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December 17, 2018

Secretary Alex Azar
United States Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Secretary Steven Mnuchin
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: CMS-9936-NC

Submitted electronically via regulations.gov

Dear Secretaries Azar and Mnuchin:

AARP appreciates the opportunity to comment on the Centers for Medicare and Medicaid (CMS) 1332 waiver guidance released on October 24, 2018. AARP, with its nearly 38 million members in all 50 States, the District of Columbia, and the U.S. territories, is a nonpartisan, nonprofit, nationwide organization that helps empower people to choose how they live as they age, strengthens communities, and fights for the issues that matter most to families, such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.

We have serious concerns that the guidance issued by CMS and the Department of the Treasury (Department) could lead to the erosion of the core consumer protections of the Affordable Care Act (ACA).

No Protections for Vulnerable Populations

While the previous guidance required states to explain how they would protect vulnerable populations -- including older adults -- in their 1332 waivers, the new guidance does not. As a result, a waiver could reduce premiums for some state residents while driving up costs for certain vulnerable populations. Accordingly, under

this guidance, older Americans and those with pre-existing conditions could see their health care costs increase and once again find themselves without access to affordable coverage.

Allowance of Plans Non-Compliant with the ACA

First, the guidance not only allows for the sale of non-compliant, non-consumer-protected health insurance plans on state marketplaces, but also provides that these plans be eligible for tax subsidies. AARP is particularly concerned about the expansion of -- and lack of consumer protections for -- short-term limited duration (STLD) plans in the individual health insurance market and association health plans (AHPs) in the small group health insurance market. While in some cases these plans may offer lower premiums, the lack of ACA-compliant consumer protections could undermine the use and value of these policies when someone faces a health emergency.

STLDs and AHPs also allow for discrimination based on age and health status. The ACA's protections against these types of discrimination were critical improvements in the American health care system. It is clear there is broad public support for prohibiting insurance companies from denying coverage or charging higher, unfair rates simply because an individual was older or had a preexisting medical condition.

AARP is particularly concerned with the impact of STLDs on older Americans. The proliferation of these plans has the potential to lead to higher premiums across the market. In 2015, at least 25 million adults age 50 to 64 had what would be a declinable pre-existing condition prior to the enactment of the ACA[1]. Many older adults could be denied coverage based on age or preexisting condition or see their premiums increase dramatically, as insurers could charge older adults far more than then the current limit of three times more than they charge other people.

The plans also may cause serious disruptions in the market. As we have noted in previous comment letters related to the President's 2017 Executive Order on health care, AARP is very concerned with the potential harmful impact STLDs will have on the stability of the overall individual health insurance market. The expansion of STLDs will likely lead to higher premiums for all Americans, including those aged 50-64 and those with pre-existing conditions, who remain in the ACA compliant individual health insurance market. Siphoning off younger and healthier people from the existing market means older Americans and those with pre-existing conditions will have to pay more for their existing coverage due to the further fragmentation of the risk pool. An analysis done by our Public Policy Institute found that the expansion of STLDs could mean an average premium increase of $2,000 for 60-year olds who purchase a typical silver plan in the ACA-compliant individual market[2]. Some states -- like Nebraska and Wyoming -- could see double that increase.

[1] https://www.aarp.org/content/dam/aarp/ppi/2017-01/ACA-Protects-Millions-of-Older-Adults-with-Preexisting-Health-Conditions-PPI-AARP.pdf
[2] https://blog.aarp.org/2018/03/21/warning-short-term-health-plans-higher-premiums-for-older-adults/

The new 1332 guidance doubles down on the expansion of these plans, leading to further premium increases and market fragmentation. HHS would also give states the ability to apply federal taxpayer dollars, in the form of advance premium tax credits (APTCs), to subsidize these harmful, non-ACA compliant plans. Premium tax credits were enacted under the ACA to help individuals afford the cost of fully insured, consumer protected coverage. In addition to the previously discussed issues of age rating and preexisting condition protections, this includes the requirement that all benefit packages include the ten essential health benefits (EHBs) in order to meet both the anticipated and unanticipated health care needs of those enrolled.

Unfortunately, this guidance falls well short of CMS and the Department's stated goals of "empowering states to innovate in ways that will strengthen their health insurance markets, expand choices of coverage, and target public resources to those most in need, and meet the unique circumstances of each state." The guidance could result in a weakened individual marketplace with increased costs and reduced coverage, particularly for vulnerable groups like older adults and people with preexisting conditions.

We urge you both to reconsider this new 1332 guidance and work with stakeholders to improve the existing health insurance markets by expanding more quality, affordable insurance that maintains important protections for vulnerable populations, including for older adults, people with low incomes, and those with pre-existing conditions. We strongly believe that any updated 1332 guidance should adhere to the following core principles:

1. Maintain the prohibition on charging older Americans more than three times the premium of any other American;
2. Maintain the prohibition on discrimination against those with preexisting conditions; and
3. Maintain the requirement that all health plans -- in both the individual and small group markets -- include EHBs.

Once again, we thank you for the opportunity to comment on the negative impact of the new 1332 guidance and urge you to reconsider its issuance. If you have any questions, please do not hesitate to contact me or have your staff contact Brendan Rose on our Government Affairs staff at 202-434-3770 or brose@aarp.org.

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director