

**United States Senate**  
WASHINGTON, DC 20510

January 8, 2019

**VIA ELECTRONIC TRANSMISSION**

**The Honorable Alex Azar II**  
**Secretary**  
**U.S. Department of Health and Human Services**  
**Hubert H. Humphrey Building, Room 716G**  
**200 Independence Avenue SW**  
**Washington, DC 20201**

**RE: RIN 0938-AT53 Patient Protection and Affordable Care Act; Exchange Program Integrity**

Dear Secretary Azar,

We write with grave concern about the potential impacts of the regulation proposed on November 7, 2018, by the Department of Health and Human Services (HHS) regarding the health insurance marketplaces established under the Affordable Care Act (ACA) and urge the Trump-Pence Administration to withdraw the proposed rule. This proposed rule would substantially change the federal law around health insurance coverage of abortion and would undermine access to insurance coverage for abortion and other health care services, which would run afoul of the clear Congressional intent of section 1303 of the ACA. In addition, the proposed rule could confuse consumers, increase their health care costs, and ultimately lead to consumers losing not only abortion coverage, but health coverage in its entirety. HHS should rescind the proposed rule and instead focus on expanding health care and coverage options.

*Congress clearly intended to allow insurers to offer a plan that includes abortion coverage*

Section 1303 of the ACA establishes “special rules” that allow insurers to decide whether to sell plans on the marketplaces that cover abortion, while imposing accounting requirements plans must follow in order to cover abortion beyond the limited exceptions included in the harmful Hyde Amendment.

This proposed rule contradicts Congressional intent, as its goal is to eliminate insurance coverage of abortion. While section 1303 imposes accounting requirements on plans that offer abortion coverage, the proposed rule goes far beyond Congressional intent by requiring insurers to send two separate billing statements or invoices for abortion services and other health services, and instructing consumers to make two separate payments.<sup>1</sup> These requirements would increase the cost and burden of selling plans in the marketplace that cover abortion outside of the limited

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<sup>1</sup> <https://www.federalregister.gov/documents/2018/11/09/2018-24504/patient-protection-and-affordable-care-act-exchange-program-integrity>

instances of rape, incest, and life-endangerment. The onerous nature of these requirements could force many insurers to drop abortion coverage.

By effectively forcing insurers to drop abortion coverage from marketplace plans, the proposed rule runs counter to Congressional intent. During the drafting of the ACA, and section 1303 specifically, Congress clearly chose to allow insurers to continue to decide whether to cover abortion, thereby preserving the ability of women across the country to obtain insurance coverage of abortion. In fact, Congress explicitly rejected proposals that would have eliminated insurance coverage of abortion in the ACA marketplaces. For example, during the drafting of and debate over the ACA, the House of Representatives initially passed a bill that included a provision known as the “Stupak Amendment.” The “Stupak Amendment” would have denied the use of federal subsidies for any plan that included abortion coverage, effectively eliminating insurance coverage of abortion in the marketplace.<sup>2</sup> Ultimately, Congress rejected the Stupak Amendment and instead passed section 1303’s “special rules” on abortion coverage to ensure plans could be offered that include coverage of abortion. Further, following the passage of the ACA, Congress has similarly rejected several proposals that aimed to restrict abortion coverage in the marketplaces. This proposed rule undermines Congress’s explicit intent and could instead result in many insurers not covering abortion services due to the burdensome requirements imposed on them.

*The separate payments requirement would increase costs and confusion for consumers and would potentially lead to many consumers losing their insurance coverage entirely.*

The Trump-Pence Administration has frequently justified their sabotage of the health care system by citing a need to decrease health care costs for consumers and reduce regulatory burden. Yet, this proposed rule would clearly fail to achieve both those goals: it would increase costs to consumers and impose additional burdensome requirements on patients and insurers. In fact, the Trump-Pence Administration acknowledges the proposed rule will burden consumers, estimating it will cost consumers alone more than \$30 million. This \$30 million estimate does not include the cost of consumers learning about the new billing and payment requirements, or the cost consumers will incur if they lose abortion coverage or coverage entirely. Additionally, the separate emails, mailings, and the necessary consumer education would likely cost insurers significantly more than the \$1.6 million contemplated in the proposed rule— costs that would certainly be passed on to consumers.<sup>3</sup> Further, the proposed rule does not acknowledge that the federal and state governments will need to devote additional personnel time and resources to ensure compliance with the proposed rule’s complex requirements.

The proposed rule’s requirements would also result in consumer confusion. Requiring one premium to be broken up into two separate bills goes against industry practice. Consumers may not understand why they are receiving a separate bill every month in addition to the rest of their insurance bill, particularly when the second bill may be as little as one dollar. As a result, some consumers may inadvertently fail to pay the second, smaller bill, while others may fail to

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<sup>2</sup> <https://www.commonwealthfund.org/publications/newsletter-article/house-adopts-stupak-amendment-abortion>

<sup>3</sup> <https://www.federalregister.gov/documents/2018/11/09/2018-24504/patient-protection-and-affordable-care-act-exchange-program-integrity>




properly pay either bill. A consumer who does not pay both bills in full could face loss of coverage entirely. The proposed rule does nothing to prevent this unnecessary loss of coverage from happening.


*The proposed rule is clearly intended to make it harder for women to access abortion care and to prevent insurers from offering abortion coverage.*

There is no reason to overhaul implementation of Section 1303. It is clear the proposed rule is intended to eliminate insurance coverage of abortion. It is the latest administrative action in a long line of attacks by the Trump-Pence Administration to undermine access to comprehensive sexual and reproductive health care, particularly abortion, and to sabotage the health care system. The regulatory process is meant to implement the laws that Congress passes, not to undermine them. This proposed rule likely would result in a loss of coverage, furthering the Administration's goal of sabotaging access to health care, and in particular, women's access to health care. We strongly oppose finalizing this rule and urge the Administration to reverse course and rescind the proposed rule.

Sincerely,

  
PATTY MURRAY  
United States Senator

  
RICHARD BLUMENTHAL  
United States Senator

  
SHERROD BROWN  
United States Senator

  
SHELDON WHITEHOUSE  
United States Senator

  
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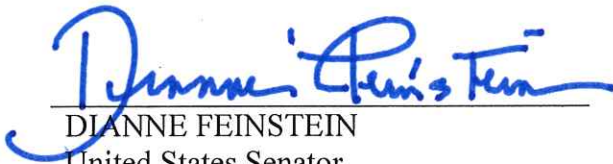
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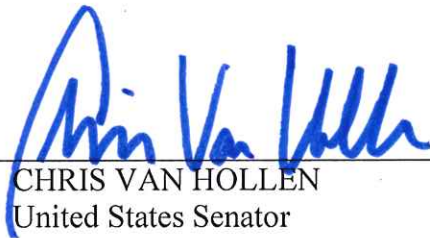
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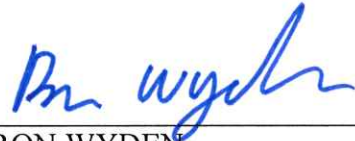
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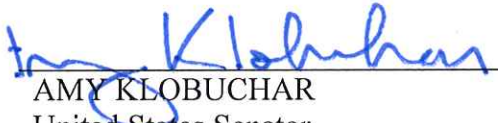
KAMALA D. HARRIS  
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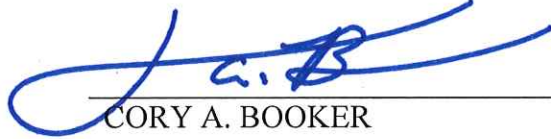
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DEBBIE STABENOW  
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CHRISTOPHER MURPHY  
United States Senator



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GARY C. PETERS  
United States Senator



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CHARLES E. SCHUMER  
United States Senator



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MICHAEL F. BENNET  
United States Senator

cc: The Honorable Seema Verma  
Administrator  
U.S. Centers for Medicare & Medicaid Services