



May 6, 2019

Secretary Alex Azar
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW.
Washington, D.C. 20201

Re: Request for Information on Increasing Consumer Choice Through the Sale of Individual Health Insurance Across State Lines through Health Care Choice Compacts; CMS 9921-NC (RIN 0938-ZB45)

Dear Secretary Azar,

Covered California is submitting comments in response to the request for information (RFI) on the sale of individual health insurance coverage across state lines through Health Care Choice Compacts. We provide the following comments based on our experience and analysis of the necessary efforts to ensure ongoing sustainability for a state-based marketplace, maintaining a viable risk-mix, and providing effective services to the consumers we serve. Through our strong relationships with the 11 health insurance companies participating in Covered California, we have created a robust health insurance market that fosters a competitive environment while empowering consumers to choose plans that give them the best value.

While this RFI is in direct response to the Presidents Executive Order 13813, "Promoting Healthcare Choice and Competition Across the United States," we take this opportunity to highlight the current rules around interstate compacts as well as the importance of patient-centered benefit designs.

As the RFI states, section 1333 of the Patient Protection and Affordable Care Act (ACA) provides specific criteria under which two or more states may enter into a Health Care Choice Compact to offer one or more qualified health plans (QHPs) in the individual market in any state included in the compact. It is important to note that to date, no state has enacted a law authorizing it to enter into a Health Care Choice Compact as described in section 1333 of the ACA. According to the National Association of Insurance Commissioners (NAIC), simply allowing for QHPs to be sold across state lines would not provide consumers with more options. NAIC believes that interstate

sales would actually reduce options to consumers because out-of-state insurers would be able to lure healthy enrollees away from existing risk pools by offering less rich plans. This would in turn force insurers to cover less and less as they attempt to discourage the sickest consumers from applying.¹

The RFI specifically asks for feedback on how states allowing issuers to sell individual health insurance coverage across state lines through Health Care Choice Compacts would impact access to and the utilization of medical services. Research has proven that more choice in benefit design, in fact, has an adverse effect on decision making, leading to consumers making poorer decisions on plan selection, especially among the most financially vulnerable.² It is important to understand that a key driver of health insurance premiums is local costs of health care.³ Simply allowing for the sale of health insurance across state lines does not change the fact that health care is local and that it is enormously difficult for out-of-state insurers to build local provider networks, while meeting local regulatory and benefit mandates.⁴

Since its inception, Covered California has worked through a process that has engaged insurers, clinicians, hospital representatives, and consumer advocates to establish Covered California's [patient-centered benefit designs](#). All 11 health plans participating in Covered California offer identical patient-centered benefit designs, maximizing their impact on consumers and providers' practices while minimizing the confusion for consumers and providers. These priorities align benefit design with the goal of supporting patients in getting the right care at the right time. As stated in the article ["Toward Lower Costs and Better Care — Averting a Collision between Consumer- and Provider-Focused Reforms."](#) published in the New England Journal of Medicine, "The aim is to enable consumers to make apples-to-apples comparisons among plans based on cost and network composition (rather than hard-to-interpret differences in deductibles and copayments) and to ensure that consumers do not face undue financial barriers to receiving primary and other high-value care." Most importantly, Covered California's patient-centered benefit designs allow consumers at every metal tier to visit their primary care physician without being subject to a deductible.

In California, our patient-centered benefit designs work to minimize the factors that consumers must weigh when selecting a health plan to premium, provider network, and quality because the applicability of the deductible is standardized for all benefits within a metal tier. To illustrate the substantial differences that exist between Silver plans in different states, consider the plan choices available in Sacramento, California versus Atlanta, Georgia (see Table 1 below).

¹ [Interstate Health Insurance Sales: Myth vs. Reality](#) – National Association of Insurance Commissioners

² [Do Individuals Make Sensible Health Insurance Decisions? Evidence from a Menu with Dominated Options](#) – Working Paper 21160, National Bureau of Economic Research

³ [Selling Insurance Across State Lines](#) – American Academy of Actuaries

⁴ [Selling Health Insurance Across State Lines: An Assessment of State Laws and Implications for Improving Choice and Affordability of Coverage](#) – The Center on Health Insurance Reforms, Georgetown University Health Policy Institute

Table 1: Comparison of 2018 Silver Plans for a 27-Year Old in Sacramento vs. Atlanta

	Sacramento, CA	Atlanta, GA
Number of Silver Plans	5	11
Number of Carriers	5	2
Monthly Net Premium (after Advanced Premium Tax Credit)	\$244 - \$382	\$270 - \$332
Deductibles	\$2,500 Medical \$130 Drug	\$2,750 - \$7,050 Combined
Maximum Out-of-Pocket	\$7,000	\$6,000 - \$7,350
Factors Consumers Must Consider When Selecting a Plan	Premiums ✓ Deductibles Cost-sharing amounts Maximum Out-of-Pocket Provider Networks ✓ Quality ✓	Premiums ✓ Deductibles ✓ Cost-sharing amounts ✓ Maximum Out-of-Pocket ✓ Provider Networks ✓ Quality ✓

In the 2016 Benefit and Payment Parameters, HHS introduced “standardized options” in the FFE individual market. HHS cited the improvement and stability of the exchanges and support for consumers’ ability to make informed choices when purchasing insurance as the intent for establishing these plans. In the 2016 final rule, HHS established a standardized option with a specific cost-sharing structure at each of the Bronze, Silver, and Gold metal levels that consisted of a fixed deductible; fixed maximum out-of-pocket limit, and fixed copayment or coinsurance for a key set of essential health benefits (EHBs) that comprise a large percentage of the total allowable costs for an average enrollee. In their overview of the 2019 Benefit and Payment rule, in which this Administration sought to dramatically reduce the availability of standardized options, the Commonwealth Fund noted that state-based marketplaces are moving in the opposite direction of the FFM. State-based marketplaces, like

Covered California, have been the leader in simplifying plan options for consumers and driving the individual market toward higher-value health plans.⁵

While HHS states in this RFI that they do not want to preempt state law or impede the role states play as the primary regulators of insurance, the fact is that state regulators can only enforce laws within their jurisdiction. The fragmented and confusing role of regulatory enforcement that is associated with the sale of insurance across state lines will likely lead to fraud and abuse as well as significantly decrease consumer protections. Trying to further expand the sale of insurance across state lines is undoubtedly an attempt to impede the role states play as the primary regulator of insurance.

Thank you for your consideration of our comments. If you have any questions or would like more information, please feel free to contact me.

Sincerely,



Peter V. Lee
Executive Director

cc: Covered California Board of Directors

⁵ [The Trump Administration's New Marketplace Rules: Regulatory Simplification or More Complexity for Consumers?](#) –The Commonwealth Fund