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December 24, 2018

BY ELECTRONIC DELIVERY

The Honorable Seema Verma Administrator
Centers for Medicare & Medicaid Services Attn: CMS-1701-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD. 21244-8013

RE: State Relief and Empowerment Waivers; CMS-9936-NC

Dear Administrator Verma:

The National Health Council (NHC) submits this letter on the Centers for Medicare & Medicaid Services' (CMS') Guidance entitled "State Relief and Empowerment Waivers" and requests its withdrawal. The NHC does not believe that the financial benefits of lower premiums for healthy individuals contemplated under the Guidance will outweigh the likelihood or magnitude of harms to individuals with chronic diseases and disabilities.

Founded in 1920, the NHC is the only organization that brings together all segments of the health community to provide a united voice for the more than 160 million people with chronic diseases and disabilities and their family caregivers. Made up of more than 125 diverse national health-related organizations and businesses, the NHC's core membership includes the nation's leading patient advocacy organizations, which control its governance and policy-making process. Other members include professional and membership associations, nonprofit organizations with an interest in health, and representatives from the pharmaceutical, generic drug, health insurance, device, and biotechnology industries.

Our member organizations represent millions of people with serious, chronic diseases and disabilities, as well as their caregivers. These individuals, and all Americans, need access to affordable, high-value, sustainable health care to meet their medical needs. While we continue to advocate for the patient protections included in the Patient Protection and Affordable Care Act (PPACA), we recognize the law's limitations and appreciate the potential value of state innovation in addressing some of the difficulties people with chronic diseases and disabilities have had in accessing care through their Marketplace insurance plans. For example, some states have used innovation waivers to institute reinsurance programs to facilitate access for people with pre-existing conditions. **However, this proposal falls far short of protecting people with pre-existing conditions and has the potential to cause them great harm. Therefore, we ask that this Guidance be withdrawn.**

The NHC strongly urges the Administration to approach state waiver requests under section 1332 of the PPACA in a manner consistent with the intention of the section and addresses patient access hurdles and maximizes progress toward the goal of maintaining or improving access to affordable, high-value health care for individuals with chronic diseases and disabilities. Our comments reflect our concern that the Guidance will encourage states to pursue approaches that frustrate those goals and disproportionately impact individuals with chronic diseases and disabilities. Specifically, we are concerned that:

- The policies contained in the Guidance could adversely impact the risk pool and erode the PPACA's protections for individuals with pre-existing conditions and
- State waivers that promote purchase of non-compliant coverage could confuse consumers and leave them susceptible to being significantly under-insured.

The policies contained in the Guidance could adversely impact the risk pool and erode the PPACA's protections for individuals with pre-existing conditions.

Maintaining access to both comprehensive and affordable coverage is, and should continue to be, the primary measure by which state 1332 waiver requests are evaluated. "Comprehensive" and "affordable" should not be viewed as separate inquiries; they are dual prongs of a single, essential statutory requirement. We are concerned that the Guidance contemplates approval of waivers if comprehensive coverage is available, and some coverage types (such as AHPs and STLDI) are affordable. The NHC strongly urges CMS to ensure that state waiver requests are not approved unless comprehensive coverage is available and affordable to those who need it, including individuals with chronic diseases and disabilities, and those with pre-existing medical conditions.

The NHC acknowledges that the Guidance does not explicitly permit state 1332 waivers that eliminate protections for individuals with pre-existing conditions. It does, however, present a considerable expansion of state authority under Section 1332 in "[t]hese waivers could potentially be used to allow states to build on additional opportunities for more flexible and affordable coverage that the Administration opened through expanded options for Association Health Plans (AHP) and short-term, limited-duration insurance (STLDI)."

Unfortunately, the alternative coverage options encouraged within the Guidance are designed to accommodate relatively healthy individuals and do not represent an added "choice" for people with chronic conditions. As previously cautioned by the NHC, the broader patient community, and an overwhelming majority of health care experts and stakeholders, STLDI plans and AHPs can design benefit offerings to deter sicker patients from enrolling. These issuers can also charge higher premiums to individuals with pre-existing health conditions, exclude coverage for treatment of pre-existing conditions, and even completely decline to enroll individuals with chronic diseases and disabilities.

Additionally, under the Guidance, states would be able to reduce subsidies for PPACA-compliant exchange coverage and instead use those funds to subsidize coverage for people enrolled in plans that fail to meet the definition of minimum essential coverage, including STLDIs and AHPs. We expect that if states take full advantage of the flexibilities offered in the guidance, reliance on AHPs and STLDIs will increase the number of individuals and families with limited benefits for prescription drugs, higher cost-sharing, potential gaps in coverage, and application of pre-existing condition exclusions as they move from one non-ACA plan to another.

Perhaps more importantly for individuals with chronic diseases and disabilities, the increased choices for healthier individuals will lead to a segmented market and divergent risk pools that will ultimately make it difficult for high-cost individuals to obtain comprehensive coverage. As healthier people opt out of

PPACA exchanges to enroll in lower-cost coverage options, the Marketplace enrollee population will move closer and closer to a high-risk pool. Issuers in the PPACA-compliant market will be forced to adjust to the increased risk by either leaving the PPACA marketplace or raising premiums, with reduced subsidies to blunt the premium increases for people with pre-existing conditions.

As we are about to enter the 2019 plan year, where market participation and premium growth rates are stabilizing, this proposal has a strong likelihood of taking us backwards, making it harder for individuals with more complex health needs to purchase the meaningful and affordable health coverage needed to manage their conditions.

State waivers that promote purchase of non-compliant coverage could confuse consumers and leave them susceptible to being significantly under-insured.

The Guidance affords states an increased level of flexibility that could significantly undermine critical protections that benefit millions of Americans. Unlike PPACA-compliant plans, AHPs and STLD plans are free to design their benefit offerings to attract healthier people while discouraging sicker individuals from enrolling. They can engage in medical underwriting, decline to renew coverage, and even rescind coverage under certain circumstances. The NHC is concerned that without strong regulatory protections, brokers may be incentivized to sell non-compliant plans, but consumers will not have the information about what STLDI plans or AHPs do and do not cover, or how they differ from Marketplace plans. Absent strong requirements for transparency, consumer choice could be driven by lack of information and inappropriate steering, rather than an understanding of which plan best meets their personal needs.

Similarly, the NHC has serious concerns about whether these plans would convey a substantial benefit to any enrollee who subsequently develops a condition requiring costly medical care. As an example, if a person purchases a STLDI plan while he or she is healthy and is later diagnosed with cancer, he or she may find that the plan has a higher deductible and cost sharing, limited access to specialist care, and no coverage for prescription drugs. Although Marketplace coverage may be available, this enrollee would not be eligible for comprehensive coverage until the next open enrollment period.

Conclusion

The NHC appreciates the opportunity to submit comments on the Guidance. Consumer-driven flexibilities, including promotion of AHPs and STLDI, do not represent increased “choice” for people with chronic conditions. We urge CMS to ensure that any flexibility it affords to states does not make it harder for individuals with complex health needs to purchase the meaningful and affordable health coverage needed to manage their conditions. Therefore, we ask that this Guidance be withdrawn.

Please do not hesitate to contact Eric Gascho, Vice President of Policy and Government Affairs, if you or your staff would like to discuss these issues in greater detail. He is reachable by phone at 202-973-0545 or via e-mail at egascho@nhcouncil.org.

Thank you,



Marc Boutin, JD
Chief Executive Officer
National Health Council