

May 2, 2019

Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
Attention: CMS-9921-NC  
P.O. Box 8016  
Baltimore, MD 21244-8016

*Via Regulations.gov*

To Whom It May Concern:

In response to the request for information (RFI) on the sale of individual health insurance coverage across state lines through Health Care Choice Compacts, the National Association of Insurance Commissioners (NAIC) submits the following comments on behalf of its members, the chief insurance regulators in the 50 states, the District of Columbia, and the United States territories.

The Department of Health and Human Services seeks comment about actions that could further facilitate selling individual health insurance coverage across state lines. As noted in the RFI, no federal law prohibits the sale of health insurance across state lines. States already have authority to permit sales of non-domiciled plans to their residents. We believe that states should remain in the driver's seat with regard to allowing or promoting interstate sales and that no further action by the federal government is warranted. In particular, state regulators strongly oppose any efforts at the federal level to pre-empt state licensing requirements to allow interstate sales.

Opening a state's individual insurance market to issuers licensed in another state could potentially have benefits for some consumers. However, the potential benefits must be weighed against the risk to markets from the un-level playing field that could be created. When plans compete for the same consumers but need not follow the same market regulations the potential for adverse selection is high. Lower-risk consumers are likely to be attracted to plans with less coverage and fewer consumer protections, while higher-risk consumers will more often seek plans with greater coverage and protections. States regulate their insurance markets to manage these risks and states remain the most appropriate entities to weigh the risks and benefits of interstate sales.

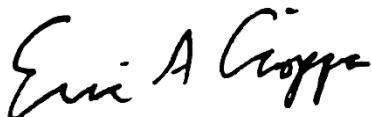
Health Care Choice Compacts, as outlined in Section 1333 of the Affordable Care Act, attempted to address the problem of an un-level playing field by requesting that the NAIC develop standards for these interstate compacts to protect consumers and preserve healthy markets. The Department of Health and Human Services never officially asked the NAIC to develop these standards, and no regulations were ever developed. Even if regulations had been developed, it is unlikely states would have implemented compacts using the federal rules because states are already free to develop multi-state compacts that meet their specific needs – no federal standards are necessary.

While they have not adopted laws to create Health Care Choice Compacts under the ACA, a number of states have enacted laws to permit sales of health insurance across state lines, demonstrating that there is no legal barrier to doing so. These states have each taken a different approach, none of which has, to date, resulted in insurers offering comprehensive health insurance in a state in which it is not licensed. This shows that the impediments to interstate sales are not in federal law but are inherent in the business of health insurance. The challenges of contracting with provider networks, managing risk pools and costs, and providing customer service to consumers in states in which the insurer is not licensed are considerable – and obtaining a license is not difficult.

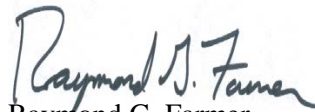
Further, federally-directed sales of health insurance coverage across state lines would frustrate the ability of state insurance regulators to fulfill one of their central obligations—to provide protection and counsel to insurance consumers in their states. The regulators of one state have no authority to enforce the laws of another state, so a regulator could offer little protection to a state resident who purchased health insurance licensed by another state. Instead, consumers would have to hope that the regulator in a distant jurisdiction has the ability and resources to assist consumers nationwide, which is uncertain due to funding and staff limitations. Allowing interstate sales only when considered and authorized by the laws of the states involved (as already permitted) preserves the ability of state regulators to develop interstate enforcement and consumer protection agreements that keep consumers protected.

Thank you for this opportunity to comment.

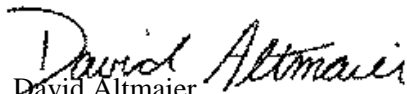
Sincerely,



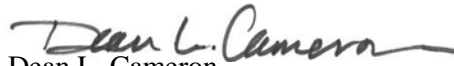
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