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ACA CHIROPRACTORS Hands down better™

May 3, 2019

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
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 ChoiceCompacts

Dear Ms. Verma:

The American Chiropractic Association (ACA) appreciates the opportunity to submit comments regarding the Centers for Medicare & Medicaid Services (CMS) request for information on Patient Protection and Affordable Care Act: Increasing Consumer Choice through the Sale of Individual Health Insurance Coverage Across State Lines Through Health Care ChoiceCompacts.[1] ACA, the largest organization in the United States representing doctors of chiropractic (DCs), is leading the chiropractic profession in the most constructive and far-reaching ways – by working hand in hand with other healthcare professionals, reporting functional outcome assessment measures, by supporting meaningful research, and by using that research to inform chiropractic practice. ACA members pledge to adhere to the highest standards of ethics and patient care, contributing to the health and well-being of the estimated 35 million individuals across the country who seek chiropractic care each year.

Under the federal Employee Retirement Income Security Act (ERISA), association health plans (AHPs) are classified as Multiple Employer Welfare Arrangements (MEWAs), and they are generally subject to state insurance regulation. Specifically, non-fully insured AHPs are currently subject to any state insurance law so long as that state law is not inconsistent with ERISA. Therefore, non-fully insured AHPs should be subject to state benefit mandates under current federal law. This would include state insurance equality laws—those, for example, that prohibit insurers from excluding coverage for services provided by a chiropractic physician if those services are within the chiropractor's scope of practice and also covered if performed by another licensed physician. Patients nationwide benefit from these important consumer protection laws by being able to choose (using this example) chiropractic services instead of more costly and potentially risky pharmacological treatments.

[1]Patient Protection and Affordable Care Act: Increasing Consumer Choice through the Sale of Individual Health Insurance Coverage Across State Lines Through Health Care ChoiceCompacts
www.regulations.gov/document?D=CMS-2019-0045-0001

ACA is deeply troubled that by exempting non-fully insured AHPs from state consumer protection insurance laws, such as insurance-equality or any-willing-provider laws, chiropractors and their patients would have no protection from coverage discrimination by these plans. Although the Affordable Care Act contains a provision (Public Health Service Act, Section 2706) that prohibits group health plans, including non-fully insured AHPs, from discriminating with respect to participation under the plan or coverage against any healthcare provider acting within the scope of their license, enforcement of that law has been weak at both the state and federal level.

ACA supports the role of state insurance commissioners as the first line of defense against insurance abuses. However, as outlined by the American Academy of Actuaries,[2] the viability of many state markets would be challenged because AHPs could operate under separate rules than those competing plans that must follow existing state regulations. For this reason, the National Association of Insurance Commissioners (NAIC), along with numerous business and interest groups, have opposed proposals to expand the use of AHPs, particularly proposals that would exempt AHPs from state regulation.[3] It is worth noting that during previous congressional debate on this issue, more than 1,000 state government, business, labor, consumer and provider groups opposed the expansion of AHPs nationwide.[4]

ACA is also concerned that this new scheme would not require insurers to comply with many patient protections called for under the Affordable Care Act, such as essential health benefits (EHBs). Under the AHP concept, a bare-bones plan could be designed that could siphon off healthier patients and ultimately lead to higher premiums for consumers and employers who buy plans in the traditional insured markets. In an earlier proposed rule, ACA expressed apprehension that undermining the current EHB structure would create a patchwork of standards across the country and recommended that there must be continued federal interaction on this vital component of the Affordable Care Act.[5] Anything less may result in the unintended consequence of patients losing important health benefits.

Yet another troubling provision with the association health plan concept is one that would exempt insurers who market these new AHPs from spending at least 80 percent of premium revenue on actual medical care. The current 80/20 rule, or Medical Loss Ratio, called for under the Affordable Care Act,[6] has bipartisan support and ensures patients that at least 80 percent of their premiums are going to actual healthcare costs and not in the pockets of corporate executives. Eliminating this rule could result in higher premiums, and insurers would be free to spend unchecked on extraneous overhead items.

Regarding Section 1333 of the Affordable Care Act, which allows two or more states to enter into a Health Care Choice Compact, ACA has many concerns regarding this provision and CMS' plans to issue applicable rules. While four states have passed legislation authorizing the sale of health insurance

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[2] American Academy of Actuaries, Issue Brief, Association Health Plans, February 2017 http://www.actuary.org/content/association-health-plans-0

[3] National Association of Insurance Commissioners, Letter to Congress http://www.naic.org/documents/government_relations_170712_ltr_small_business_health_plan_prov_bcra.pdf

[4] Congressional Record May 13, 2004, p. H2961 https://www.congress.gov/crec/2004/05/13/CREC-2004-05-13-pt1-PgH2951.pdf

[5] Comments of the American Chiropractic Association, re:CMS-9930-P, Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2019 https://www.acatoday.org/LinkClick.aspx?fileticket=DOmXReD-Awg=&portalid=60

[6] Rate Review & the 80/20 Rule https://www.healthcare.gov/health-care-law-protections/rate-review/

across state lines,[7] ACA notes that *no* states have passed legislation authorizing the state to enter into a "Compact" and that no insurer has offered coverage in any such scheme. To this end, ACA believes the tepid response to this arrangement is evidence that neither states nor insurers see this type of program as a panacea to greater coverage. In fact, as pointed out by The Commonwealth Fund, "six states have already found [out] that cross-state sales will do nothing to improve consumers' choices or lower premiums"[8]

Finally, ACA finds the federal court ruling last month in Washington, D.C.,[9] as further evidence of the precarious nature of selling insurance across state lines. Calling the Administration's rules on association health plans an "end run around the Affordable Care Act,"[10] the ruling blocks implementation of AHPs and found that such a program envisioned by the federal government "does violence"[11] to ERISA. ACA supports this ruling and urges the Administration to cease attempts to implement phantom coverage and disrupt state patient protections.

In summation, interstate sales—the core of association health plans called for under this proposal—will start a "race to the bottom" by allowing insurers to choose their regulator. This is not sound policy for the consumer or the provider. CMS needs to scrap this proposal and instead offer a viable solution that maintains states' regulatory and oversight authority, which is vital to their traditional role in protecting patients and insurance markets. It is ACA's view that while the aim of providing more coverage to more people is indeed laudable, the pure notion that state protections, many of which patients have spent decades achieving and which would be suddenly wiped out by the concept of association health plans, is simply unacceptable.

ACA appreciates the opportunity to provide these comments for your consideration. We believe that ensuring state oversight of all plans marketed within their states will ensure patients receive high-quality care that is responsive to their needs and preferences, and that comes at a cost both they and the government can afford. If you have any questions regarding our comments or need more information, please contact John Falardeau at jfalardeau@acatoday.org or at (703) 812-0214.

Respectfully,

Robert C. Jones, DC
President

[7] Georgia, Maine, Oklahoma, Wyoming
[8] Corlette, Lucia, The Commonwealth Fund April 2017
[9] State of New York, et. al. v. United States Department of Labor, et. al. MEMORANDUM OPINION, March 28, 2019
[10] Ibid, p. 2
[11] Ibid, p.2