Congress of the United States
Washington, DC 20510

February 19, 2019

Ms. Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, District of Columbia 20201

Dear Administrator Verma:

We are writing to express our serious concerns regarding policies included in the proposed rule, published on January 24, 2019, "Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020." The proposed rule is yet another example of this administration's pattern of complaining about the cost of individual and small group market health insurance coverage, while simultaneously enacting policies that actually increase those costs and remove protections for patients and families. If implemented, the policies in the proposed rule would result in thousands of people losing coverage, millions of dollars in premium increases, higher out-of-pocket costs even for those with employer coverage, and even tighter restrictions on women's access to coverage for comprehensive reproductive health services. This proposed rule also requests comment on additional policies that could raise costs even further and result in even more patients and families losing coverage. We call on you not to finalize these policies and instead work with Congress and stakeholders across the health care system to reduce costs, secure patient protections, and improve access to coverage.

Proposed change in premium adjustment calculation will raise costs. We are particularly concerned about the administration's proposal to modify the calculation of the premium adjustment percentage and urge you not to finalize this change. Your agency's impartial Office of the Actuary estimates that this policy will reduce advance premium tax credits (APTCs) for low-income patients and families by $900 million for each of the next two years and $1 billion for each of the two following years. The Actuary links this loss of tax benefits to over 100,000 people dropping their coverage in Qualified Health Plans (QHPs) and $181 million in lost benefits for people who choose to keep their coverage despite the higher cost.[1] A recent expert analysis found that a family of four earning $80,000 who purchase their coverage in the Marketplace could see their premiums rise by nearly $200 annually.[2] In addition to raising premiums, this change could increase out-of-pocket costs for anyone with commercial insurance – including people with employer-sponsored coverage – by $200 for individuals and by $400 for families.[3]

[1] 84 FR 308

[2] https://www.cbpp.org/research/health/change-to-insurance-payment-formulas-would-raise-costs-for-millions-with-marketplace

[3] *ibid*

Silver loading should be retained to protect patients and ensure affordability. The proposed rule also requests comment on whether to end the practice of "silver loading", which most states adopted in order to mitigate the effects of this administration's damaging decision to end payments for cost-sharing reductions (CSRs). In the wake of this Trump administration sabotage, states have allowed plans to compensate for the lost CSR payments by "loading" the cost of these expanded benefits on to the silver-tier of coverage, ensuring that patients would not be harmed. As a result of "silver loading", many patients gained access to bronze coverage with no monthly premiums and gold coverage with substantially lower premiums. We strongly urge your agency not to end this practice, as it would result in billions of dollars in increased costs for consumers and loss of coverage.[4] Further, although we believe that funding for CSRs should be restored, this must be accompanied by a policy to hold consumers harmless, so that low-income individuals are not punished with higher premiums and deductibles.

Proposed changes in re-enrollment could lead to fewer covered. We are also deeply concerned about your agency's request for comments on whether to end the practice of automatically re-enrolling consumers who do not take action to notify the Marketplace of changes in eligibility or take action to select a different plan. The proposed rule even notes that 1.8 million people using the Federally-facilitated exchange were automatically re-enrolled last year. In other words, over a million could lose coverage if this administration terminates automatic re-enrollment. Further, the proposed rule notes that actively choosing a plan is the best way to make sure that consumers get the coverage that is right for them.[5] While we agree that active enrollment is ideal, we believe that the best way to accomplish that goal is through robust outreach and education about the open enrollment period, not threatening to terminate enrollees' coverage if they fail to make an active plan selection. It is nonsensical for this administration to argue that it wants to encourage active plan selection after cutting the budget for outreach and education during open enrollment by 90 percent.[6] Indeed, one poll conducted during the 2019 open enrollment period found that only one in four people who buy their own insurance or were uninsured knew about the deadline to sign up for coverage.[7] We strongly urge you to maintain the policy of automatic re-enrollment and reinvest in robust advertising and education.

Proposed rules relating to coverage of women's services create additional burden. The proposed rule would also require any issuer offering a plan that includes coverage for abortion to offer at least one additional plan in the same service area that does not cover abortion care. This proposal will likely discourage issuers from offering plans that include abortion coverage by creating administrative burdens and making it cost-prohibitive to do so. Moreover, we believe it is contrary to the plain language of Section 1303 of the Affordable Care Act and Congress's intent. The rule's preamble even acknowledges this proposal could result in no issuers covering abortion unless required by state law. This would put access to abortion care out of reach for

---

[4] https://www.cbo.gov/publication/53664

[5] 84 FR 229

[6] https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Policies-Related-Navigator-Program-Enrollment-Education-8-31-2017pdf.pdf

[7] https://www.kff.org/health-reform/poll-finding/kff-health-tracking-poll-november-2018-priorities-congress-future-aca-medicaid-expansion/

many women and disproportionately harm communities of color, while also once again stigmatizing this care and treating abortion differently than other health care services.

Proposed prescription drug policies could disrupt care for patients. The proposed rule includes a number of policies intended to address the cost of prescription drugs. While we agree that Congress and the administration can and should do more to address the cost of prescription drugs, we are concerned that some of the policies in this proposed rule could limit access to needed drugs. For example, one proposal allows QHP sponsors to remove drugs from a formulary as long as they notify enrollees. By contrast, Medicare Part D requires plan sponsors to give patients transitional fills of their ongoing prescriptions in order to minimize disruptions. Indeed, the Part D benefit manual notes that, "formulary stability is extremely important so that enrollees maintain access to the benefit they chose during enrollment as represented to them by the sponsor."[8] We are concerned that the administration's proposed approach could disrupt care for enrollees.

New direct enrollment pathway will cause consumer confusion. We also remain concerned about the administration's proposed expansion of direct enrollment to include the new enhanced direct enrollment pathway. This proposed pathway will let consumers enroll in Marketplace coverage entirely through the website of a third party, such as an insurer or web broker, rather than through the Marketplace. The Marketplace was developed to enable consumers to make "apples-to-apples" comparisons among QHPs, promoting price competition and greater choice. By enrolling directly through a third-party website, consumers may make coverage decisions without access to adequate information about competing insurance plans or their eligibility for financial help. Expanding the use of direct enrollment reduces competition and choice in the Marketplace.

Special enrollment period will help families retain coverage. Finally, despite our serious concerns about numerous other policies in the proposed rule, we support the proposal to add a new special enrollment period for individuals that become newly eligible for APTCs while enrolled in individual market coverage purchased outside the Marketplace. We agree that this proposed policy will help patients and families maintain continuous coverage throughout the year and is better aligned with policies regarding special enrollment periods for individuals enrolled in Marketplace coverage and employer-sponsored insurance.

It is long past time for this administration to respond to rising health care costs with something other than proposals that kick individuals off their coverage, increase costs, and make the health care system more complicated. In this proposed rule alone, you propose policies that will increase premiums, make it more difficult to compare plans, increase the likelihood that patients will lose access to their medications, and make it harder for women to access comprehensive reproductive health services. We urge you to reverse course and work with patients, providers, insurers, and Congress to enact market rules that enhance competition and reduce costs.

---

[8] https://www.cms.gov/Medicare/Prescription-Drug-Coverage/PrescriptionDrugCovContra/Downloads/Part-D-Benefits-Manual-Chapter-6.pdf

If you have any questions regarding these comments please have your staff contact Colin Goldfinch with Ranking Member Murray at 202-224-7675, Arielle Woronoff with Ranking Member Wyden at 202-224-4515, Una Lee with Chairman Pallone at 202-225-3642, and Carrie Hughes with Chairman Scott at 202-225-3725.

Sincerely,

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

Robert C. "Bobby" Scott
Chairman
House Committee on Education and Labor