

December 19, 2018

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

David J. Kautter, Assistant Secretary for Tax Policy
Department of Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Azar and Assistant Secretary Kautter:

On behalf of the American Academy of Family Physicians (AAFP), which represents 131,400 family physicians and medical students across the country, I write in response to the [guidance](#) titled, “State Relief and Empowerment Waivers” published by the U.S. Department of Health and Human Services (HHS) and the Department of Treasury in the October 24, 2018 *Federal Register*.

This guidance supersedes policy established in 2015 relating to Section 1332 of the *Affordable Care Act* (ACA). This section allows states to propose waivers to the federal government that, if approved, enable the states to forgo certain parts of the ACA and pursue alternate coverage mechanisms.

It is the AAFP’s position that all public and private insurance policies adhere to four fundamental patient protections – guaranteed issue, essential health benefits (EHB), limits on age rating, and no limits on annual/lifetime spending. The ACA’s EHB requirements prevent insurance discrimination against any individual based on their health status, age or gender. The AAFP is also concerned that under the guidance, insurers could reduce or eliminate certain EHBs to avoid vulnerable, expensive patients by excluding specific services. In doing so, insurers could potentially make plans more expensive for people with long-term chronic conditions or with sudden medical emergencies. Inadequate benefits could leave this population with too little coverage to meet their health care needs.

Under the new guidance, provisions that may be waived are those that regulate qualified health plans, cost-sharing reductions, and premium tax credits, as well as the individual and employer mandates. Under prior policy, coverage provided through these measures must be (1) at least as comprehensive in covered benefits as federally operated marketplaces, (2) affordable, (3) provide coverage to a comparable number of residents as would be provided coverage absent a

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waiver, and (4) may not increase the federal deficit. These waivers only apply to the health insurance marketplace and may not be designed to impact other public programs such as Medicare and Medicaid.

This new guidance changes how the federal government reviews and approves Section 1332 waivers and modifies prior interpretations of the law's "guardrails." Effective October 24, 2018, the Departments indicated a favorable waiver application would advance some or all of the below five principles outlined in the new guidance:

1. Provide increased access to affordable private market coverage;
2. Encourage sustainable spending growth;
3. Foster state innovation;
4. Support and empower those in need; and
5. Promote consumer-driven health care.

Under the new guidance, waivers will be evaluated based on whether residents have access to comprehensive and affordable coverage, rather than based on actual coverage purchased under the waiver. **The AAFP is deeply concerned states will seek waivers to provide access to less comprehensive or less affordable coverage compared to the ACA based on this standard.** We urge the Departments to maintain the 2015 guardrail policies that factors in and encourages individuals to enroll in comprehensive coverage.

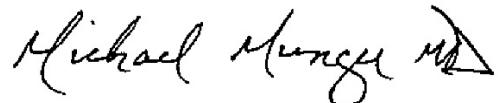
The AAFP is also troubled that the new guidance does not explicitly prohibit any waiver that reduces access to care for vulnerable populations, such as the elderly, low-income, or those with complicated health conditions. Waivers that impact these groups could lead to coverage losses or increased cost-sharing among for them. State waivers should only be considered if they overtly factor in the comprehensiveness of coverage provided to vulnerable populations.

We are also concerned with the guidance proposal that would allow states to no longer ensure their waiver applications include coverage that qualifies as "minimum essential coverage" under the ACA. Under the new guidance, coverage will be interpreted to be either "minimum essential coverage" under the ACA or "health insurance coverage" (which includes group health insurance, individual health insurance, and short-term, limited-duration insurance). **The AAFP strongly opposes this approach since "health insurance coverage" will allow plans, such as short-term, limited-duration insurance, to sell low-value insurance policies that could subject patients to catastrophic medical bills and medical bankruptcy.** As articulated in detail in our March 5, 2018 comment [letter](#) to the Employee Benefits Security Administration regarding Association Health Plans as well as the AAFP's April 18, 2018 [letter](#) to HHS in response to the Short-Term, Limited-Duration Insurance proposal, we harbor deep concern that these plans will not provide meaningful insurance coverage. Allowing small employers to buy low-value health insurance plans through AHPs is step backward from promoting insurance that satisfies critical consumer protections, including coverage for pre-existing conditions, under the ACA.

The AAFP strongly supports the goal of providing robust access to affordable health coverage for all Americans, but we are afraid that this guidance moves us further away from that goal. We therefore encourage the federal government to maintain the prior policy.

We appreciate the opportunity to comment. Please contact Robert Bennett, Federal Regulatory Manager, at 202-232-9033 or rbennett@aafp.org with any questions or concerns.

Sincerely,



Michael L. Munger, MD, FAAFP
Board Chair

About Family Medicine

Family physicians conduct approximately one in five of the total medical office visits in the United States per year—more than any other specialty. Family physicians provide comprehensive, evidence-based, and cost-effective care dedicated to improving the health of patients, families, and communities. Family medicine's cornerstone is an ongoing and personal patient-physician relationship where the family physician serves as the hub of each patient's integrated care team. More Americans depend on family physicians than on any other medical specialty.