THE COUNCIL
The Council of Insurance Agents & Brokers

February 16, 2017

Delivered Via Mail and Electronic Mail – Secretary@HHS.gov

Secretary Thomas E. Price, M.D.
U.S. Department of Health & Human Services
Office of the Secretary
200 Independence Ave., SW
Washington, DC 20201

Dear Secretary Price:

I write on behalf of The Council of Insurance Agents and Brokers ("The Council") to urge you, consistent with President Trump's Executive Order on minimizing the economic burden of the Patient Protection and Affordable Care Act ("ACA"),[1] to establish a national benchmark health plan in lieu of current costly state-enhanced "benchmark" plans. As discussed in further detail below, adoption of a basic national plan is a cost reduction tool that the ACA directed the Department of Health and Human Services ("HHS") to develop. Not only did the Obama Administration HHS affirmatively decide not to do so, but in the way it directed the States to establish their individual benchmark plans, it essentially ensured that allowing for less benefit-rich plans currently is prohibited. We urge you to reverse this policy as soon as possible.

By way of background, The Council represents the largest and most successful property/casualty and employee benefits agencies and brokerage firms. Council member firms annually place more than $300 billion in commercial insurance business in the United States and abroad. Council members conduct business in some 30,000 locations and employ upwards of 350,000 people worldwide. In addition, Council members specialize in a wide range of insurance products and risk management services for business, industry, government, and the public.

The President's Executive Order instructs you and other agency heads to "exercise all authority and discretion available" to alleviate ACA-related fiscal burdens on States, individuals, families, healthcare providers, and other industry participants. Like the Administration, The Council and its members are committed to combatting rising health care costs in the near and long term. One way to address immediate cost concerns for many Americans, we believe, is for HHS to act upon an often-overlooked cost

[1] Executive Order 13765, *Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal*, 82 Fed. Reg. 8351 (Jan. 24, 2017).

containment mechanism in the ACA—namely, development by the federal government of a standard, streamlined benchmark health plan.

The ACA requires HHS to establish such a national benchmark by defining and standardizing the minimum benefits package for qualified health plans ("QHPs").[2] Further, the ACA dictates that if States impose benefit mandates for QHPs that go beyond the benchmark plan requirements (i.e., beyond HHS-defined essential coverage), the States must defray the cost of those additional benefits.[3] The expectation was that the national benchmark plan would be basic and affordable, and the State subsidization requirement would lead to massive reform of benefits mandates across the country.

Broad mandate reform and its attendant cost saving potential was thwarted, however, when the previous Administration refused to adopt a basic national plan, and instead, allowed each State to establish its own "benchmark" that includes each and every benefit mandate required by that State before 2012.[4] These enhanced State-mandated plans, which are now locked in place under current regulations, drive up costs for insurers and consumers. Now, even if States want to narrow their benefit requirements, they are not permitted to do so. Ultimately, rather than pursuing the cost-saving and reform-driving benefits of a slimmed down nationwide benchmark plan, the last Administration left the market worse off with respect to broad, costly State mandates.

Fundamentally, health plans in the U.S. have become too "rich" for a lot of Americans. While benefits packages may be more robust, deductibles are so high that many families cannot actually access care. Council members report that individuals want the *choice* to purchase more basic coverage if it means that costs will decline and they can get the

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[2] *See* 42 U.S.C. § 18022(b) ("The Secretary *shall define* the essential health benefits" within certain general categories and items such as: ambulatory patient services, emergency services, hospitalization, prescription drugs, lab work, etc.) (emphasis supplied); 42 U.S.C. § 18021 (defining "qualified health plans" as those that provide essential health benefits, as defined by HHS, among other requirements); 42 U.S.C. § 18031(d)(3)(B) (States may require benefits beyond HHS-defined essential health benefits if they defray the cost of those additional benefits).

[3] 42 U.S.C. § 18031(d)(3)(B) (states may require QHPs to offer benefits in addition to HHS-defined benefits, but the state must make payments to the individual or the plan to defray the subsidy cost associated with those additional benefits).

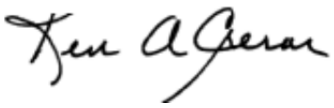
[4] *See* 45 C.F.R. 155.170(a)(2) ("A benefit required by State action taking place on or before December 31, 2011 is considered an EHB. A benefit required by State action taking place on or after January 1, 2012, other than for purposes of compliance with Federal requirements, is considered in addition to the [EHBs]" (and thus must be subsidized by the State).).

services they need. Today, however, insurers are prohibited from offering what people want to buy, at least in part because State-mandated benefits go beyond basic care and force people into higher-cost plans.

Expanding plan options and competition is a hallmark of Republican proposals to reform our health care system, give consumers the freedom to purchase what they want, and control rising costs. To that end, one increasingly popular idea is to allow sales of health plans across state lines. The Council contends that establishing a basic national benchmark—which could even be modeled after existing State benchmarks—would serve the same purpose as interstate sales (i.e., proliferation of basic, affordable plans) without triggering complexity and concerns related to our state-based insurance system, oversight responsibility, and consumer protection functions of the States.[5] And, as noted above, this cost-saving tool is available to HHS now, and would not require a multi-year "off ramp" like some other reform proposals.

We applaud your efforts to address the current health care system's financial burden on American families. Focusing on cost-drivers in the system is essential to preserving a functioning private health care market. We would appreciate the opportunity to speak with you further about potential cost containment strategies, including development of an affordable national benchmark plan. Thank you for your consideration.

Respectfully submitted,



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[5] Additionally, an interstate sales approach would favor larger national insurance carriers over smaller regional carriers, and could negatively impact competition in the industry.