March 7, 2017

Centers for Medicare & Medicaid Services,
Department of Health and Human Services,
Attention: CMS-9929-P,
P.O. Box 8016,
Baltimore, MD 21244-8016

To Whom It May Concern:

The following comments on the proposed "Market Stabilization" regulation as published February 9, 2017, are submitted on behalf of the members of the National Association of Insurance Commissioners (NAIC), which represents the chief insurance regulators in the 50 states, the District of Columbia, and the 5 United States territories.

General Comments

The members of the NAIC agree with the Administration that stabilizing the individual market in 2018 should be a top priority. In some states the individual health insurance market is struggling and, in a few, it is near collapse. In these states, premium increases, limited plan options, little or no competition, rising cost-sharing, and narrowing networks have combined to create a health insurance market that fails to meet the needs of consumers and is unsustainable. However, in some other states the individual market is robust with increased enrollment and premiums have stabilized. Insurance markets are local, and the different experiences around the country reinforce the need for increased state flexibility and deference.

While the time to comment on this proposed regulation is limited, state regulators understand the need to move quickly. Carriers are already developing plans and calculating rates for 2018, and considering whether they will participate on the Exchanges or in the market at all in 2018. Action must be taken now to eliminate unnecessary regulatory burdens and stabilize the risk pools. We believe, overall, this regulation is a step in the right direction.

Specific Comments

§147.104 Guaranteed Availability of Coverage

There is some concern amongst state regulators about the impact of the proposal to allow carriers to collect outstanding debts before effectuating enrollment in the same or different plan for the new year. State regulators would like to see more clarity in the regulatory language regarding what is meant by "non-payment of premiums" and "outstanding debt." There is concern that a consumer may have not paid premiums for legitimate reasons (such as, Exchange errors that enrolled the consumer in multiple plans) and that consumers may be required to pay for months during which they had no coverage under the grace period.

State regulators also request that the final regulation make clear that any decision by the carrier to require back payment is subject to state appeals processes and that states can determine what "uniform application" means. We also request that this be an option for State-Based Marketplaces, not a requirement.

§155. 410 Initial and Annual Open Enrollment Periods

While state regulators understand the desire to end the open enrollment period on December 15th in order to avoid having plans begin in February or March and to stabilize the markets, there is concern that the Exchange enrollment systems and call centers may not be able to handle the volume. This may also be an issue for agents and brokers, especially since this will coincide with the Medicare open enrollment period. We ask that the Administration provide sufficient resources to ensure the systems are ready and the call centers are properly staffed to ensure smooth enrollment. We also encourage you to make limited allowances for extending the enrollment period only if a backlog occurs.

As in the past, we also recommend that State-Based Marketplaces be allowed to set their own open enrollment period.

§155.420 Special Enrollment Periods

The NAIC has long encouraged the federal government to verify Special Enrollment Periods applications and worked with the former Administration on the pilot program that was set to begin June 2017. We support extending verification to all applications and, in principle, agree with the limitations the proposed regulation places on coverage that may be purchased during a Special Enrollment Period.

However, we do have some recommendations: 1) There should be a maximum period (say, 30 days) for the review of the supporting materials by the Exchange, otherwise the application is deemed approved by the Exchange; and, 2) there should be an expedited review for simple cases, such as, marriage or newborn child.

In addition, the final regulation should clearly state that state enrollment laws are not preempted and that State-Based Marketplaces have the flexibility to set their own standards for review.

Finally, state regulators acknowledge that the new limitations placed on coverage obtained during a Special Enrollment Period may add to consumer confusion. We recommend that the Administration work with state regulators, carriers and agents/brokers to ensure consumers are educated as to their options during a Special Enrollment Period.

§156.140 Levels of Coverage

While some states support the proposed changes to the actuarial value de minimis levels, some states have expressed strong concerns about the impact this would have on subsidies (the value of the second-lowest Silver Plan) and the variety in plan designs between metal levels. Given the complexity of this issue, the Administration may want to delay any action until after 2018.

§156.230 Network Adequacy

State regulators have expressed for many years their opposition to unnecessary federal interference in network adequacy review. This interference has proven costly to carriers without increasing protections for consumers. Therefore, we support the language in the proposed regulations and the NAIC will continue to work with states to improve the oversight of carrier networks.

§156.235 Essential Community Providers

State regulators support reducing the Essential Community Provider threshold percentage to 20%. This will allow more insurers to cover rural and underserved areas. We also recommend that the Administration consider revising the current regulation that counts a provider group with many providers as only one provider. This, too, would make it easier for carriers to enter into contracts and provide coverage in rural and underserved areas.

QHP Certification Timeline

As for the revised QHP certification and rate review timelines, which were published separately, state regulators urge the Administration to move the deadline for finalizing QHP filings to August 23, 2017, to allow for the same review period as last year. As proposed, states would have only 22 business days from final submission to final approval (July 17th – August 16th). Many states did not receive rate filings in 2016 until very close to the July 15th deadline due to insurers waiting until the Risk Adjustment results were posted on June 30th. In some cases, insurers submitted rates and then re-submitted them once the Risk Adjustment data was available. Moving the date back would provide states sufficient time for their review, and would give the federal administrators the same amount of time as last year to implement the final plans into the system.

Other Issues

In addition to the issue addressed in the proposed regulation, we would like to raise the following for your consideration:

- The NAIC recommends that the Administration withdraw the regulation that defines a "short-term limited duration plan" as one that provides coverage for three months or less. As we have stated in past letters and comments, this three-month limitation is arbitrary and does not take into account the needs of all consumers. The definition and limitations of these plans should be left to the states as they are not specifically set forth in federal law.

- The NAIC remains very concerned about the impact the Affordable Care Act (ACA) has had on the Territories. Since residents of the Territories do not receive subsidies and are not subject to the individual mandate, the individual markets in the Territories have been devastated. We encourage the Administration to consider the impact of any laws and regulations on the Territories and ensure they are not adversely affected.

Thank you for this opportunity to comment. As state regulators continue to review the ACA and its impact on market competition, premiums, and consumer protections, we will continue to provide comments. We are available to discuss these or other issues as the regulation is finalized.

Sincerely,

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