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December 22, 2014

Katherine Archuleta
Director
U.S. Office of Personnel Management
1900 E. Street, NW
Washington, D.C. 20415

Via Electronic Submission

Attn: RIN 3206-AN12

Re: Proposed Rule for Establishment of the Multi-State Plan
Program for the Affordable Insurance Exchanges

The National Health Law Program (NHeLP) is pleased to offer these comments on the proposed rule for Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges from the Office of Personnel Management published in the Federal Register on November 24, 2014. NHeLP protects and advances the health rights of low-income and underserved individuals. The oldest non-profit of its kind, NHeLP advocates, educates, and litigates at the federal and state levels. Consistent with this mission, NHeLP works to ensure that all people in the United States have access to comprehensive health care services, which include abortion services.

§ 800.109

We commend the U.S. Office of Personnel Management (OPM) for requiring multi-state plan issuers to make provider directories available to enrollees and to comply with additional provider directory standards established by HHS for issuers, and urge it to adopt minimum network adequacy standards to ensure that consumers have timely access to needed care. Pending regulations from the U.S. Department of Health and Human Services (HHS) would require qualified health plan (QHP) issuers to make complete, up-to-date- and accurate information available on plan websites, and meet specific standards with respect to the participation of essential community providers in their networks. In

separate comments to those rules, we have provided detailed feedback and recommendations to HHS on how these consumer protections can be further strengthened to ensure that consumers have real access to needed care. In addition, network adequacy, provider directories, and essential community providers have received considerable regulatory attention from state legislatures, insurance commissioners, and Exchanges in 2014. Currently, multi-state plans are not required to comply with either HHS rules or state rules related to network adequacy, provider directories, and essential community providers. This gap in regulation creates significant disparities in the consumer protections available to multi-state plan enrollees compared to enrollees in other QHPs. Since consumer protections in this area are critical to ensuring that coverage is real and comprehensive for enrollees, we strongly urge OPM to ensure that multi-state plans meet the same minimum standards as other QHPs. To that end, we urge OPM to require issuers to comply with both state rules as well as any new minimum standards adopted by HHS adopts with respect to network adequacy, provider directories, and essential community providers.

§ 800.602

As OPM recognizes in the preamble to these proposed rules, § 1334(a)(6) of the Affordable Care Act (ACA) requires OPM to ensure that “at least one [multi-state] plan []” does not cover abortion services, except in cases of rape, incest, and life endangerment (hereinafter, non-excepted abortions).¹ OPM’s regulations currently in effect also reflect this statutory provision.² Yet, for 2014 and 2015, OPM operationalized this policy by requiring each MSP issuer to offer at least two plans that exclude non-excepted abortion services.³ We appreciate OPM recognizing that multi-state plans are permitted to cover abortion services. However, consistent with the ACA and the OPMs own regulations, we urge that OPM only require in the future that multi-state plans offer at least one (not at least two) additional option that does not cover non-excepted abortions.

Subsection (c)

Multi-state plan Summary of Benefits and Coverage (SBC) should clearly explain their inclusion or exclusion of all services, including abortion services. The primary goal of such disclosure rules should be to ensure that every consumer (and enrollee) has simple-to-understand information about health insurance coverage options so that he or

¹ Patient Protection and Affordable Care Act; Establishment of the Multi-State Plan Program for the Affordable Insurance Exchanges, 79 Fed. Reg. 69,802, 69,808 (Nov. 24, 2014) (to be codified at 45 C.F.R. pt. 800).

² See 45 C.F.R. § 800.602(a) (“Assured availability of varied coverage. Consistent with Sec. 800.104, OPM will ensure that at least one of the MSP issuers on each Exchange in each State offers **at least one MSP option** that does not provide coverage of services described in section 1303(b)(1)(B)(i) of the Affordable Care Act.”) (emphasis added).

³ 79 Fed. Reg. at 69,808.

she can make a well-informed choice when selecting a health plan. Plans should disclose this information not only in states where coverage is permitted by State law, but also in states where such coverage is prohibited; consumers will not always know whether there is a state law prohibiting coverage of abortion in their states. We therefore urge OPM to apply these disclosure requirements to all multi-state plans in all states.

Multi-state plans, like all other plans, should inform prospective (and current) enrollees of all covered and excluded services. We accordingly support OPM's proposal to require multi-state plans to disclose coverage of abortion services before (and after) a consumer enrolls in the plan. However, plans should also disclose whether they exclude abortions. Specifically, the SBC must contain all of the information a person needs to make an informed choice about her health plan. This includes whether abortion is covered (as well as whether it is excluded), cost-sharing amounts, and any limitations on coverage. Additionally, all plans should include a link to their plan documents where consumers can find more information about the coverage details. This information should be listed under the "Common Medical Events" section of the SBC. Abortion is a common medical procedure, one that more than one million U.S. women obtain every year.⁴ Moreover, listing abortion under Common Medical Events will enable plans to disclose important limitations and exceptions. Conversely, we feel strongly that it should not be listed at the end of the SBC under "other" services. Enrollees are unlikely to look at that section for abortion coverage. The services listed there are ones that enrollees expect are more discretionary or those that are excluded from coverage, such as acupuncture or chiropractic services, when all other options for pregnancy are explicitly listed in the Common Medical Events section.

Plans should explain their coverage of abortion under "Common Medical Events" in either the "If you are pregnant" row or on a separate row, immediately below the "If you are pregnant" row. The following chart contains our suggested language for each circumstance – when a plan covers abortion, only covers abortion in certain circumstances, or does not cover abortion at all. If a plan does not cover abortion at all, it should have to clearly indicate the exclusion of coverage.

| | In-network provider | Out-of-network provider | Limitations & Exceptions |
|-----------------------------------|------------------------------------|------------------------------------|--|
| If a plan covers Abortions | [provide cost-sharing information] | [provide cost-sharing information] | None. See full plan information at www.###.com |
| If a plan covers abortion only in | [provide cost-sharing | [provide cost-sharing | Coverage excluded except |

⁴ Three in 10 women will have an abortion before the age of 45. Guttmacher Institute, *Induced Abortion in the United States* (July 2014), http://www.guttmacher.org/pubs/fb_induced_abortion.html.

| | | | |
|--|--------------|--------------|---|
| certain circumstances | information] | information] | when [the woman's life is endangered] [the pregnancy is the result of rape or incest] [explanation of other circumstances]. See full plan information at www.###.com |
| If a plan does not cover abortion at all | Not covered | Not covered | Abortion is not covered [The exclusion must also be listed in the Services Your Plan Does Not Cover] See full plan information at www.###.com |

RECOMMENDATION(S): We recommend amending **§ 800.602(c)** as follows:

(c) Notice to enrollees--(1) Notice of **coverage or** exclusion. The MSP issuer must provide notice to consumers prior to enrollment when non-expected abortion services are ~~not a covered or excluded benefit in a State where such coverage of such abortion services is permitted by State law,~~ in the form, manner, and timeline prescribed by OPM.

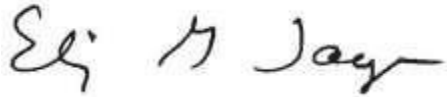
(2) Notice of coverage. ~~If an MSP issuer chooses to offer an MSP option that covers non-expected abortion services, in addition to an MSP option that does not provide coverage for these services, the~~ **The** MSP issuer must provide notice to consumers prior to enrollment that non-expected abortion services are a covered **or excluded** benefit, in a manner consistent with 45 CFR 147.200(a)(3), to meet the requirements of 45 CFR 156.280(f). **This notice must include information about whether abortion is covered, cost-sharing amounts, and any limitations on coverage.** OPM may provide guidance on the form, manner, and timeline for this notice.

(3) OPM review and approval of notices. OPM may require an MSP issuer to submit to OPM such notices. OPM reserves the right to review and approve these consumer notices to ensure that an MSP issuer complies with Federal and State laws, and the standards prescribed by OPM with respect to Sec. 800.602.

Conclusion

Thank you for considering our recommendations. If you have any questions about these comments, please contact Dipti Singh (singh@healthlaw.org), Staff Attorney at the National Health Law Program. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth G. Taylor". The signature is written in a cursive style with a large initial "E" and a long horizontal stroke at the end.

Elizabeth G. Taylor
Executive Director