

Congress of the United States

Washington, DC 20510

December 13, 2019

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

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid
7500 Security Boulevard
Baltimore, MD 21244

Dear Secretary Azar and Administrator Verma,

We are concerned that Idaho's state-based marketplace, Your Health Idaho, is planning to make available subpar, short-term health plans to consumers who come to its website seeking comprehensive health coverage. Directing consumers to such plans over those that provide comprehensive coverage would harm consumers with pre-existing conditions. Furthermore, if Idaho's state-based marketplace proceeds to make these plans available to consumers through its website, Idaho would be in violation of the federal statutory requirement that an exchange "may not make available any health plan that is not a qualified health plan (QHP)."¹ We are calling on you to do your duty and enforce this requirement to protect families who turn to the exchanges for quality, affordable health care against insurance companies peddling junk plans that cover less and cost more.

As Administrator Verma wrote in a 2018 letter to Idaho officials, the Affordable Care Act (ACA) "remains the law and we have a duty to enforce and uphold the law."² At the time, Idaho sought to offer "state-based plans" that did not satisfy consumer protections required of individual market insurance coverage under the ACA. The letter served as notice of CMS's "concerns that Idaho may not be substantially enforcing" the law with respect to the noncompliant "state-based plans" and the agency's obligation under the ACA to step in if the state failed to do so within 30 days. Just a few months later, however, officials in the state discussed offering such plans on Idaho's exchange.³

Now, the state is poised to allow the very same thing to occur, under the new name "enhanced" short-term plans, while also providing a way for consumers to view and purchase the plans via the Your Health Idaho website. Just as with the "state-based plans" proposed in 2018, the "enhanced" short-term plans can deny claims and charge higher premiums to people with pre-existing conditions, avoid covering all essential health benefits such as prescription drugs or

¹ Patient Protection and Affordable Care Act (PPACA), 42 U.S.C. § 18031(d).

² Letter to Idaho Governor C.L. "Butch" Otter and Department of Insurance Director Dean L. Cameron from CMS Administrator Seema Verma, March 8, 2018, <https://www.cms.gov/CCIIO/Resources/Letters/Downloads/letter-to-Otter.pdf>.

³ Your Health Idaho, Approved Board Meeting Minutes, December 14, 2018, <https://www.yourhealthidaho.org/wp-content/uploads/12-14-2018-APPROVED-Board-Meeting-Minutes.pdf>.

maternity care, impose an “age tax” on older enrollees, and impose annual dollar limits on benefits, among other actions that are inconsistent with ACA market reforms. They fall far short of meeting the standards of QHPs certified by the exchange.

States have primary enforcement authority over the market requirements of the ACA with respect to health insurance issuers that sell or offer health insurance coverage in the state. When a state is not substantially enforcing the law, however, the Secretary of the Department of Health and Human Services (HHS), via the Centers for Medicare & Medicaid Services (CMS), must enforce that provision in the state. Similarly, if a state fails to comply with exchange establishment and operation requirements under 42 U.S.C. § 18031(d), CMS has an obligation to take action to ensure the exchange in the state meets federal standards and consumer protections.

We urge CMS to once again immediately notify Idaho that making available non-compliant, non-QHP plans to consumers visiting the Your Health Idaho website violates the exchange requirements under federal law. CMS should also clarify that any issuers planning to offer the non-compliant, non-QHP plans through the state-based marketplace website are in violation of the law if they do so, putting themselves at risk for federal investigations and civil money penalties (CMPs) of up to \$100 a day per person affected under 42 U.S.C. § 300gg-22 – even if Idaho has given the companies approval to offer the non-compliant, non-QHP plans.⁴

CMS must act quickly, as it is currently the open enrollment period for the health insurance marketplaces. It is our understanding that Idaho is not currently displaying the non-QHPs on its exchange website, but we are concerned that if it does so, consumers could be diverted to the non-QHPs and fail to access the information needed to determine if they are eligible for more affordable and comprehensive health coverage options.⁵ Some people who end up in the “enhanced” short-term plans could find, especially if they get sick, that the plans leave them paying significant costs out of pocket.

This represents another attempt by Idaho to offer substandard health plans in a manner that is inconsistent with federal law. The last time this happened, you rightly stepped in to warn Idaho that moving forward would mean the state was failing to substantially enforce federal health standards and consumer protections under the ACA. We urge you to step in once again. We additionally request that you provide the following information by January 10, 2020.

1. What meetings or conversations have HHS and CMS officials had with Idaho officials about their “enhanced” short-term plans and what was the content of those discussions?
2. Did Idaho officials notify HHS or CMS officials about their intent to make the “enhanced” short-term plans available via the state-based marketplace?

⁴ Offering non-QHPs on the exchange is a violation of 42 U.S.C. § 18041(a)(1) and enforceable by CMPs under 42 U.S.C. § 18041(c)(2).

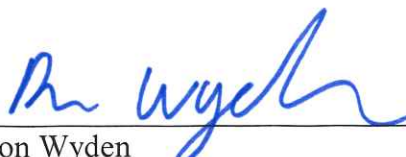
⁵ Your Health Idaho, Draft Marketplace Committee Minutes, September 3, 2019, <https://www.yourhealthidaho.org/wp-content/uploads/09-03-2019-DRAFT-Marketplace-Minutes-for-APPROVAL.pdf>.

3. Have HHS and CMS officials raised questions or concerns about Idaho's intention to make available subpar, short-term health plans on its website?
4. What details, if any, have Idaho officials provided to HHS or CMS officials regarding how and when they plan to display the short-term plans on the state's marketplace website?
5. What actions will CMS take to ensure Idaho enforces, and state issuers comply with, federal law?

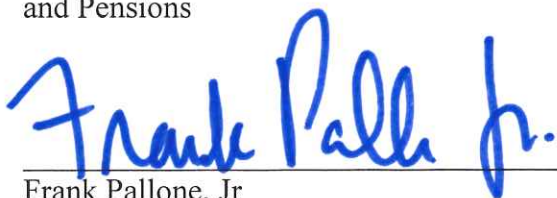
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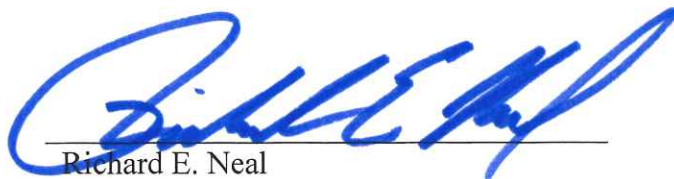
Patty Murray
Ranking Member
Senate Committee on Health, Education, Labor,
and Pensions



Ron Wyden
Ranking Member
Senate Committee on Finance



Frank Pallone, Jr.
Chairman
House Committee on Energy and Commerce



Richard E. Neal
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