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Public Policy and Education Fund of New York/Citizen Action of New York
Raising Women's Voices-New York ☞ Schuyler Center for Analysis and Advocacy
Small Business Majority

August 7, 2017

Maria T. Vullo, Superintendent
Troy Oechsner, Deputy Superintendent for Health
Nathaniel Dorfman, Deputy Superintendent for Legislative and Regulatory Affairs
New York State Department of Financial Services
One State Street New York, NY 10004

Re: DFS-25-17-00002-EP— Emergency/Proposed Rule Making Regarding Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure (Emergency Regulations regarding Essential Health Benefits, Nondiscrimination; DFS-18-17-00020-E Emergency Rule Making Regarding Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets; Executive Order No. 167 Regarding Ban on Insurers That Withdraw From NY State of Health, New York's Official Health Plan Marketplace

Dear Sir/Madam:

Health Care For All New York (HCFANY) respectfully submits the following comments to the New York State Department of Financial Services (DFS) in response to the Emergency/Proposed Rulemaking released June 21, 2017. HCFANY is a statewide coalition of over 170 organizations dedicated to achieving quality, affordable health coverage for all New Yorkers. We strive to bring consumer voices to the policy conversation, ensuring that the concerns of real New Yorkers are heard and reflected. For more information on HCFANY, visit us on the web at www.hcfany.org.

HCFANY greatly appreciates the opportunity to provide comments on the following three items: 1) the emergency/proposed rule regarding essential health benefits and nondiscrimination; 2) the emergency rule regarding the establishment and operation of market stabilization mechanisms for certain health insurance markets; and 3) Executive Order no. 167 regarding a ban on insurers that withdraw from the New York State of Health Marketplace.

Regulations Adopting the Essential Health Benefits Should be Adopted as Proposed.

HCFANY lauds the proposed rule's effort to require New York's individual and small group market carriers offer the 10 Essential Health Benefits mandated in the Patient Protection

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and Affordable Care Act (ACA). This action is necessary because the Essential Health Benefits have been under near constant threat by both members of Congress and the federal Administration since January 2017. Recent “repeal and replace” efforts at the federal level have attempted to undermine the Essential Health Benefits in the guise of providing “state flexibility” or, more explicitly, through efforts to completely eliminate them in their entirety. Fortunately, for now, those efforts appear to have stalled.

Nonetheless, HCFANY believes it is important for states to step into the federal policy making void and adopt the Essential Health Benefits into state regulations, as proposed here. The Essential Health Benefits are a vital consumer protection because they ensure that consumers have comprehensive coverage for medically necessary care. Their adoption is consistent with New York’s longstanding commitment to protect consumers from medical underwriting and to encourage the provision of comprehensive coverage in the individual and small group markets. Formally adopting the Essential Health Benefits will further strengthen the New York insurance market by providing consumers more coverage security, while also reducing marketplace uncertainty from the insurer prospective.

The Nondiscrimination Regulations Should be Adopted As Proposed and Expanded to Bar Discrimination based on Sexual Orientation.

HCFANY further lauds the adoption of nondiscrimination provisions in the emergency/proposed rule, which includes discrimination based on race, color, creed, national origin, sex (including sex stereotyping and gender identity), age, marital status, disability, and preexisting conditions. In particular, HCFANY supports the inclusion of sex stereotyping and gender identity in the non-discrimination provision, as well as the proposed protections for non-resident immigrants. This inclusive proposal is imperative for New York because a nationwide preliminary injunction issued by a US District Court in Texas has resulted in non-enforcement of a federal regulation prohibiting discrimination based on gender identity, severely limiting transgender individuals' recourse when they face discrimination.

However, HCFANY urges the state to expand the emergency regulation to prohibit discrimination based on sexual orientation. The current language is not explicit enough in its protection of people who are lesbian, gay or bisexual and should be amended to include a specific prohibition against discrimination based upon sexual orientation.

Regulations Adopting Market Stabilization Mechanisms Should be Adopted as Proposed.

HCFANY supports the adoption of a market stabilization mechanism in the form of a state-based risk adjustment pool in the small group market for the 2017 plan year. The federal risk adjustment program developed under the ACA requires that carriers whose members have relatively better loss experience pay into the risk adjustment pool, and that those with relatively worse experience receive payment from the risk adjustment pool. The purpose of such a program is to balance out the experience of all carriers in the market.



In New York, however, the federal risk adjustment program has led to a situation in which some carriers in New York are receiving large payments out of the risk adjustment program that are paid by other carriers, which represents a significant portion of their revenue. DFS has determined that the federal risk adjustment program does not yet adequately address the impact of administrative costs and profits in the small group market, and does not appropriately address New York's rating tier structure. In response, DFS adopted a small group risk adjustment pool to balance out the experience of New York's small group insurance carriers. HCFANY lauds this adoption, and believes it will support a robust small group insurance market and make for a more equitable experience across carriers.

HCFANY Supports the Executive Order Regarding a Ban on Insurers That Withdraw from the New York State of Health Marketplace.

HCFANY lauds Governor Cuomo's Executive Order regarding a ban on insurers that withdraw from the New York State of Health Marketplace (NYSOH). Under the Executive Order, any insurer that intends to withdraw their plan options from NYSOH will be placed on a publicly available Commissioner's list that states their intent to withdraw. State entities, such as Child Health Plus, Medicaid Managed Care, and the New York State Health Insurance Program will then be directed not to enter into any new contracts or extend existing contracts with any insurer that is included on the Commissioner's list.

HCFANY believes this is an important consumer protection because withdrawal by insurers on NYSOH would have a significant and detrimental impact on hundreds of thousands of New York's consumers. Moreover, the Executive Order is an important market stabilization mechanism because it ensures that New York will continue to have a robust individual market going forward.

Thank you for the opportunity to provide comments. If you have any questions about our comments, please contact Amanda Dunker at adunker@cssny.org or at (212) 614-5312.

Very truly yours,