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AMERICAN ACADEMY *of* ACTUARIES

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March 2, 2018

Director Dean Cameron  
Department of Insurance, State of Idaho  
P.O. Box 83720  
Boise, ID 83720

Re: Executive Order 2018-02 and Department of Insurance Bulletin 2018-01

Dear Director Cameron:

On behalf of the Health Practice Council of the American Academy of Actuaries,<sup>1</sup> I would like to offer comments on Executive Order 2018-02 and the related Department of Insurance Bulletin No. 18-01 that would allow health insurers to offer state-based plans that are not compliant with the Affordable Care Act (ACA) in Idaho. In particular, our comments highlight conditions needed for a sustainable health insurance market and the potential adverse consequences on the ACA risk pools of permitting state-based plans.

### **Balanced Risk Pools and a Level Playing Field Are Keys to Insurance Market Sustainability**

To be sustainable, health insurance markets require sufficient enrollment numbers and a balanced risk pool. Pooling risks together allows the higher costs of the less healthy to be offset by the relatively lower costs of the healthy, either in a plan overall or within a premium rating category. In general, the larger the risk pool, the more predictable and stable the premiums can be. However, enrollment of only individuals with higher health care needs, typically referred to as adverse selection, can produce upward premium spirals. Attracting healthier individuals is needed to keep premiums more affordable and stable.

Health insurance markets also require a stable regulatory environment that facilitates fair competition, with health plans competing to enroll the same participants operating under the same rules. If one set of plans operates under rules that are more advantageous to healthy individuals, then those individuals will migrate to those plans; less-healthy individuals will migrate to the plans more advantageous to them. In other words, plans that have rules more amenable to higher-risk individuals will suffer from adverse selection. In the absence of an effective risk adjustment program that includes all plans, upward premium spirals could result, threatening the viability of the plans more advantageous to higher-risk individuals.

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<sup>1</sup> The American Academy of Actuaries is a 19,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

The law includes mechanisms to encourage enrollment and achieve a balanced risk pool, including providing premium and cost-sharing subsidies, limiting the open enrollment period, and imposing a financial penalty for individuals who remain uninsured (recent federal legislation eliminates the penalty beginning in 2019). The law also requires that insurers use a single risk pool that includes all ACA-compliant plans inside and outside of a state's exchange when developing premiums. In other words, insurers must pool all of their individual market enrollees together when setting the prices for their products. In addition, the ACA rules generally support a level playing field—the rules governing the insurance market regarding issue, rating, and benefit requirements apply equally to all insurers.<sup>2</sup> In addition, the law includes a permanent risk adjustment program that transfers payments among insurers in the single risk pool based on the relative risk of their enrollees. By limiting the adverse selection in the market as a whole and mitigating the effects of enrollee risk profile differences among insurers, the single risk pool requirement, uniform market rules, risk adjustment program, and provisions to encourage enrollment work together to facilitate market competition and the ACA's pre-existing condition protections.

### **Potential Market Fragmentation Under Idaho's State-Based Health Benefit Plans Could Increase ACA Premiums and Reduce Pre-Existing Condition Protections**

The Idaho bulletin allows insurers that offer ACA plans on the state's exchange to also offer noncompliant state-based plans, which could compete under different issue, rating, and benefit coverage requirements. The state-based plans can offer less comprehensive benefits than ACA plans and can vary premiums among individuals to a greater extent than ACA plans, including premium variations by health status (not allowed in ACA plans) and age variations of 5:1 (compared to 3:1 under the ACA). State-based plans can also exclude coverage for pre-existing conditions for applicants who don't provide evidence of previous coverage. State-based plans would likely be structured to attract low-cost enrollees, through fewer required benefits, higher cost-sharing, and premiums that vary by health status. Higher-cost individuals would tend to want the broader benefits, rating, and pre-existing condition protections of ACA coverage.

When developing premium rates, the bulletin requires insurers to use a single risk pool that includes ACA plans and the state-based plans. Premiums for the state-based plans can be adjusted to reflect differences from ACA plans in terms of cost-sharing design, provider network, delivery system characteristics, covered benefits, and administrative costs. Notably,

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<sup>2</sup> Exceptions include grandfathered plans—plans already in effect on March 23, 2010—and in states that permitted them, transition plans, often referred to as “grandmothered plans,” purchased after March 23, 2010, but before ACA market rules became effective in 2014. These plans can avoid many of the ACA issue, rating, and benefit coverage rules. In states that allowed individuals to retain their pre-ACA plans, lower-cost individuals and groups were more likely to do so because they could face lower premiums. Higher costs among ACA-compliant plans were the result. Evidence suggests that states allowing consumers to retain their noncompliant plans experienced higher premium increases and/or reduced insurer participation in the ACA marketplaces compared to states that didn't. See Katherine Hempstead, “[Marketplace Pulse: Leaky Risk Pools Sink Markets](#),” Robert Wood Johnson Foundation, August 2017. Recently proposed rules that would expand the availability of association health plans (AHPs) and short-term duration policies, which could avoid many or all ACA issue, rating, and benefit coverage rules, could similarly undermine the ACA individual market risk pool, increasing premiums and reducing pre-existing condition protections.

adjustments are not allowed to reflect differences in health status between enrollees in ACA and state-based plans. Despite the single risk pool requirement, however, the state-based plans would not be part of the risk adjustment program; payments to insurers would not be calibrated to reflect the relative risks of the ACA and state-based plan enrollee populations.<sup>3</sup> As a result, premium differences between ACA and state-based plans would likely reflect overall differences in enrollee health status between the enrollee populations.

Under this structure, plans competing to enroll the same participants will not be competing under the same rules. Rather than having a single risk pool, in which costs are spread broadly, there would be, in effect, two risk pools—one for ACA coverage and one for state-based coverage. Premiums for ACA coverage would increase, threatening sustainability of the ACA market and its pre-existing condition protections. Insurers offering only or predominantly ACA plans could be particularly disadvantaged because state-based plans with healthier individuals will not be contributing to the risk adjustment pool. As a result, average premiums for insurers offering predominantly ACA coverage could exceed those of insurers offering the state-based plans. The destabilizing effects of state-based plans would be exacerbated if market rules facilitate movement of people between the two pools, such as through the bulletin’s requirement that individuals reaching the \$1 million annual cap for state-based coverage be transitioned to ACA coverage. Such transitions would further deteriorate the ACA risk pool.

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Improving health insurance choice and competition across a health insurance market requires achieving stability and sustainability and fostering a consistent regulatory environment. Although offering state-based plans that can avoid ACA issue, rating, and benefit rules could provide lower-cost health insurance options to many Idaho residents, such options would lead to a deterioration of the state’s ACA market. As a result, ACA premiums would increase, and options for individuals with pre-existing conditions would narrow.

We would welcome the opportunity to discuss these options with you in more detail. If you have questions, please contact David Linn, the Academy’s senior health policy analyst, at 202-785-6931 or [linn@actuary.org](mailto:linn@actuary.org).

Sincerely,

Shari Westerfield, MAAA, FSA  
Vice President, Health Practice Council  
American Academy of Actuaries

cc: All State Departments of Insurance  
Members of the U.S. Senate  
Members of the U.S. House  
U.S. Governors  
U.S. Secretary of Health and Human Services

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<sup>3</sup> While including state-based plans in risk adjustment is not currently being proposed, we note that it would be difficult to effectively risk-adjust between the ACA market and state-based plans. The potentially large differences in underlying benefits and premium rating factors between ACA and state-based coverage would make risk adjustment extremely difficult to implement.