

**Congress of the United States**  
**Washington, DC 20515**

July 1, 2019

The Honorable Steven T. Mnuchin  
Secretary  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, District of Columbia 20220

Dear Secretary Mnuchin:

We are writing to express serious concerns regarding policies under consideration by the Trump Administration that would increase health care costs and take away coverage from American families and patients. According to an internal memorandum dated August 2018 from Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma to the Health and Human Services (HHS) Secretary Alex Azar (“the August 2018 memorandum”), the Trump Administration is considering changes to the Affordable Care Act (ACA) that would result in 1.1 million individuals losing health insurance coverage.<sup>1</sup>

We call upon the Administration not to finalize these proposed policies, which CMS admits would cause chaos in the individual market, “potentially resulting in bare counties or states with no subsidized coverage available in 2019 and future plan years.”<sup>2</sup> We also are requesting information to better understand why the Trump Administration finalized a proposal in the 2020 Notice of Benefit and Payment Parameters (2020 Payment Notice)<sup>3</sup> substantially similar to one that CMS acknowledged in the August 2018 memorandum “increases taxes on issuers and consumers,” and would “cause coverage losses, further premium increases, and market disruption.”<sup>4</sup> The fact that the Trump Administration would finalize policies despite these serious

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<sup>1</sup> This memorandum was produced to multiple House Committees by the Department of Health and Human Services (HHS) as part of its response to the Committees’ inquiry regarding HHS’ position and role in the *Texas v. Azar* lawsuit, in which the Trump Administration is seeking to strike down the entire ACA. Letter from House Democratic Health Leaders, to Secretary Alex M. Azar and Administrator Verma (June 13, 2018).

<sup>2</sup> Memorandum from Seema Verma, Administrator, Centers for Medicare and Medicaid Services, to Secretary Azar, Department of Health and Human Services (Aug. 29, 2018) (Bates PalTX-004092-PalTX-004122).

<sup>3</sup> Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020*, 84 Fed. Reg.17454 (April 25, 2019).

<sup>4</sup> See note 2.

warnings is deeply troubling, and it appears to be part of the Administration's continuing efforts to sabotage the individual market, undermine the ACA, hinder consumers' access to comprehensive health care coverage, and weaken protections for people with preexisting conditions.

Ending of "Silver-Loading"

The August 2018 memorandum from Administrator Verma to Secretary Azar examines several key 2020 Payment Notice issues. In the memorandum, CMS includes a discussion of several policies under consideration for inclusion in the 2020 Payment Notice, including an end to "silver loading," terminating Marketplace automatic re-enrollment policies, and modification of the premium indexing methodology.<sup>5</sup> Taken together, these proposed policies would, according to CMS' own analysis, result in over 1.1 million Americans losing health insurance coverage, or approximately 10 percent of all Marketplace enrollment.

In the August 2018 memorandum, CMS discusses a proposal to unilaterally end the practice of "silver-loading." Most states adopted this practice in order to mitigate the effects of this Administration's unilateral decision to end payment for cost-sharing reductions (CSRs) in October of 2017. CSRs help keep deductibles down for consumers and offset other forms of cost-sharing for patients and families. States allowed plans to compensate for the lost CSR payments by "loading" the cost of these expanded benefits only on to the silver-tier of coverage, minimizing harm to consumers. CMS recommended against ending the practice of "silver-loading," stating that ending the policy would result in "substantial premium increases for consumers as well as confusion over plan selection and benefit designs," and that "issuers may withdraw from the market," and "consumers may drop coverage altogether."<sup>6</sup> In the memorandum, CMS writes that loading the cost of CSRs across all metal levels would increase premiums by 11 percent.

Terminating Automatic Re-Enrollment

In the August 2018 memorandum, CMS also discusses a proposal to terminate automatic re-enrollment for consumers in the Marketplace who do not actively enroll in a plan during annual Open Enrollment. Automatic re-enrollment in the Marketplace mirrors the standard practice for other insurance markets, such as employer-sponsored coverage and Medicare Advantage, to protect consumers from becoming uninsured or facing expensive penalties. CMS writes that if automatic re-enrollment was terminated, "consumers will likely lose coverage and become uninsured." The memorandum includes an analysis by the CMS Office of the Actuary (OACT) showing that ending automatic re-enrollment would cause 200,000 enrollees to lose coverage in 2020 and 100,000 consumers to lose coverage in each subsequent year. In the memorandum, CMS recommended against changes to the automatic re-enrollment process.

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Reduction in Advance Payments of the Premium Tax Credit

In the August 2018 memorandum, CMS discusses proposed changes to the premium indexing methodology that would result in consumers receiving less in advance payments of the premium tax credit (APTC) and paying higher out-of-pocket costs. The annual premium adjustment percentage is a measure of premium growth that is used for a number of purposes, including calculating the required contribution amount towards premiums for Marketplace consumers and determining the annual maximum out-of-pocket limit. CMS recommends against moving forward with the proposed changes, noting that implementing the policy under consideration will “cause coverage losses, further premium increases, and market disruption.”<sup>7</sup> CMS also explains that such recommendation is “consistent with the recommendation from Treasury.”<sup>8</sup> CMS describes the changes to the indexing methodology as “flawed,” and concludes that the policy will result “in a larger increase in enrollee contributions to premiums.”<sup>9</sup> CMS’ analysis finds that additional, more dramatic changes to the indexing methodology could result in approximately 2 million Americans losing coverage.

On January 24, 2019, the Trump Administration published a proposed rule, “Patient Protection and Affordable Care Act: HHS Notice of Benefit and Payment Parameters for 2020.”<sup>10</sup> The proposed rule requested comments on a number of Marketplace policies covered in the August 2018 memorandum, including ending the practice of “silver-loading,” terminating automatic re-enrollment policies, and modifying the premium indexing methodology. During the comment period on the Proposed Rule, more than 26,000 patient and consumer advocates, provider organizations, and other health care stakeholders submitted comments criticizing or opposing the proposed changes. On February 19, 2019, Democratic health leaders sent a letter expressing strong concerns and urged HHS not to finalize the policies in the Proposed Rule, including changes to the calculation of the premium adjustment percentage.<sup>11</sup>

The Administration published the final 2020 Payment Notice on April 25, 2019.<sup>12</sup> The final rule itself notes that “all commenters expressed opposition to or concerns about the proposed change” to the premium adjustment percentage.<sup>13</sup> Despite the overwhelmingly negative response to the proposed changes to the premium indexing methodology, and despite objections to the proposed changes from CMS and the Department of the Treasury (Treasury), the Administration

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> 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. 308 (January 24, 2019).

<sup>11</sup> Letter from House and Senate Democratic Health Leaders, to Secretary Azar and Administrator Verma (Feb. 19, 2019).

<sup>12</sup> *See* note 3.

<sup>13</sup> *See* note 3.

finalized changes to the methodology. In the final rule itself, CMS Office of the Actuary (OACT) estimated that this policy will reduce APTCs for low-income patients and families by \$980 million in 2020 and over \$1 billion for each of the following three years. An independent analysis by the Center on Budget and Policy Priorities found that the policy will result in higher premiums for 7.3 million Marketplace consumers by reducing the consumers' APTCs.<sup>14</sup> The final rule also noted that the Administration would consider "potential action in future rulemaking" regarding ending the practice of "silver-loading" and terminating automatic re-enrollment."<sup>15</sup>

We are very concerned that despite the analyses from Treasury and CMS, the Administration moved forward with the proposal to adjust the calculation of the premium adjustment percentage, and that the Administration appears to be contemplating additional destructive policies that could harm families' access to affordable, comprehensive health insurance coverage. We are writing to request further information regarding these policies and Treasury's internal analyses. Please provide the following information to our Committees by July 15, 2019:

1. Please provide any and all analyses, including actuarial, economic, and fiscal analyses conducted by Treasury to determine the impact that changing the premium indexing methodology will have on enrollment, premiums, consumer choice, and market stability in the individual market.
2. Please provide any and all analyses including actuarial and fiscal analyses conducted by Treasury regarding the impact of ending "silver-loading" on enrollment, premiums, and market stability in the individual market.
3. Please provide any and all analyses including actuarial and fiscal analyses conducted by Treasury regarding the impact of ending automatic re-enrollment on premiums, enrollment, and market stability in the individual market.
4. Please provide a detailed explanation of why HHS decide to finalize changes to the premium adjustment percentage despite Treasury's recommendation not to move forward with the policy in the August 2018 memorandum.
  - a. Please provide a comprehensive list of all individuals in the Executive Office of the President, including the Office of Management and Budget (OMB), involved in this decision to finalize changes to the premium adjustment percentage, including their job titles at the time of the decision.
5. Please provide a comprehensive list of all Treasury personnel who were involved in any way in reviewing policy proposals related to silver-loading, automatic re-enrollment, and

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<sup>14</sup> Center on Budget and Policy Priorities, *Change to Insurance Payment Formulas Would Raise Costs for Millions With Marketplace or Employer Plans* (April 26, 2019) ([www.cbpp.org/research/health/change-to-insurance-payment-formulas-would-raise-costs-for-millions-with-marketplace](http://www.cbpp.org/research/health/change-to-insurance-payment-formulas-would-raise-costs-for-millions-with-marketplace))

<sup>15</sup> *Id.*

The Honorable Steven Mnuchin

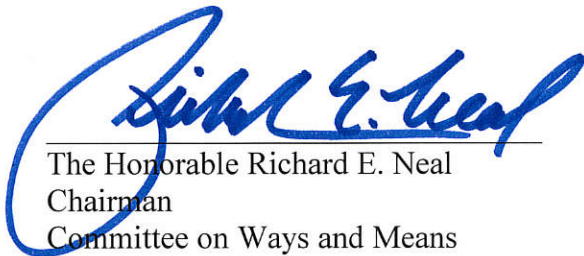
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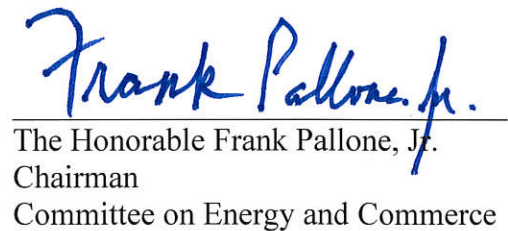
premium indexing methodology discussed in the 2020 Payment Notice, including their job titles at the time of their involvement.

Thank you for your attention to this matter. We look forward to your response in the near future.


Sincerely,



The Honorable Richard E. Neal  
Chairman  
Committee on Ways and Means



The Honorable Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce



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