



February 14, 2018

Honorable Alex Azar
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Idaho Department of Insurance Bulletin 18-01 (Jan. 24, 2018)

Dear Secretary Azar:

The 15 undersigned organizations represent millions of patients facing serious, acute, and chronic health conditions across the country. We collectively stand ready to ensure that these patients have access to affordable, adequate health insurance in order to treat and manage their conditions. We write regarding the recent action by the State of Idaho to authorize the issuance of health insurance plans that violate numerous requirements of the Affordable Care Act (ACA) that provide essential protections to individuals and families. We urge you to address this issue in a timely manner, and provide clarification by the Department of Health and Human Services that Idaho’s Department of Insurance Bulletin 18-01 is legally invalid.

Idaho’s insurance bulletin would allow insurers to sell individual market plans that do not comply with federal law.¹ Because the Idaho Bulletin purports to authorize the issuance of insurance coverage that is prohibited by federal law, it is legally invalid. Under the Affordable Care Act, a “health insurance issuer” is prohibited from offering “health insurance coverage” in the individual or small group market that violates the statute’s consumer protection standards.²

¹ The Supremacy Clause of the United States Constitution (Article V, Section 2) provides that federal laws “shall be the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” States therefore cannot authorize companies to violate federal law.

² See 42 U.S.C. §§ 300gg & 300gg-4.

Idaho's insurance bulletin would allow the sale of products that could:

- Deny coverage of pre-existing conditions for those with a break in coverage;³
- Charge older Americans up to five times as much as younger Americans;⁴
- Impose higher premiums on people with pre-existing conditions;⁵
- Put a dollar limit on insurance benefits;⁶
- increase consumers' annual out-of-pocket costs;⁷ and
- exclude key health benefits such as maternity care, newborn care, habilitative services, and pediatric vision and dental services—and potentially others such as contraceptive services, tobacco cessation and cancer screening.⁸

Idaho's action—if it is permitted to stand—would seriously injure Idaho patients and consumers and significantly destabilize Idaho's entire health insurance market. Individuals and families who purchase these plans may not have insurance coverage for essential health services and would likely pay more out of pocket for the services that are covered—while older Americans and individuals with pre-existing conditions, because of premium surcharges, would likely pay more for less coverage. Further, older Americans could be charged up to five times the premiums for younger Americans—much more than the three-to-one limit in federal law. People with pre-existing conditions could be charged up to 50 percent on top of what they otherwise would pay. And a person who is both older and has a pre-existing condition could be charged premiums up to **fifteen times** more than a young, healthy American.⁹

Health care providers that care for patients with these substandard plans may find the plans won't cover the bills, resulting in medical debt for patients or uncompensated care for providers. While the Bulletin would require issuers who offer skinny plans to provide a disclosure “on the face of the policy that: The

³ Federal law bars insurers from imposing pre-existing condition exclusions (42 U.S.C. § 300gg-3) or continuous coverage requirements (42 U.S.C. § 300gg-1), but the Idaho bulletin (§ 3) permits such exclusions for individuals who lack coverage in the prior 63 days.

⁴ Federal law prohibits insurers from setting premium rates that vary by more than a 3:1 age ratio and that vary by more than 50% for tobacco use (42 U.S.C. §§ 300gg & 300gg-4), but the Idaho bulletin (§ 5) allows plans to vary their rates by a 5:1 age ratio.

⁵ Federal law prohibits insurers from setting premium rates based on health status (42 U.S.C. §§ 300gg), but the Idaho bulletin (§ 5) allows plans to vary their rates based on a risk factor.

⁶ Federal law prohibits insurers from setting an annual limit on the amount the insurer will pay (42 U.S.C. § 300gg-11), but the Idaho bulletin (§ 6) permits an annual limit of no less than \$1 million per person.

⁷ Federal law prohibits health insurance coverage that violates the maximum out-of-pocket cost limit established by federal law (42 U.S.C. § 18002(c)), but the Idaho bulletin (§ 7) applies the out-of-pocket cost ceiling to the bulletin's more restrictive list of essential health benefits (and therefore permits higher out-of-pocket costs than does federal law) and in addition permits separate maximums for different types of services (*e.g.*, one for prescription drugs and another for other services), which is also contrary to federal law.

⁸ Federal law prohibits individual market coverage that fails to cover specified essential health benefits (42 U.S.C. §§ 300gg-6 & 300gg-13), but the Idaho bulletin (§ 4) permits plans that do not cover a number of the essential health benefits specified under federal law: maternity care; newborn care; pediatric vision and dental care; habilitative services; and the full set of preventive services, such as contraceptive services, recommended cancer screening, and gestational diabetes screening.

⁹ Tim Jost, “Idaho's Proposal for State-Based Plans Violates the Affordable Care Act”, The Commonwealth Fund, Feb 8, 2018, available at <http://www.commonwealthfund.org/publications/blog/2018/feb/idaho-state-based-plan>.

Policy is not fully compliant with federal health insurance requirements,”¹⁰ we are concerned that this disclosure is insufficient education to consumers to warn them of the limitations of the plan’s coverage.

The cap on insurers’ payments and increased out-of-pocket limits for families could impose serious financial burdens on Idaho families. For instance, a person who has an accident and requires an expensive medication after being hospitalized may pay twice the federal limit on out-of-pocket spending of \$7,350: once for medical care and a second time for the prescriptions.

Individuals and families who continue to purchase plans that comply with federal law will likely pay more for it, because healthier individuals are more likely to be siphoned off, which will unbalance the risk pool for lawful plans.¹¹ Insurers that do not offer these plans will incur losses as their risk pools are left with sicker, costlier patients.

The federal government must uphold the requirements of federal law that protect patients, their families, and the health system against these consequences. On behalf of our patients, and all Americans, we urge you to make clear that Idaho cannot authorize the issuance of health insurance coverage that violates federal law, and that any insurer that issues such plans risks enforcement action and serious penalties.

Sincerely,

American Cancer Society Cancer Action Network
American Diabetes Association
American Heart Association
American Liver Foundation
American Lung Association
Cystic Fibrosis Foundation
Epilepsy Foundation
Hemophilia Federation of America
Leukemia & Lymphoma Society
Lutheran Services in America
March of Dimes
Mended Little Hearts
Muscular Dystrophy Association
National MS Society
National Organization for Rare Disorders

¹⁰ Idaho Bulletin at ¶ 8.

¹¹ Policy experts surmise that the skimpy plans will be attractive to younger and healthier consumers, while older and sicker individuals will gravitate to ACA-compliant plans “rendering coverage unaffordable for many Idahoans who don’t qualify for the ACA’s premium tax subsidies and aren’t young or healthy enough to afford the state-based plans.” This will result in higher federal subsidies needed to pay for the more expensive plans offered on the exchanges. See Sabrina Corlette, “Idaho Goes Rogue: State Authorizes Sale of Health Plans That Violate the Affordable Care Act,” Georgetown University Health Policy Institute Center for Children and Families, Feb. 1, 2018, available at <https://ccf.georgetown.edu/2018/02/01/idaho-goes-rogue-state-authorizes-sale-of-health-plans-that-violate-the-affordable-care-act/>.