

Congress of the United States
Washington, DC 20510

October 31, 2017

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

Dear Acting Secretary Hargan,

We are writing to express our concerns regarding reports that automatic re-enrollment in the Affordable Care Act's (ACA) Marketplaces will occur after the last day of the Open Enrollment period, potentially locking individuals into health plans that do not meet their health care needs. Given the extent of the Trump Administration's sabotage of the health care system, consumers are facing significant confusion about their plan choices and enrollment deadlines this year. In addition to the challenges created by a shortened Open Enrollment period, the impact of the Administration's decision to stop paying cost-sharing reduction (CSR) payments and significant cuts in outreach and education spending, recent reports revealed that consumers will be auto re-enrolled in ACA Marketplace plans without being given the opportunity to shop for coverage. In previous years, longer Open Enrollment periods afforded consumers the opportunity to switch plans after they were auto re-enrolled in Marketplace plans. However, because the Trump Administration has cut this year's Open Enrollment period to just 45 days—from November 1 to December 15—consumers' ability to make choices that best suit their health care needs will be severely limited. We request additional information on how the U.S. Department of Health and Human Services (HHS or "the Department") is ensuring consumers have the information they need in advance of these auto re-enrollments.

Most individuals who already have a Marketplace plan and take no action are scheduled to receive a notice on December 16 containing details of the plan for which they would be automatically re-enrolled. Auto re-enrollment does not necessarily mean that a consumer is enrolled in the identical plan they had during the previous year. For example, an enrollee's plan may no longer be available, so he or she would be assigned to an alternative plan. In past years, consumers in such a situation had six weeks to shop for plans following re-enrollment notification before deciding whether to remain in the auto re-enrolled plan or choose a different option. Given that the December 16 re-enrollment will take place after this year's Open Enrollment ends, consumers will have no option to change plans, which could catch millions of people by surprise.

During the Open Enrollment period for the 2017 plan year, 5.3 million returning consumers were active re-enrollees, meaning they actively returned to select a plan on the Marketplaces, compared to the 2.8 million passive enrollees who were auto re-enrolled.¹ With the large

¹ <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2017-Fact-Sheet-items/2017-03-15.html>

increase in premiums arising directly from the Trump Administration's decision to stop making CSR payments, it is now all the more important that consumers return to the Marketplace to make an active plan selection.

Yet, according to news reports, a recent Centers for Medicare & Medicaid Services' (CMS) document revealed that consumers who were enrolled in ACA Marketplace plans for the 2017 plan year will be auto re-enrolled in 2018 plans on December 16—the day after Open Enrollment is set to end. If this system is implemented, consumers may be offered no opportunity to shop for other coverage options once they receive their auto re-enrollment notification. This may leave consumers with a new plan, a new issuer, and a new provider network without an opportunity to explore other options.² Furthermore, it is unclear if this system complies with existing regulations governing re-enrollments.

In the HHS Notice of Benefit and Payment Parameters for 2017, finalized in March 2016, HHS amended the regulations that govern re-enrollment for consumers whose identical plans are not available the subsequent year.³ The regulations outline a number of scenarios, such as when plans at the same metal level are no longer available, and dictate how a consumer's new plan should be selected.

In September 2016, CMS issued a Bulletin to provide further guidance on the regulations, including how consumers should be notified of changes.⁴ The 2016 Bulletin specifically states that it shall be used for “policy years beginning on or after January 1, 2018 (that is, beginning with notices required to be provided in connection with enrollment for coverage in policy years that start in 2018).” The 2016 Bulletin contained form letters tailored to a number of different scenarios in which a consumer's prior plan was unavailable. For example, one form letter applied to consumers who would be auto re-enrolled in a different plan provided by the same issuer. The form letter included text about the differences between the two plans (including the difference in premiums), what actions the consumer should take if he or she elected to enroll in a different plan, and a notification that such decisions need to be made by a particular date. For consumers who want to enroll in a different plan, the form letter text reads, “You can choose a different plan between [43 Dates]. Enroll by [44 Date] for coverage to start [45 Date].”⁵

The September 2016 Bulletin declared that notice must be provided in the form and manner specified by the HHS Secretary, as codified in regulation.⁶ A September 2014 Bulletin explains those form and manner requirements.⁷ The 2014 Bulletin states, “an issuer must provide to each individual market policyholder written notice of renewal before the first day of the next annual open enrollment period.”

² https://blogs.wsj.com/washwire/2017/10/19/capital-journal-5-ways-open-enrollment-is-different-this-year-gop-divided-over-monetary-policy-changes-in-store-for-foreign-companies-tax-treatment/?utm_campaign

³ <https://www.gpo.gov/fdsys/pkg/FR-2016-03-08/pdf/2016-04439.pdf>; 42 CFR § 155.335(j)

⁴ <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Final-Updated-Federal-Standard-Renewal-and-Product-Discontinuation-Notices-090216.pdf>

⁵ The dates in brackets represent that information to be inserted by the issuer.

⁶ 45 CFR 147.106

⁷ <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Renewal-Notices-9-3-14-FINAL.pdf>

This new approach to auto re-enrollment is troubling, but also consistent with the Trump Administration's sabotage of the health care system and its repeated efforts this year to deny consumers the information they need to make informed health care decisions. These destructive actions have left consumers very confused about the upcoming Open Enrollment period and whether they should enroll. An October 16, 2017, study by Hart Research Associates found that only 31 percent of insured individuals and 12 percent of uninsured individuals know that Open Enrollment will begin on November 1.⁸ In the 42 states where Open Enrollment is set to end on December 15, only 12 percent of insured individuals and six percent of uninsured individuals were aware of the deadline. Fifty-four percent of insured and 59 percent of uninsured individuals believe that "Obamacare will be cancelled" and people will lose their health coverage in 2018. According to the Kaiser Family Foundation, nearly 20 percent of uninsured people between the ages of 18 and 64 believe the individual mandate is no longer in effect, and nearly 25 percent were not sure.⁹

It is deeply irresponsible of the Trump Administration to perpetuate this confusion and leave consumers without the necessary resources to understand their coverage options. The Administration's failure to provide options before auto re-enrollment is yet another example of clear and concerted efforts to sabotage the ACA. In order to understand how the Department came to its decision on auto re-enrollments this year, please respond to the following questions no later than November 14, 2017:

1. Will consumers who were previously enrolled in ACA Marketplace plans be auto re-enrolled in 2018 plans on December 16, 2017? If so,
 - a. Why did HHS make the decision to schedule the auto re-enrollment date after the end of Open Enrollment? Did the Administration consider the fact that scheduling auto re-enrollment after the close of the open enrollment period could lock individuals into plans that were not optimal for their health care needs?
 - b. When was the decision made to schedule the auto re-enrollment date after the end of Open Enrollment?
 - c. When was the decision communicated to relevant stakeholders, including states and issuers?
 - d. Did HHS explore scheduling the auto re-enrollment during Open Enrollment, in order to give consumers a chance to explore other coverage options?
2. Will re-enrollees be notified before December 16, 2017, that they will be auto re-enrolled for the 2018 plan year? If so, what information will this notification contain?
3. How does the auto re-enrollment system for the 2018 plan year comply with the HHS Notice of Benefit and Payment Parameters for 2017 and the 2016 and 2014 bulletins?
 - a. Will the Department use the form letters included in the 2016 Bulletin to notify consumers of their auto re-enrollment? If so, what text will the form letters include to notify consumers of the option to choose another plan and what dates will be provided for doing so?

⁸ [https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2017/10/17/Editorial-Opinion/Graphics/ME-12240_\(Press_Memo_10-16-17\).pdf](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2017/10/17/Editorial-Opinion/Graphics/ME-12240_(Press_Memo_10-16-17).pdf)

⁹ https://blogs.wsj.com/washwire/2017/10/19/capital-journal-5-ways-open-enrollment-is-different-this-year-gop-divided-over-monetary-policy-changes-in-store-for-foreign-companies-tax-treatment/?utm_campaign

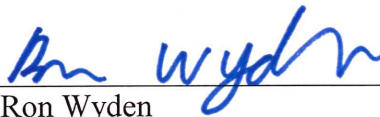
- b. Will the Department ensure that consumers receive written notices from issuers before the first day of the Open Enrollment, as required by the 2014 Bulletin?
4. Did the Department consult with stakeholders, including consumers, state insurance personnel, and issuers, regarding its plans for re-enrollment this year? If so, what input did stakeholders provide?

Thank you in advance for your attention to this critical matter. If you have any questions, or would like to further discuss compliance with this request, please contact Elizabeth Letter with Senator Murray's HELP Committee Staff at 202-224-6403.

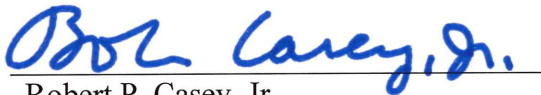
Sincerely,



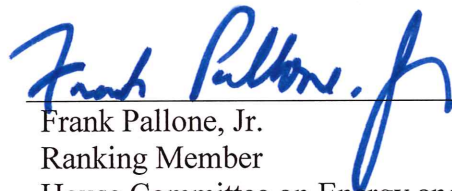
Patty Murray
Ranking Member
Senate Committee on Health,
Education, Labor, and Pensions



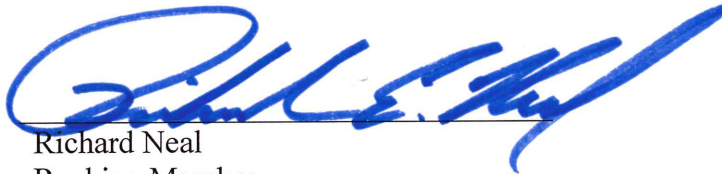
Ron Wyden
Ranking Member
Senate Committee on Finance



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



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



Richard Neal
Ranking Member
House Committee on Ways and Means