

Congress of the United States
Washington, DC 20515

March 5, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Administrator Verma:

We write to express our serious concerns regarding policies included in the proposed rule, published on February 6, 2020, “Patient Protection and Affordable Care Act (ACA); HHS Notice of Benefit and Payment Parameters for 2021.”¹ The Administration is proposing policies that would increase health care costs, threaten the stability of the individual market, and take away coverage from American families and patients. If implemented, the policies in the proposed rule would result in higher out-of-pocket costs for millions of Americans and thousands of low-income families losing coverage. We call on you to withdraw these policy proposals and urge you to instead work with Congress to enact policies that would improve access to and affordability of coverage.

We are deeply concerned about the agency’s request for comments on whether to discontinue providing advance payments of the premium tax credit (APTC) for consumers who are enrolled in zero-dollar premium plans, and who do not actively reapply during the Marketplace’s annual Open Enrollment. The proposed rule notes that about 270,000 consumers were enrolled in a plan with a zero-dollar premium during the 2019 Open Enrollment.² These are low-income Americans who rely on subsidies for their health coverage and whose income qualifies them for a zero-dollar premium plan. The proposed policy would be harmful and place significant undue burden on these consumers. These low-income consumers could lose health coverage if the Administration discontinues providing APTC to individuals who do not actively reapply each year. Additionally, the ACA already includes safeguards to ensure consumers eligible for APTC receive the correct amount of subsidies through the reconciliation process.

We are particularly concerned given Congress directed the Secretary of the Department of Health and Human Services (HHS) to establish an automatic re-enrollment

¹ Department of Health and Human Services, Center for Medicare and Medicaid Services, *Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2021*, 85 Fed. Reg. 7088 (February 6, 2020) (proposed rule).

² *Id.*

process for plan year 2021 in the Marketplace.³ We believe the proposed policy to discontinue APTC for individuals who do not actively reapply during the annual Open Enrollment undermines the automatic re-enrollment policy and goes against Congressional intent. The Marketplace practice of automatic re-enrollment follows standard practice for other insurance markets, such as employer-sponsored coverage and Medicare Advantage, and is intended to protect consumers from becoming (i) uninsured or (ii) subject to expensive penalties. Last year, the Administration contemplated a proposal to terminate automatic re-enrollment for consumers in the Marketplace.⁴ According to an internal Centers for Medicare & Medicaid Services (CMS) memorandum, the agency's own analysis found that if automatic re-enrollment was terminated, "consumers will likely lose coverage and become uninsured."⁵ The proposed rule notes 1.8 million individuals were automatically re-enrolled in coverage during the 2019 Open Enrollment, including nearly 270,000 persons in zero-dollar premium plans.

The proposed change to automatic re-enrollment is also troubling given the Administration's record of undermining enrollment in the Marketplace. The proposed policy of threatening to discontinue consumers' APTC would be particularly disruptive given consumers have become accustomed to the existing automatic re-enrollment process. Moreover, the Administration has a record of refusing to properly invest in robust advertising and outreach, so we are concerned there would be minimal effort to ensure consumers are aware of this proposed policy change and offered resources about re-enrollment. The Administration cannot, on the one hand, apply punitive policies for those who do not actively re-enroll, while simultaneously cutting the budget for the very outreach activities that promote active re-enrollment. We strongly urge you to maintain the policy of providing APTC to consumers who do not actively return to the Marketplace during the annual Open Enrollment.

The proposed rule would continue to charge states that use the federal platform a three percent user fee. The Administration collected approximately \$1.7 billion in user fees for calendar year 2018, while simultaneously failing to properly invest in robust advertising and outreach.⁶ The Administration has cut funding for outreach and enrollment by 90 percent, and spent just \$20 million in outreach and navigator funding in 2019, compared to \$163 million in

³ 42 U.S.C. Sec. 18031(c)(7)

⁴ Department of Health and Human Services, Center for Medicare and Medicaid Services, *Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020*, 84 Fed. Reg. 227 (January 24, 2019) (proposed rule).

⁵ Memorandum from Seema Verma, Administrator, Centers for Medicare & Medicaid Services, to Secretary Azar, Department of Health and Human Services (Aug. 29, 2018) (Bates PalTX-004092-PalTX-004122).

⁶ Department of Health and Human Services, *Fiscal Year 2020 Centers for Medicare & Medicaid Services Justification of Estimates for Appropriations Committees* (Feb. 2020).

2017.⁷ A poll conducted by the Kaiser Family Foundation found that only one in four people who purchase their own insurance or were uninsured knew about the deadline for Open Enrollment for 2019.⁸ The Administration's failure to conduct robust outreach and education about the Open Enrollment period is making it more difficult for millions of Americans to access high quality, affordable health insurance. We strongly urge you to invest in robust marketing and outreach.

Finally, we remain concerned about the Administration's decision to modify the calculation of the premium adjustment percentage. Last year, the Administration finalized a policy that changed the premium indexing methodology. The policy reduced APTC for low-income patients and families by approximately \$900 million and increased out-of-pocket costs for all consumers.⁹ An internal CMS memorandum noted that finalizing the policy would "cause coverage losses, further premium increases, and market disruption."¹⁰ This year's proposed rule would raise costs even further and disrupt Americans' health care. The proposed rule would increase out-of-pocket costs by \$400 for individuals and \$800 for families. We urge you to reverse last year's changes to the premium indexing methodology.

We call on the Administration to cease its efforts to undermine the ACA and throw families' health care into jeopardy for partisan gain. The proposed rule includes policies that would increase premiums, kick individuals off their coverage, and increase health care costs. We urge you to reverse course, and work with Congress to enact policies that would improve access to coverage.

⁷ Katie Keith, *CMS to Maintain Navigator Funding at \$10 Million for 2020, 2021*, HealthAffairs (May 29, 2019).

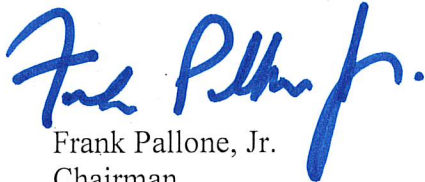
⁸ Ashley Kirzinger, Bryan Wu, and Mollyann Brodie, *KFF Health Tracking Poll – November 2018: Priorities for New Congress and the Future of the ACA and Medicaid Expansion*, KFF (Nov. 28, 2018).

⁹ See note 4

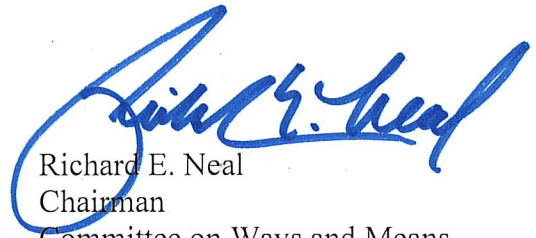
¹⁰ See note 5

Thank you for your attention to this matter. If you have any questions regarding these comments, please have your staff contact Saha Khaterzai with Chairman Pallone at 202-225-5056, Melanie Egorin with Chairman Neal at 202-225-3943, Daniel Foster with Chairman Scott at 202-225-3725, Colin Goldfinch with Ranking Member Murray at 202-224-7675, or Arielle Woronoff with Ranking Member Wyden at 202-224-4515.

Sincerely,



Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce



Richard E. Neal
Chairman
Committee on Ways and Means



Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor



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



Ron Wyden
Ranking Member
Committee on Finance