

Congress of the United States

Washington, DC 20510

February 22, 2018

Mr. Dean Cameron
Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720

Dear Director Cameron:

Last month, the Idaho Department of Insurance issued a bulletin permitting the sale of “state-based plans” that do not satisfy consumer protections required of individual market insurance coverage under federal law.¹ We strongly oppose efforts that result in higher costs and undermine consumer protections that are guaranteed by federal law that protect women, people with pre-existing conditions, and others facing discrimination in access to health care, and therefore request an explanation of how the Idaho Department of Insurance will regulate insurance plans being sold in the individual market that are not compliant with federal law.

Idaho state officials have reportedly discussed the concept of these “state-based plans” with federal regulators at the U.S. Department of Health and Human Services (HHS), including with former Secretary Tom Price.²

On Tuesday, Blue Cross of Idaho requested state regulatory approval to begin marketing five of these “state-based plans,” which it hopes to begin selling in early March for coverage beginning in April. The proposed plans would charge higher premiums for older and sicker patients in ways that are prohibited under federal law, which permits variation in premiums based only on family size, geography, age, and tobacco use.³ Blue Cross of Idaho’s application for these “state-based plans” seeks information about a potential enrollee’s medical history, ranging from reproductive health conditions to a history of mental illness and substance use, and the insurer would be permitted to charge enrollees more based on their responses.⁴ The plans can deny coverage for those with pre-existing conditions who have not had continuous coverage.⁵ The plans would also include annual limits on coverage, and at least one plan would not cover critical essential health benefits like maternity care.

Other Idaho insurers have so far declined to apply to sell these state-based plans, citing concerns that the guidance contained in the Idaho Department of Insurance’s bulletin conflicts with federal

¹ <https://www.wsj.com/articles/idaho-insurer-to-sell-plans-at-odds-with-federal-health-law-1518595200?utm>

² <http://www.idahostatesman.com/news/politics-government/state-politics/article199999234.html>

³ Public Health Service Act § 2701.

⁴ <http://www.idahostatesman.com/news/politics-government/state-politics/article199999234.html>

⁵ <http://www.idahostatesman.com/news/politics-government/state-politics/article198322574.html>

regulations. Carriers that violate the Public Health Service Act are subject to a penalty of up to \$100 per day for each individual that receives coverage that fails to comply with federal law. And, the Public Health Service Act requires the federal government to step in if a state is not “substantially enforcing” federal insurance law. Those insurers also raised concerns about the impact of these plans on the single risk pool in Idaho’s individual insurance market and the potential to introduce “unnecessary uncertainty into the market.”⁶

We request a staff briefing in order to understand how the Idaho Department of Insurance plans to regulate these “state-based plans” and to address the resultant effects on the individual insurance market. Please also provide the following documents and responses by no later than March 7, 2018:

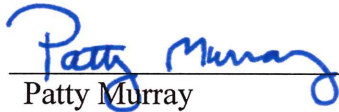
1. Please provide any analysis conducted by or provided to the Idaho Department of Insurance to evaluate the sale of “state-based plans” and compliance with requirements under federal law that require plans sold on the individual insurance market comply with certain consumer protections, such as the prohibition of discrimination against individuals with pre-existing conditions.
2. Please provide any analysis conducted by the Idaho Department of Insurance to evaluate the effects the new guidelines may have on coverage and market stability in the State of Idaho.
3. Please provide all communications between the Idaho Department of Insurance and HHS officials, including officials at CMS and CCIIO, in which the new guidelines or approval of “state-based plans” were discussed or mentioned. Such communications should include, but not be limited to, emails, letters, faxes, or any other written materials, as well as a list of any meetings, calls, or other oral communications that took place between the aforementioned parties. In the case of meetings, calls, and other oral communications, please include the date, time, and location at which such communications took place, as well as a list of individuals who participated.
4. Do you believe that the State of Idaho is still substantially enforcing federal insurance law?
5. The civil monetary penalty for health plans in violation of federal law is \$100 per member per day. Please provide any analysis conducted by the Idaho Department of Insurance to evaluate the reserves of Blue Cross of Idaho and its ability to absorb these penalties and remain in compliance with state law.

Thank you in advance for your attention to this critical matter. If you have any questions or would like to discuss further compliance with this request, please contact Elizabeth Letter or Colin Goldfinch with Senator Murray’s Senate HELP Committee staff at 202-224-0767, Peter Gartrell or Arielle Woronoff with Senator Wyden’s Senate Finance Committee staff at 202-224-4515, Una Lee with Representative Pallone’s House Energy and Commerce Committee staff at

⁶ <https://www.wsj.com/articles/idaho-insurer-to-sell-plans-at-odds-with-federal-health-law-1518595200?utm>

202-225-3641, and Melanie Egorin with Representative Neal's House Ways and Means Committee staff at 202-215-7520.

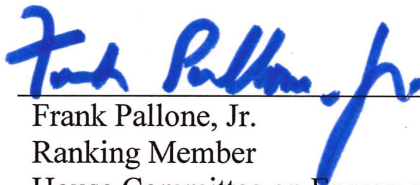
Sincerely,



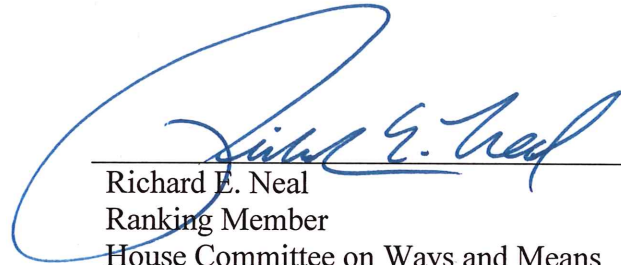
Patty Murray
Ranking Member
Senate Committee on Health,
Education, Labor, and Pensions



Ron Wyden
Ranking Member
Senate Committee on Finance



Frank Pallone, Jr.
Ranking Member
House Committee on Energy and
Commerce



Richard E. Neal
Ranking Member
House Committee on Ways and Means