

August 12, 2020

The Honorable Russell Toal
Superintendent, Office of the Superintendent of Insurance
P.O. Box 1689
Santa Fe, NM 87504-1689

Re: NAMC STANDARDS FOR ACCIDENT ONLY, SPECIFIED DISEASE OR ILLNESS, HOSPITAL INDEMNITY, AND RELATED EXCEPTED BENEFITS

Dear Superintendent Toal:

Thank you for the opportunity to submit comments on the Office of the Superintendent of Insurance's (OSI) proposed new rule 13.10.34, NAMC STANDARDS FOR ACCIDENT ONLY, SPECIFIED DISEASE OR ILLNESS, HOSPITAL INDEMNITY, AND RELATED EXCEPTED BENEFITS.

Our organizations serve thousands of individuals facing serious, acute and chronic health conditions across New Mexico. We have an informed perspective on what people with pre-existing conditions and their families need to prevent disease, cure illness, and preserve health and well-being over their lifetimes. Substandard health coverage products have significant limitations, and we appreciate OSI's efforts to set fair and responsible standards and to foster a health insurance market that meets patients' and consumers' needs.

Comprehensive, major medical coverage is crucial to the survival and well-being of the people we serve. A lack of coverage – be it through having no insurance or being underinsured – reduces access to care, discourages preventive care, and increases the likelihood that patients will face medical and financial hardships. While some consumers may find value in excepted benefit (EB) plans to augment their major medical coverage, we believe that OSI takes the correct approach with this proposed rule by requiring strict regulation of the EB market.

The proposed rule delivers a strong and balanced approach, and sets an appropriate scope by applying the rule to products issued to New Mexico residents by entities inside and outside the state. We would like to note the following items of interest to our organizations from the proposed rule:

- It requires carriers to obtain signed affirmation a customer is enrolled in major medical coverage prior to being able to purchase an EB plan;
- It prohibits bundling of EB products across product categories;
- It updates disclosure and notice requirements for plan materials; and
- It requires carriers to seek approval for all plan and marketing materials prior to use.

Major medical coverage requirement

Our organizations fully support OSI's position on section 13.10.34.18, Part C ("Major medical coverage requirement"). We are particularly pleased to see the written-attestation requirement.

People facing a diagnosis of a serious disease need a strong baseline of essential benefits to ensure full and proper coverage for their care. There is no debate that EB products do not deliver these kinds of benefits. Additionally, the use of medical underwriting for EB plans allows carriers to exclude coverage for people with pre-existing conditions, a practice that runs counter to the interests of the patients we serve.¹ Allowing EB plans to be sold to New Mexicans who do not have major medical coverage would promote a false sense of security among consumers. Many patients with a serious illness need access to a wide range of medical services that are

critical to diagnosis and long-term surveillance of an illness, but do not constitute the actual treatment of the illness itself, and could therefore be left uncovered by a disease-specific plan.

Prohibition on product bundling

Our support for section 13.10.34.18, Part B (“No bundling”) also stems from our concerns about health insurance literacy and coverage adequacy. As a December 2017 Kaiser Health News article pointed out, the practice of bundling can leave consumers with weaker coverage and higher out-of-pocket costs.ⁱⁱ Prohibiting bundling will reduce consumer confusion about what’s being sold.

Plan disclosure and notice requirements

In section 13.10.34.16, OSI requires disclosure of several limitations of EB plans. We are pleased to see the following requirements in the proposed rule:

- A general disclosure notice that reminds consumers that EB plans are not major medical coverage, and that they may possibly find more substantial and affordable coverage through the state’s health insurance marketplace;
- Required delivery of plan documents, plus a ten-day window to review the purchase;
- A two-month notice requirement for termination of coverage;
- Contact information for OSI’s Consumer Assistance Bureau; and
- Prohibition of references to provider networks.

We believe these requirements take important steps to improve consumer awareness and product transparency. The average consumer often struggles to navigate the complexities of purchasing and utilizing their health insurance plan. For example, a 2019 study of 15,168 adults found that the majority had “low knowledge about basic health insurance terms and had difficulty using health insurance to access needed health care services.” Those who were more likely to be affected included young adults, groups with low-income, and people who are uninsured.ⁱⁱⁱ

A 2019 review of marketing practices for short-term, limited-duration plans (which compete with EB plans and share similar marketing features) reported: “the consumer is often urged to purchase the plan before reviewing written plan materials, making it difficult for insurance regulators to later identify clearly fraudulent or deceptive statements.”^{iv} In a 2019 interview study of consumers who reviewed marketing materials from short-term plans, most participants overlooked the products’ disclosure language and misunderstood the product’s terminology, charts, and coverage mechanics.^v We hope that these rules reduce the likelihood of consumers experiencing similar challenges with EB plans.

Prior approval of plan and marketing materials

In section 13.10.34.15, part A (“Form and Rate Filing and Approval Required”), the proposed rule requires carriers to gain prior approval for all forms used to market and sell EB products. We are grateful for OSI’s commitment to this aspect of consumer protection: the advertising language that informs the buying process should support transparency. We believe that OSI oversight in this area will help promote accuracy and transparency, to the benefit of patients and consumers.

Reporting on minimum loss ratio

Section 13.10.34.15, part G (“Annual Rate Certification Filing Procedures”) requires carriers to submit an annual actuarial memorandum to demonstrate compliance with MLR standards, regardless of whether they are filing rate updates. We support this requirement in the interests of public and consumer transparency, and would

encourage OSI to monitor these reports with possible MLR increases in mind to ensure these plans are delivering optimal value to consumers.

Other items of interest

During our review of the proposed rule, we found a few minor technical items that may require the attention of OSI prior to publication of the final rule. This list is not meant to be exhaustive, but we hope the information will be constructive to OSI’s efforts to develop a clean regulation.

- On page 4, section O (“Review authority”), the comma after the word “not” seems to be unnecessary.
- On page 4, section P (“Termination of coverage”), there seems to be a comma missing after the word “subparagraph” in the second line of the section.
- On page 8, section D, part 2 (“Low average premium forms”), the last line says “...up to a maximum of $1 \times .250$.” When this formula appears elsewhere in the proposed rule (pages 9 and 10, for example), the usage of $.250$ (one-fourth) versus 250 (two hundred fifty) is not consistent. It is not clear whether this variation is intentional, and we thought it would be beneficial to point out the variation.
- On page 10, section E, part 3 (“High average premium forms”), the first formula appears to require a line break in it between X (the average annual premium value) and “ (1×5500) .”

Conclusion

Our organizations represent millions of patients, individuals, caregivers, and families nation-wide who need access to quality and affordable healthcare regardless of their income or geographic location. We appreciate the opportunity to provide our recommendations on the proposed rule, and are pleased to support OSI’s efforts to appropriately regulate the marketing, availability, and terms of EB plans.

If we can be of further assistance, please do not hesitate to contact any of our organizations. For questions or to discuss our comments further, please contact Dana Bacon, Regional Director, Government Affairs, The Leukemia & Lymphoma Society, at dana.bacon@lls.org or 612.308.0479.

Sincerely,

American Cancer Society Cancer Action Network
American Diabetes Association
American Heart Association
American Kidney Fund
American Lung Association
Arthritis Foundation
Cystic Fibrosis Foundation
Epilepsy Foundation
Health Action New Mexico
Hemophilia Foundation of America
The Leukemia & Lymphoma Society
National Organization for Rare Disorders
National Psoriasis Foundation
Sangre de Oro

ⁱ C. L. Young, K Hannick, “Fixed indemnity health coverage is a problematic form of ‘junk insurance’.” *USC-Brookings Schaeffer on Health Policy*, August 4, 2020. <https://www.brookings.edu/blog/usc-brookings-schaeffer-on-health-policy/2020/08/04/fixed-indemnity-health-coverage-is-a-problematic-form-of-junk-insurance/>.

ⁱⁱ J. Appleby, “Brokers Tout Mix-And-Match Coverage To Avoid High-Cost ACA Plans.” *Kaiser Health News*, December 7, 2017. <https://khn.org/news/brokers-tout-mix-and-match-coverage-to-avoid-high-cost-aca-plans/>.

ⁱⁱⁱ J. Edward, A. Wiggins, M.H. Young, M.K. Rayens, “Significant Disparities Exist in Consumer Health Insurance Literacy: Implications for Health Care Reform.” *Health Research Literacy and Practice*. October 2019. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6831506/>.

^{iv} S. Corlette, K. Lucia, D. Palanker, O. Hoppe, “The Marketing of Short-Term Health Plans: An Assessment of Industry Practices and State Regulatory Responses.” *Urban Institute*, January 2019.

https://www.urban.org/sites/default/files/publication/99708/moni_stldi_final_0.pdf.

^v Consumer representatives to the National Association of Insurance Commissioners, “Report on Testing Consumer Understanding of a Short-Term Health Insurance Plan.” March 15, 2019. https://healthyfuturega.org/wp-content/uploads/2019/04/Consumer-Testing-Report_NAIC-Consumer-Reps.pdf.