

COMMENTS FROM CONSUMER REPRESENTATIVES TO THE NAIC

August 24, 2011

Ms. Cheryl D. Allen
United States Office of Personnel Management
1900 E Street, N.W.
Washington, DC 20415

Re: RFI # OPM35-11-R-0001

Dear Ms. Allen:

On behalf of the Consumer Representatives of the National Association of Insurance Commissioners (NAIC), we are writing in support of the NAIC's August 10, 2011 response to your RFI relating to OPM's implementation of the Multi-State Plan program. As consumer advocates, we collectively represent millions of consumers and patients, both insured and uninsured, across the country. We join with the NAIC in expressing our significant concerns about the negative impact consumers could face if Multi-State Plans are in any way exempted from the rules and requirements of the states in which they're offering coverage.

While the August 10, 2011 letter from the NAIC ably captures our concerns, we want to highlight two issues of particular importance to consumers, below:

Don't Preempt State Consumer Protections

Because the Patient Protection and Affordable Care Act (ACA) allows Multi-State Plans to be automatically deemed certified for state Exchanges, we would be very concerned if this results in those plans being in any way exempted from regulatory oversight by state insurance departments or the programmatic oversight and requirements of state insurance exchanges.

States establishing and operating their own insurance exchanges will likely wish to set standards and rules that serve the unique needs of their residents and businesses. For many states, this may mean engaging in "active purchasing," which could include setting additional certification requirements for qualified health plans (QHPs), developing performance-based contracts for participating QHPs, standardizing benefits beyond the minimum federal requirements, and increasing the transparency of plan offerings. If Multi-State Plans are not required to meet *all* of each State's requirements for QHPs, it will effectively negate states' attempts to develop exchanges that meet the needs of the local population and undermine efforts to provide consumers and small business owners with higher value insurance products.

In addition, OPM should make clear that Multi-State Plans are subject to all of the licensing requirements and insurance rules promulgated by state insurance departments. These include solvency regulation, rate review, and any other consumer protections established by the state. Multi-State plans must also be subject to all of a state's oversight and enforcement mechanisms, including market conduct exams and financial audits. In addition, Departments of Insurance should have clear authority to receive and respond to any consumer complaints relating to Multi-State Plans.

Ensure a Level Playing Field in Each State

In each state, Multi-State Plans should be required to operate under the same regulatory framework as other plans offering products in that state. As noted by the NAIC in its August 10 letter, exempting Multi-State Plans from any of the consumer protections in a state, or substituting a single national standard for the states' own regulatory frameworks, would "leave some consumers with fewer protections than others, confuse them, and result in an unlevel playing field that could give the largest insurers additional competitive advantages in the marketplace, stifling competition...and weakening consumer protection."

We are particularly concerned that a separate provision of the ACA (§ 1324, "Level Playing Field") would expressly exempt all health insurance issuers from certain critical state rules if Multi-State Plans are exempted from them. The provision lists these critical state laws to include state rules on guaranteed renewal, rating, pre-existing conditions, nondiscrimination, quality improvement and reporting, fraud and abuse, solvency, market conduct, grievances and appeals, prompt payment, privacy and confidentiality, licensure, and benefit plan material or information. If issuers in the states are allowed to be exempted from any state laws in these areas it could, in one stroke, take away numerous important protections that states have enacted to benefit consumers and small business. Thus, exempting Multi-State plans from *any* state requirement in the above-listed areas would not only reduce protections for consumers in Multi-State Plans, but would eliminate those protections for consumers in *all* plans. We believe this is not only contrary to Congress' intent, but would also be a dramatic departure from the traditional federal-state framework for regulating insurance, in which federal law sets a floor of consumer protections, but states can continue to provide more robust protections.

We also wish to reiterate the NAIC's concerns about allowing Multi-State Plans to meet different medical loss ratio (MLR) standards than other insurance issuers. The Consumer Representatives to the NAIC have engaged in extensive deliberations with regulators and the insurance industry regarding plans' reporting requirements. Many issuers sought to have their experience aggregated at a national level instead of at a state level. This was strongly opposed by consumer representatives because it would allow insurers to mask lower MLRs in some states with higher MLRs in other states. As a result, the NAIC recommended, and HHS adopted, a standard in which each insurer must report on their experience in each state so that all consumers can benefit from the MLR. Multi-State Plans should be subject to the same standard and not allowed to aggregate their experience at a national level. Doing so would not only create a competitive advantage for them over their competitors, but would also reduce the likelihood their enrollees would receive the benefits of the new MLR standard.

We appreciate your attention to these comments, and are happy to assist you as you develop the Multi-State Plan program as required by the ACA. Should you have any questions for us, please contact Sabrina Corlette, Research Professor at the Georgetown University Health Policy Institute, at (202) 687-0880 or sc732@georgetown.edu.

Sincerely,

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Timothy S. Jost, NAIC Consumer representative

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