Congress of the United States
Washington, DC 20515

October 17, 2017

The Honorable Eric D. Hargan
Acting Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Acting Secretary Hargan:

We are writing to better understand the Trump Administration's decision to terminate cost-sharing reduction (CSR) payments, which will result in skyrocketing costs for millions of consumers. These subsidies help six million hardworking individuals and their families —more than half of all Marketplace enrollees for 2017—afford their out-of-pocket health care costs. In announcing an end to these subsidies just weeks before open enrollment is set to begin on November 1, President Trump is choosing to raise costs in a way that will hurt consumers seeking to enroll in health insurance for the first time or re-enroll in existing coverage. We seek additional information to gain a better understanding of the Administration's justification of the decision to terminate these subsidies, including the legal basis for cutting off the payments, and any analyses the Administration has conducted of the impact of this decision on health insurance costs, access to health insurance in the individual market, and federal spending.

The Affordable Care Act (ACA) requires, and it is the obligation of the Executive Branch under the law, to make these payments.[1] President Trump's repeated public statements about the ACA make clear that this decision to terminate these subsidies was motivated by a desire to sabotage the law. In fact, hours after announcing the decision, President Trump invoked payment of CSRs as a negotiating tool, tweeting, "Dems should call me to fix!" It is entirely unclear how this motivation relates to the Administration's purported legal justification for terminating CSR payments, provided in the memo from Attorney General Jeff Sessions.[2]

The unilateral decision to cut off CSRs will cause consumers' premiums to skyrocket, threatening the ability of millions of consumers to afford health insurance coverage. Across the country, insurance commissioners, governors, and nonpartisan experts also have warned that cutting off CSRs will have serious consequences on the stability of the Marketplaces, further threatening consumers' access to health insurance.[3] According to the American Academy of Actuaries, failure to make CSR payments "could result in insurer losses and solvency challenges, leading insurers to further consider withdrawing from the market. . . . [S]ignificant market disruption could result, leading to millions of Americans losing their health insurance."[4] Others

[1] Section 1402, Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010).
[2] 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 & Human Services (Oct. 11, 2017).
[3] Joint Democratic Staff Report, Committee on Energy and Commerce and Committee on Health, Education, Labor, and Pensions, *A Manufactured Crisis: Trump Administration and Republican Sabotage of the Health Care System* (June 2017).
[4] Letter from the American Academy of Actuaries to the Honorable Paul Ryan, Speaker, U.S. House of Representatives, and the Honorable Nancy Pelosi, Democratic Leader, U.S. House of Representatives (Dec. 7, 2016).

have warned that the decision to terminate CSRs could cause insurers to withdraw from the Marketplaces,[5] and put the individual market "in immediate jeopardy of failing."[6]

The Congressional Budget Office (CBO) projected that terminating CSR payments would cause premiums to be 20% higher for silver plans offered through the Marketplaces for 2018, and 25% higher in 2020. Additionally, according to CBO, about 5 percent of the country, or 16 million people, will live in areas where there would be no insurers in the individual market.[7] In areas where insurers decide to remain in the Marketplaces, the Trump Administration's failure to pay CSRs will increase premiums for individuals enrolled in the individual market. As a result, one million people would lose coverage due to both rising premiums and the drop in the number of insurers offering coverage in the individual market.[8]

Additionally, cutting off CSRs will not rein in or reduce federal spending. As nonpartisan experts have concluded, the decision to terminate CSRs will result in an increase, rather than a decrease, in federal government spending. According to CBO, the federal government would end up spending $194 billion more on advance premium tax credits (APTC) from 2017-2026, as a result of the decision to termination CSR payments.[9]

We are deeply concerned about the impact of President Trump's unilateral decision to terminate CSR payments on consumers. We believe this decision was made with an inadequate basis given the expected harm it will have on millions of families across the country. To better understand the Administration's decision to cut off these vitally important subsidies, we write to request the following documents and information by October 23, 2017:

1. Please provide all materials the Department of Health and Human Services (HHS) used as an empirical basis for terminating the subsidies, including any analysis of the Administration's obligations to make these payments pursuant to Section 1402 of the ACA.

2. Please provide a copy of any impact analyses conducted by the Administration, including analyses of the impact of the decision to terminate CSRs on:

    a. Premiums in the individual market, including for those beyond 400% of the federal poverty line;

    b. The stability of the individual market throughout the 50 states and the District of Columbia;

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5 Anthem Health Plans of Maine, *Part II – Written description justifying the rate increase*.

6 Letter from Peter Adler, President, Molina Healthcare of Washington, Inc., to Mike Kreidler, Insurance Commissioner, State of Washington (May 1, 2017).

7 Congressional Budget Office, *The Effects of Terminating Payments for Cost-Sharing Reduction* (Aug. 2017) (online www.cbo.gov/system/files/115th-congress-2017-2018/reports/53009-costsharingreductions.pdf).

8 *Id.*

9 Kaiser Family Foundation, *The Effects of Ending the Affordable Care Act's Cost-Sharing Reduction Payments* (Apr. 25, 2017).

c. Consumer choice in the individual market, including any additional "bare counties" that may result from the decision;

d. Coverage losses due to both the inability of consumers to afford health insurance coverage due to rising premiums as well as the increase in the number of consumers who will no longer have access to any insurance options in the individual market as a result of the decision; and

e. Federal spending due to the increased outlays for APTC as a direct result of the elimination of CSRs.

3. How is HHS incorporating information about the implications of President Trump's CSR decision into its outreach and advertising efforts, including in communications with navigators, insurance brokers, and other partners assisting consumers during open enrollment?

Sincerely,

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

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

Robert C. "Bobby" Scott
Ranking Member
Committee on Education and the Workforce

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

Ron Wyden
Ranking Member
Senate Committee on Finance

Robert P. Casey, Jr.
Ranking Member
Senate Committee on Aging