

Congress of the United States
Washington, DC 20510

February 19, 2019

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

Dear Secretary Azar:

As Ranking Member and Chairman of the U.S. Senate Committee on Finance and House Committee on Energy and Commerce, respectively, with jurisdiction over Medicaid and the Children's Health Insurance Program (CHIP), we write to you once again regarding our serious concerns with the Administration's ongoing promotion and approval of harmful Medicaid waivers that undermine access to health care and violate the plain text and purpose of Title XIX of the Social Security Act and Congress's longstanding intent for the Medicaid program.

In our letter to you from August of last year, we expressed our deep concern that Medicaid 1115 waiver demonstrations that adopt restrictive conditions on eligibility like work requirements threaten to impede access to critical care for millions of Americans.¹ We unfortunately are now seeing these concerns play out in real life in the state of Arkansas where thousands of individuals have been forced off and locked out of their Medicaid coverage. The impact of the harmful policies included in Arkansas' waiver has been so alarming that even the independent, nonpartisan Medicaid and CHIP Payment and Access Commission wrote to you stating they were "highly concerned" about the number of individuals losing coverage in Arkansas calling it a "strong warning signal" and going so far as to say that forcing people off of

¹Letter from Frank Pallone, Jr. Ranking Member, House Committee on Energy and Commerce, & Ron Wyden, Ranking Member, Senate Committee on Finance to the Honorable Alex M. Azar, Secretary, U.S., Dep't of Health and Human Services (Aug. 22, 2018), *available at* <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/082218%20RW%20Pallone%20to%20HHS%20KY%20Waiver.pdf>.

coverage as a result of such policies should be halted.² Yet, the Administration continues to take proactive steps to allow existing and new waivers including harmful policies like work requirements to move forward.

In addition to your shocking disregard of Congressional intent, and mounting evidence that the restrictive waivers you have approved do not promote the objectives of the Medicaid program, new evidence indicates that the Administration is failing to appropriately track or evaluate the impact of these misguided policies. According to a recent report, none of the eight states with waivers approved by the Administration to implement work requirements has a plan in place to track the impact of these policies on Medicaid enrollees' employment or health status.³ In fact, Arkansas' waiver which was approved by you almost a year ago and included work requirements that went into effect this past June—the same requirements that led to more than 18,000 individuals being kicked off of their Medicaid coverage—still does not appear to have an approved evaluation plan or evaluator. In addition, according to the report, nine of the 17 states requesting approval to implement 1115 demonstration waivers including work requirements have failed to provide an estimate of the number of individuals expected to lose coverage because of these policies.⁴

As we stated in our previous letter, Section 1115 of the Social Security Act permits states to waive certain federal Medicaid requirements to conduct an “experimental, pilot, or demonstration project” that, notably, achieves the statutorily articulated goals of the Medicaid program—to provide “medical assistance [to eligible individuals] whose income and resources are insufficient to meet the costs of necessary medical services.”⁵ This is why in the past, states have sought approval of waivers that included proposals to increase access to coverage and improve care and quality of services for low-income individuals such as through broad-scale delivery system reforms, expansions of benefits and coverage, and integration of care. Approvals of such waivers have also required robust evaluations and tracking to ensure their outcomes meet these goals and to learn from the demonstration projects. The Administration's complete disregard for adhering to robust tracking and evaluation requirements in the case of these harmful waivers is further evidence that taking health coverage away from people is not in any way a legitimate experiment, especially one that achieves the statutory goals of the program to provide medical assistance.

It is clear from the Congress's longstanding intent for the Medicaid program, the plain text and purpose of Title XIX, and what we are seeing play out on the ground in states like Arkansas that 1115 waiver demonstrations that restrictive conditions on eligibility such as work

² Letter from Penny Thompson, Chair, Medicaid and CHIP Payment and Access Commission to Alex M. Azar, Secretary, U.S., Dep't of Health and Human Services (Nov. 8, 2018), *available at* <https://www.macpac.gov/wp-content/uploads/2018/11/MAC-PAC-letter-to-HHS-Secretary-Regarding-Work-Requirements-Implementation.pdf>.

³ Noam N. Levey, *In rush to revamp Medicaid, Trump officials bend rules that protect patients*, L.A. Times, Feb. 6, 2019, *available at* <https://www.latimes.com/politics/la-na-pol-trump-medicare-reforms-20180206-story.html>.

⁴ *Id.*

⁵ *Supra* note 1.

Follow up letter to Sec. Azar regrading harmful Medicaid waivers

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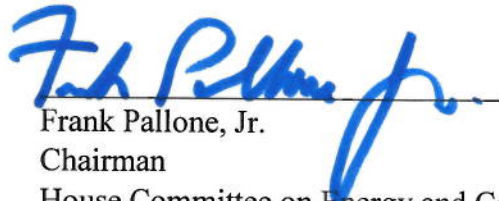
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requirements must not continue. We urge you once again to faithfully administer the Medicaid program and to put a halt to any and all Section 1115 demonstration requests that jeopardize the health and financial security of millions of low-income Americans.

Sincerely,



Ron Wyden
Ranking Member
Senate Committee on Finance



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