



May 6, 2019

The Honorable Seema Verma
Administrator, Centers for Medicare and Medicaid Services
Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: CMS-9921-NC

Submitted Electronically via www.regulations.gov

Dear Ms. Verma:

I am writing on behalf of the National Association of Health Underwriters (NAHU), a professional association representing more than 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefits specialists. We are pleased to have the opportunity to provide comments in response to your request for information titled "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," published in the *Federal Register* on March 11, 2019.

The members of NAHU work daily to help millions of individuals and employers of all sizes purchase, administer and utilize health insurance coverage. As a national federation with chapters in all 50 states, NAHU supports the critical role states play as the primary regulators of individual health insurance markets. Our members have a long history of working with state policymakers on our top public-policy goal --expanding access to affordable and high-quality private market health insurance options for all Americans -- and we feel the states are best positioned to decide what type of health insurance market options will work best for their specific residents. NAHU members are also exceptionally well-versed on the coverage options that individual consumers have available to them now, as well as what types of coverage options would hold future appeal. We hope that with this response we can share our expertise in health insurance markets and state-level health policy actions with you as it relates to the sale of individual coverage across state lines and healthcare-choice compacts. As requested, please find our direct responses to the specific questions outlined in parts A, B and C of the request for information.

A. Expanding Access to Health Insurance Coverage 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 healthcare choice compacts?



The concept of selling health insurance coverage across state lines has been around for decades, as has the model of using interstate compacts to facilitate bringing new and uniform insurance products to market quickly in multiple states. Neither idea has been particularly successful in practice, particularly concerning traditional major medical individual health insurance coverage. All of the proposals covering these topics at both the state and federal levels would in some way limit the existing primary authority of state-level regulators concerning health insurance markets. Given that states have long-established jurisdiction in this area and each state already has a wide array of valuable consumer- and market-protection laws and regulations geared toward their specific populations in place, the idea of preempting those requirements has been unpopular. Another obstacle is that the cost of providing medical care varies significantly from state to state. Even if it were possible to apply the laws of a less-regulated and lower-cost state to the healthcare market in a different and more expensive state, the mere substitution of another state's legal requirements would not make it less costly to provide access to medical care in the high-cost state. The cost of contracting with providers in the high-cost state and maintaining a high-quality network will not disappear, and reduced insurance market regulation will not make up the price difference. Also, while allowing the sale of the same plans across state lines through a compact can result in some administrative savings, it also creates new challenges, including advertising, legal costs and oversight costs that generally mitigate any gains made in other areas.

2. What actions could the federal government undertake to facilitate the state implementation of the sale of individual health insurance coverage across state lines pursuant to section 1333 of the ACA?

NAHU believes the existing authority provided by Section 1333 is both sufficient and appropriate for states to make reasoned implementation decisions about Section 1333 of the Patient Protection and Affordable Care Act and that no federal action is warranted.

3. While four states have passed laws specifically authorizing the sale of individual health insurance across state lines, we understand that no action to implement these laws has been taken. Additionally, nine states have enacted laws authorizing the creation of interstate health compacts, yet we understand that no such compact has been created. Why have states not taken advantage of these opportunities? Are there federal or state statutory and/or regulatory barriers that prevent states from doing so?

Section 1333 provides ample authority for states to create and implement interstate health insurance compacts, and existing state authority under the McCarran-Ferguson Act already gives state policymakers the ability to allow for and facilitate coverage across state lines, should they choose to do so. Accordingly, no additional federal intervention is necessary. If an individual state government decides at any time that implementing a healthcare choice compact or other means of



facilitating interstate insurance sales would be in the best interest of its citizens, it would be ideally equipped to do so. That no state has taken such action to date indicates that state regulators do not believe their private health insurance markets needs this level of intervention and that the administrative costs and hurdles involved outweigh any potential benefits.

4. Should HHS promote the sale of QHPs through healthcare choice compacts across state lines and why?

If individual states would like to move forward with implementing a Section 1333 compact, then HHS would be involved in the approval and implementation processes and could address the sale of qualified health plans (QHPs) through the healthcare choice compact at that time. Until a state or states reach that phase, NAHU does not believe that there is anything HHS needs to do to promote QHP sales through compacts.

5. How would the sale of individual health insurance coverage across state lines through healthcare choice 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.

If individual states would like to move forward with implementing a Section 1333 compact, then the impact such an agreement would have on QHP access in the affected state(s) could be assessed at that time. NAHU does not believe that there would be any negative impact on QHP access but feels that there is no way to truly ascertain potential impact at this time and that premature speculation is unproductive.

6. Are there mechanisms, such as memoranda of understanding or other contractual arrangements, other than healthcare choice compacts established pursuant to section 1333 of the ACA, 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 licensed by a state as defined under section 2791(d)(14) of the Public Health Service Act (PHS Act) (to include each of the several states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and the Northern Mariana Islands) 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.

Section 1333 applies very clearly to individual major medical health insurance coverage, so NAHU believes that federal legislative action would be necessary to alter and expand its scope.



Furthermore, NAHU does not think that additional federal legislative action to extend Section 1333 applicability to health insurance coverage such as short-term, limited-duration insurance, state-regulated farm bureau coverage that does not meet the federal definition of individual health insurance coverage, or other excepted benefits is warranted at this time, either by consumer demand or by market necessity. Short-term limited duration insurance is already marketed and sold across state lines, according to existing agreements and market arrangements, and given that states retain their authority to approve and allow products to be sold there and under what conditions, we do not see the need for additional federal action in this area.

B. Operationalizing the Sale of Health Insurance Coverage across State Lines

1. Is the structure of healthcare choice compacts contemplated by section 1333 of the ACA effective in facilitating the sale of individual health insurance coverage across state lines? To date, no states have passed laws specifically authorizing the state to enter into a healthcare choice compact under section 1333 of the ACA. Why have states not enacted such laws? Are there any necessary revisions to section to 1333 of the ACA that would facilitate the sale of health insurance coverage across state lines?

Section 1333 provides ample authority for states to create and implement interstate health insurance compacts, and existing state authority under the McCarran-Ferguson Act already gives state policymakers the ability to allow for and facilitate coverage across state lines, should they choose to do so. Accordingly, no additional federal intervention is necessary. While NAHU can only speculate as to why no states have taken action in this area already, based on our routine and direct interaction with state policymakers, individual market consumers and health insurance issuers, we assume that the lack of state action is a direct result of lack of consumer and market demand.

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 healthcare 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 healthcare choice compacts? In what ways could the federal government facilitate expanding and strengthening provider networks?

While NAHU represents independent health insurance agents, brokers and consultants and not health insurance issuers, it is our observation that there are significant financial challenges for smaller issuers looking to develop competitive and high-quality provider networks in other states. The price of medical care varies so much from area to area and hospitals, doctors and other



providers often have longstanding relationships with other in-state issuers. As for national carriers with existing comprehensive provider networks, there is a high cost associated with establishing and maintaining those networks too. There does not appear to be any evidence that selling individual health insurance coverage across state lines through healthcare choice compacts would generate enough savings and administrative simplification to mitigate existing provider contracting concerns or costs. If there were, then the markets would have demanded action in this area already.

3. How would states allowing health insurance issuers to sell individual health insurance coverage across state lines through healthcare choice compacts (if the health insurance coverage only covers health benefits in accordance with federal law and the laws of the state where the coverage is written) impact access to and the utilization of medical services?

One of the many challenges that have impeded the concept of selling coverage across state lines to date, including but not limited to through healthcare choice compacts, is the challenges associated with developing and maintaining high-quality provider networks in a price-efficient way. Since the possible administrative savings related to healthcare choice compacts do not outweigh those cost concerns or other new administrative cost burdens the agreements seem to create, we do not see how compact implementation would positively impact access to and the utilization of medical services. If there were credible evidence that it would, then states, providers, issuers and consumers would have demanded action in this area already.

4. What new and existing consumer protections are needed to protect policyholders that reside in one state but then purchase individual health insurance coverage from a health insurance issuer in another state pursuant to a healthcare 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 was written, pursuant to a healthcare choice compact?

Given that the protections of the ACA for all individual-market consumers remain in place, and CMS has already stated in this RFI that allowing the sale of health insurance coverage across state lines through healthcare choice compacts will not preempt or impede state law or any other role states play as the primary regulators of health insurance, NAHU does not believe that any additional consumer protections are necessary. Instead, state regulators should continue to have primary consumer protection authority over the residents of their state and for policies written, sold and executed in their respective states.



5. To what extent, if any, would the sale of individual health insurance coverage across state lines pursuant to a healthcare choice compact positively or negatively impact the following populations: persons with pre-existing conditions; persons with disabilities; persons with chronic physical health conditions; expectant mothers; newborns; American Indians and Alaska Natives and tribal entities; veterans; and persons with behavioral health conditions, including both mental health and substance use disorder conditions?

Given that the protections of the ACA for all individual-market consumers remain in place, and CMS has already stated in this RFI that allowing the sale of health insurance coverage across state lines through healthcare choice compacts will not preempt or impede state law or any other role states play as the primary regulators of health insurance, NAHU does not see how this policy idea would have any new impact on the specified populations.

6. In general, which statutes or regulations of the issuing state should apply to an individual-market policy sold in another state pursuant to a healthcare choice compact, and which statutes or regulations, if any, of the state in which the policy is sold should apply? To what extent should policies being sold in another state pursuant to a healthcare choice compact be required to cover the state-required benefits of that state, and to what extent should such policies be required to cover the state-required benefits of the issuing state?

NAHU agrees with CMS's assessment in the preamble to the RFI that allowing the sale of health insurance coverage across state lines through healthcare choice compacts should not preempt or impede state law or any other role states play as the primary regulators of health insurance. As such, we believe that existing state authority should prevail.

C. Financial Impact of Selling Health Insurance Coverage across State Lines

1. What policies, including how premiums and rates are established and reviewed, and how risk is pooled, should be in place with respect to rating and pricing of health insurance coverage sold across state lines pursuant to healthcare choice compacts?

If any state(s) pursue action to implement a healthcare choice compact, then individual policies sold pursuant to such a healthcare choice compact will be subject to the individual-market policies concerning premium rates and rate established and approval outlined in both the PPACA and any affected states.

Questions 2-10



Questions two through 10 in this section ask what impact the sale of health insurance coverage across state lines pursuant to healthcare choice compacts would have on the following topics: (a) premiums, (b) out-of-pocket expenses, (c) health insurers operating costs, (d) market participation, (e) the competition and the viability of health insurance issuers that elect not to sell health insurance coverage across state lines, (f) healthcare cost growth and medical inflation, (g) consolidation of health insurance issuers, (h) the market risk pools of the states where the health insurance issuer is domiciled and where the policyholder resides, and (i) the size and composition of the uninsured population. Given that our answer to all of these questions is identical, we have elected to provide a collective response to all nine questions.

There is nothing in federal law or regulation that is precluding state-level lawmakers from fully implementing healthcare choice compacts authorized under Section 1333 of the ACA, yet no state has elected to do so. The concept of the healthcare choice compact hasn't even generated significant political discussion in any state at a time where other health policy ideas and topics are being hotly debated in state legislatures across the land. Moreover, four states have enacted legislation to allow for coverage across state lines in a manner outside of the Section 1333 ACA healthcare choice compacts, and all other states and territories are well within their rights to take similar policy action. Of the four states with enabling legislation on the books, none has seen enough private-market or consumer interest to yield implementation, and no other state or territory has finalized any policy action in this area. The reason why seems abundantly clear: Allowing the sale of health insurance coverage across state lines would have no positive impact on health insurance markets or healthcare costs and competition in any state. Otherwise, state-level policymakers, healthcare stakeholders and consumers would have already demanded definitive policy action.

Conclusion

The members of NAHU sincerely appreciate the opportunity to provide information to you about the concepts of coverage across state lines and healthcare choice compacts. If you have any questions about our comments, or if NAHU can be of assistance as you move forward, please do not hesitate to contact me at either (202) 595-0787 or jtrautwein@nahu.org.

Sincerely,

Janet Stokes Trautwein
Chief Executive Officer
National Association of Health Underwriters