

**Department of Health and Human Services:  
Promoting Healthcare Choice and Competition Across the United States**

**Summary**

The U.S. Department of Health & Human Services (HHS) is actively working to promote choice and competition, and reduce regulatory burden, throughout healthcare markets. Executive Order 13813, “Promoting Healthcare Choice and Competition Across the United States” directs the Administration, to the extent consistent with law, to facilitate the purchase of insurance across State lines and the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people, and to promote competition in healthcare markets and limit excessive consolidation throughout the healthcare system. The President directs the Administration, to the extent consistent with law, to consider expanding the availability of and access to alternatives to expensive, mandate-laden Patient Protection and Affordable Care Act (PPACA) insurance, including Association Health Plans (AHPs), Short-Term, Limited-Duration Insurance (STLDI), and Health Reimbursement Arrangements (HRAs); spur increased competition in healthcare markets by lowering barriers to entry, limiting excessive consolidation, and preventing abuses of market power; and improve access to and the quality of information that Americans need to make informed healthcare decisions, including data about healthcare prices and outcomes, while minimizing reporting burdens on affected plans, providers, or payers. Executive Order 13813 also requires the Secretary of HHS, in consultation with the Secretaries of the Treasury and Labor and the Federal Trade Commission, to provide a report to the President detailing the extent to which existing State and Federal laws, regulations, guidance, requirements, and policies fail to conform to the above policies, and identify actions that States or the Federal Government could take to achieve them. Through this informal request for information, HHS seeks comment from interested parties to inform its report and lay the groundwork for future action.

**Background**

On January 20, 2017, President Trump issued Executive Order 13765, “Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal,” to minimize the economic and regulatory burdens of the Patient Protection and Affordable Care Act (PPACA). To meet this objective, the President directs the Secretary of HHS and the heads of all other executive departments and agencies with authorities and

responsibilities under the PPACA, to the maximum extent permitted by law, to exercise all authority and discretion available to them to provide States more flexibility and control to create a more free and open healthcare market; provide relief from any provision or requirement of the PPACA that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers of medical devices, products, or medications; provide greater flexibility to States and cooperate with them in implementing healthcare programs; and encourage the development of a free and open market in interstate commerce for the offering of healthcare services and health insurance, with the goal of achieving and preserving maximum options for patients and consumers.

On October 12, 2017, President Trump issued Executive Order 13813, "Promoting Healthcare Choice and Competition Across the United States," to the extent consistent with law, to facilitate the purchase of insurance across State lines and the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people, and to promote competition in healthcare markets and limit excessive consolidation throughout the healthcare system. The President directs the Administration, to the extent consistent with law, to consider expanding the availability of and access to alternatives to expensive, mandate-laden PPACA insurance, Association Health Plans (AHPs), Short-Term, Limited-Duration Insurance (STLDI), and Health Reimbursement Arrangements (HRAs); spur increased competition in healthcare markets by lowering barriers to entry, limiting excessive consolidation, and preventing abuses of market power; and improve access to and the quality of information that Americans need to make informed healthcare decisions, including data about healthcare prices and outcomes, while minimizing reporting burdens on affected plans, providers, or payers.

HHS is the Federal government's principal agency charged with protecting the health of all Americans and providing essential human services. HHS's responsibilities include: Medicare, Medicaid, increasing access to care and private insurance coverage, supporting public health preparedness and emergency response, biomedical research, substance abuse and mental health treatment and prevention, assuring safe and effective drugs and other medical products, protecting our Nation's food supply, assisting low income families, the Head Start program, providing services to older

Americans, and directing health services delivery. HHS is comprised of staff divisions and operating divisions, many of which have responsibility for promulgating regulations pursuant to HHS's statutory authority.

Each HHS agency is conducting a thoughtful analysis of its significant existing regulations issued under the PPACA, which added burdensome and costly requirements to individual and small group health insurance, to determine whether each rule advances or impedes HHS priorities of: empowering patients and promoting consumer choice; enhancing affordability; and returning regulatory authority to the States. We recently sought public input<sup>1</sup> on changes that could be made, consistent with current law, to existing regulations under the current law that would result in a more streamlined, flexible, and less burdensome regulatory structure, including identifying regulations that eliminate jobs, or inhibit job creation; are outdated, unnecessary, or ineffective; impose costs that exceed benefits; or create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies.

Since the first weeks of the Trump Administration, HHS has worked to reduce burdens and improve health insurance options under Title I of the PPACA. The Centers for Medicare & Medicaid Services (CMS) issued a proposed rule, "Patient Protection and Affordable Care Act; Market Stabilization," containing new reforms that are critical to reducing rampant abuses plaguing the individual and small group health insurance markets.<sup>2</sup> After receiving and considering public comment, CMS published the final rule on April 18, 2017.<sup>3</sup> The new reforms will place downward pressure on premiums, curb abuses, and encourage full-year enrollment by expanding pre-enrollment verification of eligibility of new exchange enrollees using special enrollment periods; encourage patients to avoid coverage lapses; provide greater flexibility to issuers on actuarial value; return to the States the authority and means to assess issuer network adequacy;

---

<sup>1</sup> Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients (CMS-9928-NC). Published June 12, 2017 at 82 FR 26885 and <https://www.federalregister.gov/documents/2017/06/12/2017-12130/reducing-regulatory-burdens-imposed-by-the-patient-protection-and-affordable-care-act-and-improving>.

<sup>2</sup> Patient Protection and Affordable Care Act; Market Stabilization. CMS-9929-P. Published February 17, 2017 at 82 FR 10980 and <https://www.federalregister.gov/documents/2017/02/17/2017-03027/patient-protection-and-affordable-care-act-market-stabilization>.

<sup>3</sup> Patient Protection and Affordable Care Act; Market Stabilization. CMS-9929-F. Published April 18, 2017 at 82 FR 18346 and <https://www.federalregister.gov/documents/2017/04/18/2017-07712/patient-protection-and-affordable-care-act-market-stabilization>.

revise the timeline for Qualified Health Plan (QHP) certification and rate review to give issuers flexibility to incorporate benefit changes and maximize the number of coverage options available to consumers; and align the open enrollment period for the individual market with the employer-sponsored insurance market and Medicare, helping to lower prices for Americans by reducing adverse selection. CMS has also taken a number of other steps to reduce burden, improve choices, and reform the insurance market.

These initial steps will help issuers and States work together to achieve HHS priorities, including addressing the rampant abuses plaguing the individual and small group health insurance markets; empowering patients and promoting consumer choice; enhancing affordability; and affirming the traditional regulatory authority of the States in regulating the business of health insurance.

There remains concern, however, that provisions of PPACA reduce the choice of healthcare options in a way that limits market competition. In recent years, there have been large premium increases in many State individual markets for health insurance. Average individual market premiums increased 105% from 2013 to 2017. The projected average monthly premium for the second-lowest cost silver plan (SLCSP), also called the benchmark plan, for a 27-year-old increased by 37% from plan year 2017 to plan year 2018. Issuer participation in the Exchanges continues to decline, with 132 total state issuers in plan year 2018, down from 167 in plan year 2017, and eight states in plan year 2018 will have only one issuer. For 2018, 29% of current enrollees will have only one issuer to choose from, up from 20% in plan year 2017.

The effects of limited healthcare competition go well beyond insurance markets and touch on a variety of healthcare markets. Numerous aspects of the healthcare system may dampen competition and innovation, especially compared to other industries. Competition and innovation are hindered by State and Federal laws, regulations, guidance, requirements, and other policies that have erected barriers to entry, allowed excessive consolidation, and permitted abuses of regulatory processes and market power in many markets for healthcare services. Exercise of market power may result in both higher prices and lower quality than might occur under more vigorous competition.

Although health spending has slowed in recent years, the projected trends are worrisome. Health spending is projected to grow 1.2 percentage points faster than Gross Domestic Product (GDP) per year over the 2016-25 period; as a result, the health share of GDP is expected to rise from 17.8% in 2015 to 19.9% by 2025. Medicare spending is projected to grow at a somewhat more rapid rate, placing greater pressure on the Federal budget. It is reasonable to assume that enhanced competition in both provider and insurance markets could improve both these spending trends and the value of healthcare received. Americans face high and increasing health insurance premiums and healthcare costs, with many healthcare services providing too little value to consumers.

Through this informal Request for Information, HHS now seeks input from the public on the extent to which existing State and Federal laws, regulations, guidance, requirements and policies limit choice and competition across all healthcare markets, and the identification of actions that States or the Federal Government could take to support the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people.

### **Request for Information**

Promoting Healthcare Choice and Competition Across the United States -- HHS is interested in public comments about State and Federal laws, regulations, guidance, requirements, and policies that discourage or prevent the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people, the promotion of competition in healthcare markets, and the limitation of excessive consolidation throughout the healthcare system. We anticipate public comments on AHPs, STLDI, and HRAs will be provided in response to rulemaking or other guidance the Departments of HHS, Labor, and the Treasury may consider in response to the Executive Order. This request for information specifically requests information about barriers to choice and competition other than any attributable to rules regarding AHPs, STLDI, or HRAs, and proposed solutions that could facilitate the development and operation of a healthcare system that provides high-quality care at affordable prices for the American people

1. What State or Federal laws, regulations, or policies (including Medicare, Medicaid, and other sources of payment) reduce or restrict competition and choice in healthcare markets?

2. What State or Federal laws, regulations, or policies (including Medicare, Medicaid, and other sources of payment) may promote or encourage anticompetitive behavior in healthcare markets?
3. What State or Federal grants or other funding mechanisms (including Medicare, Medicaid, and other sources of payment) reduce or restrict competition and choice in healthcare markets?
4. What State or Federal grants or other funding mechanisms (including Medicare, Medicaid, and other sources of payment) may promote or encourage anticompetitive behavior in healthcare markets?
5. What suggestions do you have for policies or other solutions (including those pertaining to Medicare, Medicaid, and other sources of payment) to promote the development and operation of a more competitive healthcare system that provides high-quality care at affordable prices for the American people?

### **Submitting Comments**

Resources to submit comments can be found at <https://aspe.hhs.gov/pdf-report/competition-rfi> . Comments will be received through January 25, 2018.

### **Special Note to Commenters:**

Whenever possible, respondents are asked to draw their responses from objective, empirical, and actionable evidence and to cite this evidence within their responses.

This RFI is issued solely for information and planning purposes; it does not constitute a Request for Proposal, applications, proposal abstracts, or quotations. This RFI does not commit the Government to contract for any supplies or services or make a grant or cooperative agreement award. Further, HHS is not seeking proposals through this RFI and will not accept unsolicited proposals. Responders are advised that the U.S. Government will not pay for any information or administrative costs incurred in response to this RFI; all costs associated with responding to this RFI will be solely at the interested party's expense. Not responding to this RFI does not preclude participation in any future procurement or program, if conducted. It is the responsibility of the potential responders to monitor this RFI announcement for additional information pertaining to this request.

Please note that HHS will not respond to questions about the policy issues raised in this RFI. HHS may or may not choose to contact individual responders. Such communications would only serve to further clarify written responses. Contractor support personnel may be used to review RFI responses.

Responses to this RFI are not offers and cannot be accepted by the Government to form a binding contract. Information obtained as a result of this RFI may be used by the Government for program planning on a non-attribution basis. Respondents should not include any information that might be considered proprietary or confidential. This RFI should not be construed as a commitment or authorization to incur costs for which payment would be required or sought. All submissions become Government property and will not be returned. HHS may publicly post the comments received, or a summary thereof.