May 6, 2019

The Honorable Seema Verma
Administrator, Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Washington, D.C. 20021
Attn: CMS-9921-NC

Dear Administrator Verma:

The Healthcare Leadership Council (HLC) appreciates the opportunity to comment on the Administration's Request for Information (RFI) on "Increasing consumer choice through the sale of individual health insurance coverage across state lines through healthcare choice compacts."

HLC is a coalition of chief executives from all disciplines within American healthcare. It is the exclusive forum for the nation's healthcare leaders to jointly develop policies, plans, and programs to achieve their vision of a 21st century healthcare system that makes affordable high-quality care accessible to all Americans. Members of HLC – hospitals, academic health centers, health plans, pharmaceutical companies, medical device manufacturers, laboratories, biotech firms, health product distributors, post-acute care providers, home care providers, and information technology companies – advocate for measures to increase the quality and efficiency of healthcare through a patient-centered approach.

While we applaud the intent of providing more health insurance coverage options to individuals, we have concerns about allowing the sale of health insurance across state lines. This approach in fact, may cause more unpredictability that could result in higher premiums. Further, each state has unique regulatory requirements for the sale of private health insurance, making sales across state lines subject to another state's regulatory requirements a challenge. You cannot have two sets of rules in the same market. If issuers operating in the same market are allowed to offer coverage under different rating and/or benefit rules. Premiums may decrease for plans that are designed to attract healthier individuals and groups, but in contrast, premiums will likely increase for plans that attract less healthy individuals and groups. This could result in adverse selection.

Furthermore, if issuers are permitted to bypass state regulation, particularly rating and benefit rules, market segmentation and destabilization will likely occur. This destabilization can prompt issuers to exit the health insurance market and potentially result in some geographic areas without any coverage options. In addition, regardless of where an insurer is licensed, premiums would reflect the costs of healthcare in an individual's state of residence. The ability to lower premiums by allowing sale of insurance across state lines is limited because a key driver of health insurance premiums is local costs of healthcare. Individuals in a high-cost area would not pay lower premiums by purchasing coverage from an issuer licensed in a low-cost state.

Lastly, the biggest barrier to issuers selling across state lines is the ability to negotiate favorable contracts with networks of hospitals and physicians. For insurers to sell across state lines, they must develop provider networks by establishing reimbursement agreements with hospitals and physicians, or by purchasing access to an existing network. Out-of-state insurers, especially small insurers may have difficulty in negotiating with providers. Small insurers may have trouble achieving significant provider discounts in other states which leads to a competitive disadvantage relative to larger insurers and others that may already have a presence in the state.

If the Centers for Medicare and Medicaid Services (CMS) does decide to proceed with guidance promoting the sale of health insurance across state lines, HLC believes the U.S. Department of Health and Human Services should implement interstate healthcare choice compacts under section 1333 of the Affordable Care Act by issuing proposed regulations for comment that address the concerns described above. This will help to ensure that one clear set of rules applies to all issuers in a market and that states will continue to have authority to regulate products and protect consumers within their state lines.

Section 1333 appropriately requires that issuers be subject to rules related to market conduct, unfair trade practices, network adequacy, and consumer protection standards, including standards relating to rating, filing of products and addressing disputes as to the performance of the contract of the state in which the purchaser resides. The proposed regulations should detail how states must agree to what these rules will be as part of a compact. Under a compact, states should have the authority to conduct rate review over products and states should decide for themselves whether to enter into compacts. Additionally, CMS will need to clarify how risk adjustment will work for products sold across state lines.

Thank you again for the opportunity to provide feedback on selling individual health insurance across state lines. HLC looks forward to continuing to collaborate with you on this issue. If you have any questions, please do not hesitate to contact Debbie Witchey at (202) 449-3435 or dwitchey@hlc.org.

Sincerely,

Mary R. Grealy

Mary R. Grealy
President