

May 14, 2020

The Honorable Alex Azar  
Secretary of Health of Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable Seema Verma, Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Azar and Administrator Verma:

Thank you for your continued efforts to mitigate the COVID-19 pandemic and bring an end to our national emergency. We appreciate the Administration's collaboration with states in addressing this national challenge. State insurance regulators are also working to make sure insurance markets meet the immediate and long-term needs of consumers, insurers, and other stakeholders. On behalf of the membership of the National Association of Insurance Commissioners<sup>1</sup>, we write to request that you take a number of actions to strengthen health insurance markets, namely providing maximum flexibility on 2021 rate review deadlines; clarifying the financing of surveillance testing; and expediting access in the Federally-facilitated Marketplaces to the already-codified special enrollment period for consumers with declining income.

State regulators will soon begin the process of reviewing insurers' proposed rates for plan year 2021 and carriers are already developing them. As states set their deadlines for submission, posting, review and approval of rates they must balance the need for data and the availability of state resources, and they must comply with various Federal deadlines. We thank you for your recent announcement that the initial filing, posting, and final submission dates have been moved back. This will provide states the flexibility they need as they work closely with their carriers to ensure the most accurate rates for 2021.

Adding to the complexities of setting rates for upcoming years is the recent U.S. Supreme Court ruling in *Maine Community Health Options v. United States* which allows carriers to seek \$12 billion in back Risk Corridor payments. How these payments are accounted for and included in the Medical Loss Ratio formula could have significant impact on rates and payments to consumers. We urge your Department to consult with the NAIC and state regulators as the key decisions are made about how these funds are to be handled.

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<sup>1</sup> Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and the five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

Testing for coronavirus infection and exposure is a critical means to understand and control the spread of the pandemic, especially as states begin the process of re-opening businesses. As this testing continues, two key issues have arisen: what tests should be covered and how are these tests to be financed?

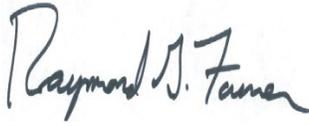
We encourage the Department to provide more consistent guidance related to testing protocols and payment. CMS guidance has indicated testing should be covered by insurers when medically necessary, but there are still many questions about the application of medical necessity standards and FDA guidance is less clear about the value of various tests. States, local governments, employers, and carriers would benefit from a consistent and clear message about what tests are approved for what uses and in what circumstances they should be covered by insurers.

On the issue of financing tests, we note that Congress has recognized the need to provide federal resources for testing through the Paycheck Protection Program and Health Care Enhancement Act. Funding has been provided to state or local entities to support a system of testing that makes most sense for that state. We believe that states are the appropriate entities to determine how testing is financed within the parameters set out by the federal government. We are also hopeful that the federal funding made available to states so far will be sufficient to support the testing that is essential to states' ability to reopen their economies but given the major fiscal challenges that states are facing as a result of the coronavirus pandemic, additional federal funding may be necessary.

Finally, as you know, the pandemic is challenging the health and economic security of many Americans and access to comprehensive health insurance can help protect both health and family finances. We encourage you to act quickly to allow more Americans to enroll in comprehensive coverage through Marketplaces on the federal platform using the special enrollment period (SEP) codified at 45 CFR 155.420(d)(6)(v). This SEP allows enrollment of an individual or dependent when he or she was previously enrolled in minimum essential coverage, experiences a decline in income, and is newly determined eligible for premium tax credits. With so many families facing falling incomes, it's particularly important to make this SEP available. Many people who responsibly enrolled in coverage outside of the Marketplace may now have lower income and struggle to afford their premiums—they are the very people Marketplaces and premium tax credits were intended to assist. But even if they are eligible for tax credits, these individuals are unable to access them in Marketplaces on the federal platform because this SEP has not been operationalized. We ask you to make this SEP available as soon as possible.

Thank you for considering these requests from state insurance regulators. Your prompt action in these areas will help keep state health insurance markets stable and allow more Americans to access much-needed coverage. State regulators pledge to continue to work closely with you, your Department, and other federal officials toward to goal of defeating this deadly disease. Please reach out immediately to NAIC staff if there is any additional assistance we can provide in this effort.

Sincerely,



**Raymond G. Farmer**  
**NAIC President**  
Director  
South Carolina Department of Insurance



**David Altmaier**  
**NAIC President-Elect**  
Commissioner  
Florida Office of Insurance Regulation



**Dean L. Cameron**  
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**Michael F. Consedine**  
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