Allowing Health Insurance Products Governed by Different Rules and Standards Would Further De-Stabilize the Individual Market and Increase Costs for Those With Pre-Existing Conditions

Policies that increase uncertainty or threaten instability should be avoided

Background: Reports have surfaced that potential changes to the proposed Better Care Reconciliation Act (BCRA) in the Senate are being considered that could permit health insurers to sell non-compliant plans if the health insurer offered at least one plan in a state's federally-regulated Exchange Marketplaces ("Exchange"). Under this proposal, the non-compliant policies would be exempt from consumer protections, such as guaranteed access to coverage, community rating (e.g. no, premium surcharges based on health-status), the ban on pre-existing condition exclusions, and the requirement to offer comprehensive benefits with appropriate limits on patient cost-sharing.

Stable and well-functioning insurance markets require broad-based enrollment and a stable regulatory environment that facilitates fair competition and a level playing field. Unfortunately, this proposal would fracture and segment insurance markets into separate risk pools and create an un-level playing field that would lead to widespread adverse selection and unstable health insurance markets. This is particularly true for patients with pre-existing conditions—who would be most affected and potentially lose access to comprehensive coverage and/or have plans that were far more expensive, as premiums in the Exchange market would rise much faster than under existing market conditions and insurance options dwindle.

- **Opening up non-compliant plans to new purchasers would create greater instability in the marketplace, according to non-partisan experts such as the American Academy of Actuaries.** A key contributing factor to the current risk pool instability in certain states was the transitional policy, which allowed individuals to renew non-compliant plans. That is because it segments the market—allowing healthier individuals to remain in their existing medically-underwritten plans while depriving the new Exchange markets of younger and/or healthier individuals necessary for risk pool stability. Actuaries estimated that states adopting the transitional policy experienced 10% higher rates for the Exchange market than states that did not elect this policy. **Proposals to re-open non-compliant plans would create even greater instability by driving adverse selection and an acceleration of the downward spiral in the Exchange markets of higher premiums and lower enrollment.**

- **The requirement that insurers also participate in the Exchange market would not preserve protections for those with higher-than-average health care costs**. Such protections—such as guaranteed issue, community rating, and banning pre-existing conditions—only work if there is broad participation to assure stable markets and affordable premiums. By bifurcating risk pools and creating separate parallel market—where healthy individuals can select underwritten plans at a preferred rate—this proposal would cause lower enrollment in Exchange markets of the younger and heathier individuals necessary for a stable insurance market. As a result, the Exchange markets would basically function like a high-risk pool—with unaffordable premiums for those with pre-existing conditions. As premiums rose, only those with the highest health needs and expenses would remain thereby accelerating the decline in the Exchange market.

- **Including both "compliant" and "non-compliant" plans in a single risk pool would be infeasible and not solve the problems of an unlevel playing field**. For a single risk pool to work, all health plans must provide coverage for the same benefit categories – for example, under a common federal benefit "floor." However, if "skinnier" non-compliant plans could exclude coverage of certain benefit categories (e.g., prescription drugs or maternity) while compliant plans must cover all benefit categories, it would be very challenging to combine those products into a single risk pool. Moreover, important premium stabilization programs such as risk adjustment that compensate plans enrolling higher risk individuals and protect against adverse selection would become unworkable and unsustainable because of likely differences in the benefit categories, health status and costs of enrollees in compliant versus non-compliant plans.

Conclusion: The individual market faces well-documented challenges to stability, including higher premiums, lower-than-expected enrollment, fewer plan choices, and risk pool problems in certain states and markets. Policy solutions exist to create more stability in the market by reducing premiums and attracting enrollment of younger and healthier individuals. In this context, *it is important that policymakers avoid policies that threaten to further increase uncertainty or threaten stability*. Such policies include opening up non-compliant plans to new enrollees, bifurcating the risk pool, or allowing plans covered by different rules to compete in the same market.