



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

May 6, 2019

**SUBMITTED ELECTRONICALLY VIA [www.regulations.gov](http://www.regulations.gov)**

Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

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**

Dear Administrator Verma:

The Consortium for Citizens with Disabilities Health Task Force (“CCD HTF”) appreciates the opportunity to comment on the Centers for Medicare and Medicaid Services (“CMS”) request for information (“RFI”) regarding the sale of individual health insurance across state lines.<sup>1</sup> CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD Health Task Force focuses on health care policy from the perspective of individuals with disabilities and chronic conditions.

While the CCD HTF shares CMS’s goal of increasing access to affordable health care, we are concerned that CMS’s proposal to expand the sale of health insurance across state lines would leave adults and children with disabilities with less comprehensive coverage and higher out-of-pocket costs. It is of utmost importance that qualified health plans (“QHPs”) do not provide a false sense of health insurance coverage by offering minimal benefits in exchange for lower premiums. This comment letter will focus largely on access to key essential health benefits (“EHBs”) for individuals with disabilities, including but not limited to rehabilitation and habilitation services and devices, mental health and substance use disorder services, behavioral health care, prescription drugs, and chronic disease management, as well as pre-existing condition exclusions, network adequacy requirements, and other provisions that impact individuals with disabilities.

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<sup>1</sup> 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, 84 Fed. Reg. 8,657 (Mar. 11, 2019).

## **I. Health Care Choice Compacts (Section 1333 of the ACA)**

In the RFI, Health Care Choice Compacts (“HCCCs”) implemented under Section 1333 of the Affordable Care Act (“ACA”) are the primary mechanism through which CMS seeks to expand the ability of issuers to sell insurance across state lines. Section 1333 of the ACA authorizes CMS to implement a regulatory framework that allows two or more states to enter into a HCCC.<sup>2</sup> Under a HCCC, a health insurance issuer can offer one or more QHPs in the individual health insurance market in any state included in the HCCC. In order to enter into a HCCC, a state must pass legislation specifically authorizing it to do so and the HCCC must be approved by CMS.

As CMS notes in the RFI, to date, no states have entered into a HCCC. Despite having been the law for almost 10 years, states have not gravitated toward this approach or pursued the sale of insurance across state lines through a HCCC in any meaningful way, indicating that this is not a fruitful practice to pursue. In addition, despite the fact that four states (Georgia, Maine, Oklahoma, and Wyoming) have passed laws authorizing the sale of health insurance coverage across state lines in certain circumstances, no health insurance issuers appear to be selling health insurance coverage across state lines under these laws. The lack of engagement in the cross-state sale of insurance under these existing laws is further evidence that CMS’s pursuit of this policy proposal is not a practical approach to increasing access to affordable health care.

## **II. Impact on Individuals with Disabilities**

In the RFI, CMS specifically asked about the impact of the sale of insurance across state lines on individuals with disabilities:

To what extent, if any, would the sale of individual health insurance coverage across state lines pursuant to a Health Care 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?<sup>3</sup>

As a coalition representing people with disabilities and chronic conditions, we appreciate CMS’s interest in obtaining the comments from our community on this RFI. The CCD HTF has significant concerns that the sale of insurance across state lines may lead to a reduction in the cost of insurance but at a great price; an increase in the sale of bare bones insurance coverage that prevents unsuspecting enrollees from accessing benefits when they need them. The CCD HTF is particularly concerned about the impact of this proposal on application of pre-existing condition exclusions through some of the new insurance products permitted through state flexibility (e.g., short-term, limited duration plans and association health plans). But our principal concern relates to access to EHBs for individuals with disabilities and chronic conditions, including but not limited to rehabilitation and habilitation services and devices, mental health and substance use disorder services, behavioral health care, prescription

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<sup>2</sup> 42 U.S.C. § 18053(a). As CMS notes in the RFI, the statute requires CMS, in consultation with the National Association of Insurance Commissioners, to issue regulations implementing this provision no later than July 1, 2013; however, CMS has not yet promulgated any regulations implementing Section 1333 of the ACA.

<sup>3</sup> 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, 84 Fed. Reg. 8,657, 8,660 (Mar. 11, 2019).

drugs, and chronic disease management, as well as network adequacy, transparency, and dispute resolution with out-of-state issuers.

#### **a. Access to EHBs**

People with disabilities rely on services from all EHB categories to maintain their health, function, and ability to live independently in their communities. Any reduction in overall benefit coverage resulting from the sale of insurance across state lines would have a serious negative impact on individuals with disabilities. While the statute requires that issuers still be subject to certain laws and regulations of the state in which an enrollee resides (such as network adequacy and consumer protection standards),<sup>4</sup> issuers would not be required to comply with the benefit coverage requirements of the enrollee's state. As a result, the CCD HTF has significant concerns that issuers and consumers would gravitate toward the least comprehensive and least expensive plans, thereby creating a "race to the bottom" in terms of benefit coverage.

A reduction in coverage of EHBs, particularly rehabilitation and habilitation services and devices, mental health and substance use disorder services, behavioral health care, prescription drugs, and chronic disease management, would not dramatically decrease the cost of insurance packages overall, but would likely lead to very high increases in out-of-pocket costs for children, families, and adults who need these services. This is particularly true for coverage of rehabilitation and habilitation care which accounts for just 2% of total premium dollars. Reducing coverage of these services included in these key EHB categories (rehabilitation and habilitation services and devices, mental health and substance use disorder services, behavioral health care, prescription drugs, and chronic disease management) may also result in further complications and avoidable hospital admissions and readmissions, as well as additional costs resulting from reduced independence for individuals with disabilities and chronic conditions.

#### **b. Network Adequacy**

Despite the fact that the statute requires issuers to comply with the network adequacy laws and regulations of the state in which an enrollee resides, the CCD HTF still has significant concerns regarding the ability of out-of-state issuers to adhere to patient-friendly network adequacy standards. Such networks must provide ample access to the full complement of professionals and facilities that provide both primary and specialty care. Services should be provided based on the individual's needs and prescribed in consultation with an appropriately credentialed clinician. All providers must be physically and programmatically accessible under the Americans with Disabilities Act of 1990, as amended. In addition to primary care networks, such provider networks should include (but not be limited to) the following types of providers that typically serve the disability community, including:

- Physician specialty services such as physical medicine and rehabilitation, neurology, orthopedics, rheumatology, and many other subspecialties, including physicians serving pediatric populations;
- Clinicians engaged in psychiatric rehabilitation, mental health and substance use disorder services, behavioral health care, cognitive therapy, and providers of psycho-social services provided in a variety of inpatient and/or outpatient settings;

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<sup>4</sup> 42 U.S.C. § 18053(a)(1).

- Post-acute rehabilitation programs such as inpatient rehabilitation hospitals and units, skilled nursing, home health, and home and community based services; and,
- Durable medical equipment specialists and appropriately credentialed prosthetists and orthotists, as well as other practitioners who provide assistive devices and technologies to individuals with disabilities.

Presently, many issuers offer limited provider networks that restrict access to these necessary types of providers. We believe that the adequacy of a plan's provider network dictates the level of access to benefits otherwise covered under the health plan. If a plan covers a benefit but limits the number of providers or specialists under that plan, coverage will be curtailed through a lack of access to providers with sufficient expertise to treat the enrollee. Additionally, network adequacy standards should ensure that persons with disabilities are not burdened by significant traveling distances in order to receive covered services under a plan. The CCD HTF is concerned that out-of-state issuers would face significant challenges in establishing provider networks that meet these standards, thus exacerbating the problem of lack of access to critical services and devices for people with disabilities and chronic conditions.

### **c. Transparency and Dispute Resolution**

While the statute requires that issuers notify policyholders that their coverage may not otherwise be subject to the laws of the state in which the policyholder resides,<sup>5</sup> the CCD HTF has serious concerns that a purchaser may not be aware that an out-of-state plan does not cover benefits mandated by their state. This would potentially leave policy holders unaware that they have inadequate coverage when they need it most, resulting not only in reduced access to care, but also higher out of pocket costs. If CMS pursues this policy, issuers should be required to explicitly list the benefit categories that are required to be covered in the state that the purchaser resides but are not covered (or are covered, but with additional limitations, cost caps, or other conditions) by the out-of-state plan.

The CCD HTF is also concerned that consumers dealing with out-of-state insurance companies may have difficulty resolving disputes under their insurance contracts. Consumers may experience difficulty with contacting an out-of-state issuer, or confusion about whether to contact an insurance regulator in the state where the purchaser lives or the state in which the issuer is established with complaints about an issuer. In addition, out-of-state issuers may be subject to different regulations governing dispute resolution than issuers in the state in which the purchaser resides, leading to greater confusion and barriers to effective dispute resolution between issuers and individuals enrolled in out-of-state plans.

As discussed in this comment letter, access to insurance that covers the full complement of EHBs, including but not limited to rehabilitation and habilitation services and devices, mental health and substance use disorder services, behavioral health care, prescription drugs, and chronic disease management, is highly cost-effective as it decreases downstream costs to the health care system and society at large. In light of the concerns discussed in this comment letter, the CCD HTF strongly cautions CMS against pursuing this policy. If CMS does pursue this policy, however, it is essential that any regulatory framework for the sale of insurance across state lines require transparency about access to the full continuum of care and eliminate barriers to resolving disputes with out-of-state issuers.

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<sup>5</sup> 42 U.S.C. § 18053(a)(1)(B)(iii).

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The CCD HTF shares CMS's goal of reducing the costs of health care and promoting competition in the health insurance marketplace. However, the CCD HTF has significant concerns that CMS's proposals in this RFI would risk dilution of current pre-existing condition protections, reduce access to EHBs, and, at the same time, increase out-of-pocket costs and enrollee burden in accessing care. The CCD HTF urges CMS to pursue policies that preserve access to comprehensive health care coverage in order to reduce costs to the health care system and ensure that children and adults with disabilities and chronic conditions can maximize their health and independent function through access to necessary services.

We greatly appreciate your attention to our comments on the proposals in this RFI. Should you have further questions regarding this information, please contact Peter Thomas.

Sincerely,

The Health Task Force Co-Chairs:

Rachel Patterson, Epilepsy Foundation

Peter Thomas, Brain Injury Association of America

Julie Ward, The Arc of the United States