



A Passionate Voice for Compassionate Care

December 21, 2018

Ms. Seema Verma
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, D.C. 20201

**Re: CMS-9936-NC
State Relief and Empowerment Waivers: Guidance**

Dear Administrator Verma:

The Catholic Health Association (CHA) is the national leadership organization of the Catholic health ministry, representing more than 2,000 Catholic health care sponsors, systems, hospitals, long-term care facilities and related organizations across the continuum of care. CHA represents the largest not-for-profit providers of health care services in the nation. With more than more than 5 million admissions to Catholic hospitals each year, including one million Medicaid admissions, 1 in 6 patients in the United States is cared for in a Catholic hospital each year. All 50 states and the District of Columbia are served by Catholic health care organizations and approximately 750,000 individuals are employed in Catholic hospitals.

CHA appreciates the opportunity to comment on the referenced guidance issued by the Centers for Medicare and Medicaid services. The guidance would modify the process for determining if states' requests for waivers of Affordable Care Act (ACA) requirements meet statutory protections intended to ensure that state waiver programs maintain coverage options that provide at least the level of access and affordability as under the ACA. CHA has long worked for policies to make comprehensive health care affordable and accessible to everyone and is strongly committed to ensuring that coverage under the ACA and states' waiver programs is available, affordable, stable and meaningful. **Because of this, we have grave concerns with the new guidance and urge you to reconsider the changes.**

Under section 1332 of the ACA, states are able to waive certain provisions of law in order to implement innovative programs so long as those programs achieve four statutory guardrails. The waiver program must provide coverage that is as (1) comprehensive and (2) affordable as coverage under the ACA, and it (3) must provide coverage to a comparable number of people as under the ACA and (4) cannot increase the federal deficit.

While we support states having the flexibility to innovate to achieve those objectives, we are very concerned that the recent guidance re-interpreting the four statutory guardrails will result in fewer people having access to affordable, meaningful and comprehensive coverage. We believe this outcome is contrary both to the principles of the Affordable Care Act and the plain language of the section 1332 statute.

Section 1332 is intended to provide states with the flexibility to innovate. It was not intended to turn the clock back to the days before the ACA where some states had affordable, accessible, and meaningful coverage options in their individual markets but many others did not. Before its passage, over 50 million people were without insurance and 25 million more were underinsured.¹ Those characteristics of the pre-ACA environment were what fueled the national health reforms of 2010. The protections of the ACA, including the section 1332 guardrails, were intended to eliminate these disparities in order to establish a minimum level of access and affordability in all states in the U.S.

- **Guardrails**

Under the proposed guidance, a state would be able to meet the comprehensiveness and affordability guardrails as long as such coverage is made available to its residents, without regard to whether people actually enroll in coverage that is in fact as comprehensive and affordable. As the guidance itself openly admits, these reinterpretations will allow a state to provide and promote coverage options that are less comprehensive and less affordable than under the ACA so long as there is an additional option offered that meets ACA standards.²

We are disturbed by how the guidance addresses the assessment of affordability. Rather than ensuring that coverage under a proposed waiver will be at least as affordable as under the ACA, CMS signals it would approve a proposal that would make plans less affordable for some, if others would have access to more affordable coverage, even a proposal that “makes coverage slightly more affordable for some people but much less affordable for a comparable number of people.”³ CMS says it will measure the overall magnitude of a waiver’s effects on affordability but provides no indication of how it will balance the winners and the losers in its decision making process.

The coverage guardrail is further weakened under the guidance because the term “coverage” is re-defined to include coverage offered via non-qualified benefit plans -- plans that do not meet minimum actuarial value and are not subject to existing prohibitions on excluding coverage for pre-existing conditions. For example, the guidance and CMS’ subsequent model waiver

¹ C. Schoen, S.R. Collins, J.L. Kriss, and M.M. Doty, How Many Are Underinsured? Trends Among U.S. Adults, 2003 and 2007; *Health Affairs*, 27, no. 4 (2008), <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.27.4.w298>

² 83 Fed. Reg. 53575, 53578.

³ 83 Fed. Reg. at 53579. CMS does say such a waiver would be “less likely” to be granted but does not rule out approving such a proposal.

concepts⁴ specifically identify short-term, limited duration (STLD) plans as an example of a type of coverage that could be counted when tallying up the number of residents with coverage under a waiver application.

STLD plans do not, and are not meant to, provide comprehensive coverage. The limited benefit plans have traditionally been intended to fill short gaps in coverage. Under federal law, issuers of STLD plans can underwrite individuals based on health conditions and exclude coverage of pre-existing conditions. They do not need to cover essential health benefits nor meet minimum actuarial value. They are able to, and often do, exclude coverage for prescription drugs, maternity care, and cancer care. Enrollment in such plans would nonetheless be counted when assessing whether the proposed waiver met the comparable coverage guardrail.

Under the new guidance CMS will now focus on the aggregate effects of a proposed waiver and will no longer require the state to demonstrate that the waiver will not leave particular vulnerable subgroups, such as the elderly, those with low incomes or those with or at risk of serious health issues, worse off. We strongly disagree with this approach and urge CMS to continue to ensure that vulnerable populations will not be harmed by a state's 1332 waiver.

- **Models**

Following the publication of the guidance, CMS released a document identifying four exemplary “waiver concepts” that it considers to be consistent with the new guidance. The models enforce the same concerns that we have identified above.

(1) Account-based subsidies. Under this waiver concept, states could direct ACA premium assistance funds into defined-contribution accounts instead of toward a health insurance plan that covers a meaningful set of benefits. This waiver concept seems to encourage states to walk away from the process of helping individuals to identify, enroll in, and ensure that plan offerings are what they say they are. Surely this could not have been the intent of Congress in establishing the ability for states to innovate.

(2) Modified premium assistance. States would be permitted, under the modified premium assistance model, to re-design the subsidy structure. CMS identifies examples, including eliminating income-based subsidies and replacing them with age-based amounts, and changing the scaling of subsidy amounts to eliminate the subsidy cliff. Because waiver programs must remain budget neutral, however, if subsidies are increased for certain recipients, then they must be reduced for others. Shifting subsidies to individuals with higher income to eliminate the subsidy cliff, for example, is likely to result in reduced subsidies to those with lower incomes.

⁴ <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Waiver-Concepts-Guidance.PDF>

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CHA finds this concept to be particularly concerning because allowing states to restructure and reduce premium subsidies while also encouraging them to offer plans with skimpier coverage than the ACA requires could result in people being driven into less meaningful coverage that does not meet their health needs, if that is all they can afford with a lower premium subsidy. In other words, it appears CMS would allow waivers that could leave people underinsured, one of the problems Congress intended to address, not perpetuate, through the ACA. And under CMS' revised guidance, enrollment in such plans would count towards satisfying the guardrail principle that waivers provide coverage to a comparable number of people as under the ACA.

(3) Adjusted Plan options – As CMS describes this concept, states could allow ACA subsidies to be used to purchase non-ACA-qualified health plans, including STLD plans with substandard coverage described above.

These actions together are likely to undermine adequate coverage and increase the number of individuals who are under- and uninsured. What's more, we are very concerned about the outcome of these actions on the stability of individual markets in many states. The guidance and models raise the likelihood of fragmenting the insurance market, and steering healthy consumers into limited benefit plans. They appear to be encouraging, and using ACA subsidies to pay for, products that are exempt from important consumer protections such as lifetime and annual dollar limits, limits on the use of pre-existing condition exclusions, and the prohibition on medical underwriting. These protections are key to ensuring that individuals with health care needs have access to quality health care needed to treat their conditions. Without these protections, individuals could find themselves enrolled in policies that do not actually cover the medical services they need at a cost they can afford. **This guidance should be withdrawn and new guidance issued implementing section 1332 in a way that ensures people will have access to genuinely affordable and comprehensive health care as intended under the ACA.**

Thank you for the opportunity to provide comments on the State Relief and Empowerment Waivers guidance. If you should have any questions about these comments or would like additional information, please do not hesitate to contact Kathy Curran, Senior Director, Public Policy, at 202-296-3993.

Sincerely,



Michael Rodgers
Senior Vice President
Public Policy and Advocacy