small group markets and access to quality health insurance. Such proposals will adversely impact District residents and small businesses with coverage

through DCHealthLink. Rather than increase health insurance options as the Administration claims, such proposals ultimately make comprehensive health insurance less readily available and less accessible.

Undermines State Licensing and Oversight

As a state-based marketplace, we certify qualified health plans (QHPs). The certification assumes that carriers offering QHPs follow all insurance consumer protections. And for that, we rely on our insurance regulators. State insurance licensing laws protect residents and businesses by establishing and enforcing requirements that insurers must meet to operate in a state. State insurance regulators protect insurance consumers through "form reviews," reviewing products to make sure they are compliant with state requirements before they are sold to consumers. It is one thing to say cancer treatment is covered and another to actually have in-network oncologists providing cancer treatment. Regulators also review premium rates to make sure rates are fair. Other consumer protections include market conduct examinations (audits designed to look at a specific practice or problem or broad audits looking at general compliance). This enables regulators to identify patterns of noncompliance. Regulators also work with residents when a consumer experiences a problem with the insurer. Regulators can require that insurers correct mistakes, stop engaging in unlawful practices, pay fines, or ultimately lose their licenses to conduct business.[1] All of these tools help a state to ensure that if an insurer is engaging in the business of health insurance, the promise of health insurance is fulfilled to its residents.

Proposals allowing for the sale of health insurance across state lines puts state oversight and enforcement of health insurance contracts in jeopardy. Under such proposals, health insurers licensed in one state would be allowed to conduct business in other states without meeting those other states' licensing requirements or complying with other states' insurance laws. As a result, we would have our hands tied when these out-of-state insurers deny claims to our residents or fail to pay our hospitals or physicians or engage in other damaging and state-prohibited behavior. Without the ability to take enforcement actions such as levy fines, suspend or revoke a license, states would not be able to regulate these entities effectively. And, we are generally not authorized to enforce the laws of other states; there would be no protection for consumers with out-of-state health insurance. Even with any agreements between states, such as interstate compacts that are intended to extend regulatory authority, it is unlikely that a state has the capacity to intervene on behalf of another state's resident.

Proliferation of Junk Plans

The RFI requests input on allowing the use of memoranda of understanding or other contractual arrangements to allow the sale of short term-limited duration insurance, state-regulated farm bureau coverage, and other coverage across state lines. HBX opposes proposals including using MOUs and contracts to circumvent state insurance laws. We also oppose proposals to sell health insurance across state lines.

As Mayor Bowser notes in her letter to Secretary Azar and Administrator Verma, the only way selling health insurance across state lines makes health insurance less expensive is by cutting benefits, avoiding

[1] M. Kofman and K. Pollitz, *Health Regulations by States and the Federal Government: A Review of Current Approaches and Proposals for Change*, Georgetown University Health Policy Institute, April 2006.

covering sicker people, not paying medical claims, not paying/reimbursing providers, or having such low reimbursement rates that no providers access that insurance. None of these are acceptable public policy and each will hurt District residents and providers.[2]

Congress passed the ACA to ensure that all people, regardless of whether they have a preexisting condition or a temporary or chronic health condition, have access to health insurance, which is the promise of covering the medical care costs and providing financial protection. Moreover, the ACA guarantees that essential benefits like maternity care, mental health and substance use disorder services, and prescription drugs are covered for those in the individual and small group markets.

Proposals to sell health insurance or junk plans across state lines threaten the stability of both the individual and employer-sponsored markets. These cheaper, junk plans would inevitably target the healthiest of individuals to cover. When only individuals with preexisting conditions or medical needs would remain in the individual risk pool, insurers would need to raise premiums to cover the costs of their medical claims. As a result, premiums for these comprehensive plans would skyrocket, making coverage unaffordable for existing enrollees and any potential enrollees who may need comprehensive health insurance. In the District, actuaries found that the proliferation of short-term limited duration plans would result in as much as a 35 percent exodus of individual market enrollees and individual market claims costs increasing by as much as 21.4 percent.[3] Likewise, with employer-sponsored coverage premiums would skyrocket if healthy employees forgo their employer-sponsored coverage for cheaper, junk plans.

Recurring Proposal with Still No Takers

The concept of interstate sale of health insurance has been around for decades, and while at least six states have passed various forms of legislation allowing for such products, no state actually has interstate sales of insurance.[4] Even under the ACA's Health Care Choice Compact, where Congress created a framework designed to protect consumers, no state has effectuated the interstate sale of insurance. We know that taking such action could strip us of our ability to protect our consumers and have stable private markets. The National Association of Insurance Commissioners, representing the nation's chief insurance regulators states that allowing for interstate sales of health insurance policies would make "insurance less available, make insurers less accountable, and prevent regulators from assisting consumers in their states."[5] HBX urges the Administration not to pursue any policies that would allow for such results.

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[2] Comment Letter from Muriel Bowser, Mayor of the District of Columbia to Secretary Azar and Administrator Verma, Dept. of HHS and CMS, on CMS -9921-NC: Patient Protection and Affordable Care Act; Increasing Consumer Choice through the Sale of Individual Health Insurance Coverage Across State Lines Through Health Care Choice Compacts, April 29, 2019.

[3] Oliver Wyman, Potential Impact of Short-Term Limited Duration Plans, April 11, 2018, https://hbx.dc.gov/sites/default/files/dc/sites/hbx/publication/attachments/OWReview%20of%20Impact%20of%20Short%20Term%20Duration%20Plans%204.11.2018%20%28002%29.pdf. This study also included the repeal of the individual responsibility requirement.

[4] *See* National Conference of State Legislatures, Allowing for Purchases of Out-of-State Health Insurance, Aug. 1, 2018, http://www.ncsl.org/research/health/out-of-state-health-insurance-purchases.aspx.

[5] National Association of Insurance Commissioners, "Interstate Health Insurance States: Myth vs. Reality," https://www.naic.org/documents/topics_interstate_sales_myths.pdf.

Limits to Administration Authority

The Administration does not have the legal authority to expand state compacts for interstate sale of health insurance beyond what is permitted under the ACA. Only Congress has the authority under the Constitution to allow state compacts.[6] Calling state compacts by other labels like "MOUs" or "other contractual agreements" does not cure the fact that the Constitution authorizes only Congress to deal with state compacts. These other agreements would function like compacts and would therefore be subject to Constitutional standards applicable to state compacts.

Conclusion

HBX encourages the Administration to build upon the successes of the ACA in increasing access to comprehensive health insurance for millions of Americans, particularly the quarter to one-third of non-elderly adults with a preexisting health condition.[7] We support permanent federal reinsurance to make quality health insurance more affordable. The temporary reinsurance program helped to keep premiums down by as much as 14 percent in the three years it operated for the individual market.[8] We also support expanding advanced premium tax credits.

HBX supports policies that allow states to continue their long-held authority to protect their residents and ensure that the promise of health insurance is fulfilled. We do not support any policies allowing for junk plans that could be sold across state lines and would destabilize our markets and result in less comprehensive and affordable coverage being available for our residents. Thank you for considering our comments.

Sincerely,

Mila Kofman
Executive Director
DC Health Benefit Exchange Authority

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[6] U.S. Const. Art. 1, Sec. 8, Clause 3.
[7] Rachel F. et al., *Mapping Pre-existing Conditions Across the U.S.*, Kaiser Family Foundation, Aug. 28, 2018, https://www.kff.org/health-reform/issue-brief/mapping-pre-existing-conditions-across-the-u-s/.
[8] *See* American Academy of Actuaries, *Drivers of 2015 Health Insurance Premiums Changes*, June 2014, http://www.actuary.org/files/2015_Premium_Drivers_Updated_060414.pdf, and *Drivers of 2017 Health Insurance Premiums Changes*, June 2016, https://www.actuary.org/content/drivers-2017-health-insurance-premium-changes-0. 2017 was the first year after which the federal reinsurance program under the ACA ended.