

Congress of the United States
Washington, DC 20515

October 30, 2017

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

The Honorable Steven Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Eric Hargan
Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Acosta, Secretary Mnuchin, and Acting Secretary Hargan:

We are writing with regard to the Departments' implementation of the Executive Order entitled, "Promoting Healthcare Choice and Competition across the United States." We are deeply concerned that implementation could further sabotage access to affordable health coverage and erode consumer protections provided by the Affordable Care Act (ACA).

The ACA has ensured that those who receive health coverage through the individual and small group markets have access to affordable and comprehensive coverage. This means that plans purchased through the individual and small group markets must have certain protections, including protections for those with pre-existing conditions and the essential health benefits package. Any actions by the Departments to create loopholes and allow the sale of bare bones plans could negatively impact millions of patients and small business owners, as well as their families.

The proposal to expand association health plans (AHPs), as included in the Executive Order, is not a new idea. There is substantial evidence that coverage sold through an unregulated association health plan could erode the ACA's current protections for small employers and destabilize markets. Exempting association health plans from the consumer protections in the ACA, such as the essential health benefits standard and the prohibition on rating based on health status, would amount to sanctioned discrimination, allowing association health plans to "cherry pick" only the healthiest and lowest-cost consumers. Younger, healthier individuals who move to less regulated or unregulated AHPs would see skimpy coverage and be left without important consumer protections. Older, sicker individuals who would remain in non-AHP plans would face skyrocketing premiums and struggle to afford coverage. When the House considered legislation expanding association health plans earlier this year, the National Association of Insurance Commissioners asserted that AHP-type entities have "done more harm than good to small businesses" and that "...rehashing strategies that have failed would not be a step forward."¹ Upon announcement of the Executive Order, a coalition of 18 patient groups expressed similar

¹ National Association of Insurance Commissioners, *Letter to Chairwoman Foxx and Ranking Member Scott*, (February 28, 2017) available at: http://www.naic.org/documents/health_archive_naic_opposes_small_business_fairness_act.pdf

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concerns, stating that “this order has the potential to price millions of people with pre-existing conditions and serious illnesses out of the individual insurance market and put millions more at risk through the sale of insurance plans that won’t cover all the services patients want to stay healthy or the critical care they need when they get sick.”²

Similarly, expanding the allowable duration of short-term medical insurance would further disrupt the market and undermine the ACA’s protections. These plans come with high out-of-pocket costs and limited benefits and are designed as a temporary safety net until individuals can access quality coverage. Encouraging their increased use in lieu of a comprehensive policy will leave young, healthy enrollees without coverage for preventive care, mental health services, or pre-existing conditions and force older, sicker individuals purchasing traditional coverage to pay higher premiums.

We are deeply concerned about the constant administrative actions to undermine the ACA, which remains the law of the land. The Trump Administration has already cut open enrollment by one-half,³ slashed funding to help individuals and families sign up for health care coverage through the Marketplaces,⁴ and now has indicated that it will no longer fund cost-sharing reduction subsidies that keep insurance affordable for millions of families.⁵ This Executive Order is another tactic in the broader strategy to undermine the progress of ACA, and with that, undermine the health of this country.

In short, this Executive Order has the potential to further sabotage the Marketplaces and leave millions of families without access to affordable, quality health insurance. We remind the Departments of their obligation to implement laws faithfully and urge your Departments to protect access to affordable health coverage for all.

Sincerely,



ROBERT C. “BOBBY” SCOTT
Ranking Member
House Committee on Education and the
Workforce



PATTY MURRAY
Ranking Member
Senate Committee on Health, Education,
Labor, and Pensions

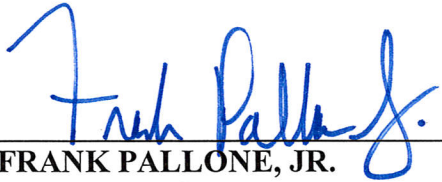
² Coalition Statement, *Health Insurance Changes Could Put Meaningful Health Coverage Out of Reach for Patients: Executive Order Could Weaken Patient Protections and Destabilize Insurance Market* (October 12, 2017) available at: <https://newsroom.heart.org/news/health-insurance-changes-could-put-meaningful-health-coverage-out-of-reach-for-patients>

³ Final Rule, *Patient Protection and Affordable Care Act; Market Stabilization*, (April 18, 2017) available at: <https://www.federalregister.gov/documents/2017/04/18/2017-07712/patient-protection-and-affordable-care-act-market-stabilization>

⁴ CMS, *CMS Announcement on ACA Navigator Program and Promotion for Upcoming Open Enrollment*, (August 31, 2017) available at: <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2017-Press-releases-items/2017-08-31-3.html>

⁵ Letter from Attorney General Jeff Sessions to The Honorable Steven Mnuchin, Secretary of the Treasury, and Don Wright, Acting Secretary, U.S. Department of Health and Human Services (October 11, 2017).

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FRANK PALLONE, JR.
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House Committee on Energy and Commerce



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Senate Committee on Finance



RICHARD E. NEAL
Ranking Member
House Committee on Ways and Means