

May 6, 2019

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

RE: 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 (CMS-9921-NC)

Dear Ms. Verma:

On behalf of the American Hospital Association's (AHA) nearly 5,000 member hospitals, health systems and other health care organizations, including nearly 90 that offer health plans, and our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, we thank you for the opportunity to respond to the Centers for Medicare & Medicaid Services' (CMS) request for information (RFI) on the sale of health insurance across state lines. **We share the administration's goal of expanding access to coverage and increasing competition between health plans. We too are concerned that a majority of health insurance markets are highly concentrated and this concentration is leading to higher premiums costs for consumers. However, we do not believe efforts to facilitate the sale of insurance across state lines will achieve either of these goals in a meaningful way.**

The AHA is committed to expanding affordable, high-quality health coverage. In [previous comments](#) to the administration, we have expressed our support for solutions to both lower the cost of coverage and provide greater choice among plans, including by supporting federal and state reinsurance programs, increasing outreach and enrollment assistance, and funding the cost-sharing reduction subsidies. These approaches likely would result in greater choice among health plans while retaining vital consumer protections. Unfortunately, the sale of insurance across state lines will not achieve these goals.

Below are our detailed comments in response to the questions posed by the agency.



EXPANDING ACCESS TO HEALTH INSURANCE COVERAGE ACROSS STATE LINES

Advantages and Disadvantages of Selling Health Insurance Across State Lines.

The agency seeks comment on the practical advantages and disadvantages of allowing health plans to sell individual health insurance coverage across state lines. The experience of states that have explored this option to date suggest that there are significant practical hurdles to selling insurance across state lines. From a health plan perspective, network development would be difficult. Health plans require local networks to provide services. However, local providers have reasons to be cautious about contracting with a health plan that is regulated by another state. In particular, providers would have little to no mechanisms to engage regulators in instances of disputes. Their own state would not have authority and the overseeing state is unlikely to prioritize addressing an out-of-state dispute. Consumers would face a similar disincentive to buy another state's insurance product; as an out-of-state consumer, they would not be guaranteed assistance by the issuing state's regulators in the case of a complaint or other issue with their insurance.

Another challenge associated with network development and pricing is whether an out-of-state health plan could assure providers sufficient enrollment to drive reimbursement discounts. Providers and health plans often negotiate volume-based discounts. Without assurance of volume, health plans likely will be unable to put together a cost-competitive package that will appeal to consumers.

Qualified Health Plans (QHPs). CMS seeks comment on whether the agency should promote the sale of QHPs through Health Care Choice Compacts across state lines. AHA believes it would not be worthwhile for the agency to do this, as the interest among all parties likely would be low. As a result of the likely provider and consumer disinterest in a multi-state insurance product as described above, health plans are unlikely to want to sell these types of products. In addition, the QHP would be subject to standards governing market conduct, unfair trade practices, network adequacy and consumer protection (such as rating rules) in each of the states where policyholders live. The burden of aligning these standards across states to develop a compliant QHP product on top of the other issues previously raised would make it unlikely that many, or any, health plans would sell QHPs through Health Care Compacts across state lines. For that level of effort, we anticipate that health plans instead would make the decision about whether to sell in a state under its rules.

Theoretically, a health plan may be interested in offering a QHP across state lines if it expected to capture significant market share of young and healthy enrollees. Some may attempt to do this by identifying states with relatively lenient laws, such as less generous coverage requirements.¹ In this situation, a health plan may be able to offer

¹ As noted in the RFI, health plans would only be subject to the laws and regulations in the state where the coverage was written or issued *except* in the case of market conduct, unfair trade practices, network adequacy, and consumer protection standards (including standards related to rating).

plans with lower premiums than the products already being sold in a market, albeit as a result of covering fewer services. If this were to occur, it could destabilize the markets as risk pools are determined by the location of the health plan, not the enrollee. Therefore, young and healthy enrollees would be removed from their local risk pool, undermining that market and ultimately decreasing coverage options. This could negatively affect vulnerable populations who seek more comprehensive coverage.

Sale of Non-QHP Compliant Plans. The agency seeks information on whether the sale of non-QHP compliant plans such as short-term, limited-duration insurance or state-regulated farm bureau insurance would facilitate the sale of individual health insurance across state lines. The AHA reiterates its position that these types of plans do not constitute true “insurance.” While these products may be appealing because of their cheaper price tag, the reality is that they could end up costing a patient far more by covering fewer benefits and ensuring fewer critical protections, like covering pre-existing conditions. These types of plans undermine the individual insurance market, and we do not support the sale of such products for any purpose beyond covering very short gaps in coverage. There are better ways to expand access to affordable, high-quality health coverage, such as supporting reinsurance proposals and increasing outreach and enrollment assistance.

OPERATIONALIZING THE SALE OF HEALTH INSURANCE COVERAGE ACROSS STATE LINES

Access to Health Care Services. CMS seeks comment on how the sale of health insurance across state lines may impact access to health care services. As mentioned above, health plans likely would be challenged in building robust networks out of state. The inability to put together adequate networks that would meet consumer needs and regulatory requirements is one of the primary barriers to the sale of such plans.

Consumer Protections. The agency seeks information on the need for additional protections for out-of-state policyholders. As mentioned above, there are unlikely to be robust protections for policyholders in states other than the regulating state. While the state regulating the health plan could choose (or be required as part of a compact) to assist out-of-state enrollees and providers, we would not expect these already often-understaffed agencies to prioritize others above their own constituents. Our members in many states already report delays in working with their own state’s regulatory bodies, let alone those of another state.

Impact on Sub-populations (e.g., People with Pre-existing Conditions). CMS seeks comment on whether the sale of individual health insurance coverage across state lines could impact a number of sub-populations, including people with pre-existing conditions, people with disabilities or chronic physical health conditions, expectant mothers, or people with behavioral health conditions. The AHA believes the sale of insurance across state lines could negatively impact these populations, particularly in states that

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have more robust protections for certain populations. Health plans could choose to issue their products in states with the most lenient protections and could therefore offer less expensive products than products issued in states with greater consumer protections. However, given the less generous coverage, these products likely would attract healthier, less expensive enrollees, drawing them out of their local risk pool. This would raise the costs of the locally-based health plans and could result in a number of them leaving the market. In this instance, the sale of insurance across state lines could result in less choice for consumers.

FINANCIAL IMPACT OF SELLING HEALTH INSURANCE COVERAGE ACROSS STATE LINES

Out-of-Pocket Costs. CMS seeks comment on the impact of the sale of insurance across state lines on policyholders' out-of-pocket costs. Because these types of plans likely would be more expensive to develop, health plans would need to raise premiums or offer fewer benefits to account for the added cost. As noted previously, health plans are unlikely to offer higher premiums in an out-of-state market as they would be unable to attract enrollees. They could offer plans with lower premiums and fewer benefits than another state's requirements. If that were to occur, enrollees in that state could face higher out-of-pocket costs for uncovered services.

Impact on Uninsured. The agency also seeks comment on the impact of the sale of insurance across state lines on the uninsured. This policy is unlikely to provide currently uninsured individuals access to new coverage options, especially as these plans will be challenged to compete in the marketplace on price.

We appreciate the opportunity to comment on this RFI concerning the sale of insurance across state lines. The AHA is committed to maintaining adequate access to care and coverage on the marketplaces and looks forward to working with the agency on these objectives. Please contact me if you have questions, or feel free to have a member of your team contact Ariel Levin, senior associate director of policy, at (202) 626-2335 or alevin@aha.org.

Sincerely,

/s/

Ashley Thompson
Senior Vice President
Public Policy Analysis and Development