

Congress of the United States

Washington, DC 20510

January 14, 2019

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

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Mnuchin and Secretary Azar:

We write today to express our concerns regarding the potential effects of the ongoing government shutdown on individuals and families who receive their health coverage in the private health insurance market. The ability of the Treasury Department to effectively disburse advance premium tax credits (APTCs), to administer Section 1332 waivers, and to prepare for future Marketplace enrollment will likely be impeded by the now 24 day-long partial government shutdown. In effect, families are facing a shutdown health care tax that increases their premiums and threatens their health coverage. We urge you and your agencies to address the following concerns to prevent this destructive shutdown from further eroding access to affordable health care.

Due to the cessation of most Internal Revenue Service (IRS) operations, we are concerned that some taxpayers will face an unexpected spike in premiums for their health care coverage due to delayed payments of APTCs. For those taxpayers who required an extension for their 2018 tax filing or had another exception in their Marketplace coverage application, additional IRS review is required to finalize APTCs and, thus, the amount of their monthly health insurance premium. Given that January is the first month of the 2019 benefit year, and the premium payment grace period does not apply if the enrollee has not effectuated enrollment, individuals who cannot afford the full cost of their January premium (without APTCs) may be at risk of losing coverage as soon as the end of the month. Finally, consumers who need to reconcile their APTC or file for a premium tax credit (PTC) and have questions regarding these processes may be left in the dark with the IRS call center closed. We urge you to ensure that consumers are not faced with unexpected premium costs, do not lose coverage, and have access to the filing assistance they need.

Additionally, the Department of the Treasury plays an essential role in the processing of State Innovation Waivers (known as Section 1332 waivers). Treasury and the Department of Health and Human Services (HHS) work with states to calculate the correct pass-through funding amount for these waivers, including those supporting state reinsurance programs that lower premiums. States often face time constraints in seeking these waivers, and application reviews, calculations of pass-through funding, and other essential functions of the application process are at risk of being significantly delayed due to the shutdown. Insurers need to begin determining

2020 premiums this spring, and President Trump has indicated he is willing to continue the government shutdown for months or years. If this results in the waiver process being impaired, premiums will increase for consumers in states with active 1332 reinsurance waivers and will be unnecessarily high for those states seeking new waivers.

Finally, if the shutdown continues, we have concerns regarding the ability of the IRS to adequately prepare for the distribution of APTCs not only in the remainder of plan year 2019, but also in plan year 2020. An array of systems, forms, and instructions must be updated in order for the Marketplace application system to operate effectively, and a large and extended absence of IRS staff could have long-term implications for the operations of the tax components of Marketplace applications and coverage.

You can take several actions to protect consumers from the negative impacts of this shutdown. In particular, the IRS should continue its essential roles of processing APTCs and administering Section 1332 waivers. Additionally, HHS should enact policies to protect consumers who would have been determined eligible for APTCs, if not for the government shutdown. HHS clearly has authority to protect consumers in these types of situations. For example, under 45 CFR § 156.460, qualified health plan (QHP) issuers are prohibited from delaying or terminating coverage in response to consumer premium payments that are late or do not include the amount of the PTC due to a delayed APTC payment. HHS should use its authorities to protect consumers from losing coverage or failing to effectuate coverage because the Trump shutdown delayed the processing of their APTC. Finally, HHS should create a special enrollment period (SEP) for individuals who, due to a delay in APTCs, are unable to pay their premiums for the month of January and/or all following months in which the partial shutdown is in effect and who subsequently lose Marketplace coverage for 2019. Patients and families should not have to effectively pay a Trump shutdown tax that makes their insurance less affordable.

We strongly urge you and your agencies to ensure consumers are not faced with insurmountable premium costs or loss of coverage as a result of this unnecessary shutdown. We request answers to the following questions by January 23rd:

- 1) What steps are you taking to ensure that consumers are not faced with unexpected premium costs, do not lose coverage, and have access to the filing assistance they need?
- 2) What are you doing to ensure consumers who are enrolling through a SEP do not face any impediments to obtaining coverage?
- 3) Are the relevant staff present at Treasury to work with states to calculate pass-through funding? What are you doing to provide states with the information they need and review applications expeditiously?
- 4) What are you doing to prevent the 2020 Marketplace preparation, including updating systems, forms, and instructions from being delayed?
- 5) On January 7, the IRS announced it would be calling a significant portion of its currently furloughed staff back to work. What number of staff will be returning to work, in what offices, and when? What impact will this have on access to APTCs?

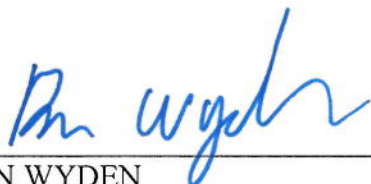
The Honorable Steven T. Mnuchin

The Honorable Alex M. Azar II

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If you have any questions please contact Arielle Woronoff with the Senate Committee on Finance at 202-224-4515, Colin Goldfinch with the Senate Committee on Health, Education, Labor, and Pensions at 202-224-7675, Caitlin Warner with the Senate Special Committee on Aging at 202-224-0185, Melanie Egorin with the House Committee on Ways and Means at 202-225-3625, Kevin Barstow with the House Committee on Energy and Commerce at 202-225-3641, and Daniel Foster with the House Committee on Education and Labor at 202-225-3725.

Sincerely,



RON WYDEN

Ranking Member

Senate Committee on Finance



PATTY MURRAY

Ranking Member

Senate Committee on Health, Education,
Labor, and Pensions



ROBERT P. CASEY, JR.

Ranking Member

Senate Special Committee on Aging



RICHARD E. NEAL

Chairman

House Committee on Ways and Means



FRANK PALLONE, JR.

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ROBERT C. "BOBBY" SCOTT

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cc: Charles P. Rettig
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