

Congress of the United States
Washington, DC 20510

May 1, 2019

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma:

As Ranking Member of the United States Senate Committee on Finance and Chairman of the House Committee on Energy and Commerce, we have the responsibility and privilege of protecting the rights of more than 70 million Americans who rely on Medicaid and CHIP for comprehensive health coverage. We write to you today in regards to ongoing actions taken by the Centers for Medicare & Medicaid Services (CMS) that weaken important beneficiary protections ensuring access to care.

In 2015, we wrote to the Department of Health and Human Services about the need for appropriate oversight and enforcement of Medicaid's access standards, which ensure that the millions of Americans who rely on Medicaid are able to receive the services they need.¹ In response, CMS finalized important rules that advanced a number of safeguards to help ensure access to care for Medicaid beneficiaries.² For example, in the 2015 final fee-for-service access rule, CMS provided states with thoughtful guidance on ensuring the sufficiency of provider payment rates and required that states assess the impact of payment rate reductions on beneficiary access. The 2016 final managed care rule furthered such efforts by establishing

¹ Letter from Frank Pallone, Jr., Ron Wyden, Sandy Levin, Gene Green, Debbie Stabenow, and Jim McDermott to the Honorable Sylvia Burwell, Secretary, U.S. Department of Health and Human Services (Jun. 22, 2015), *available at* <https://energycommerce.house.gov/newsroom/press-releases/bicameral-democratic-leaders-urge-hhs-to-protect-equal-access-to-medicaid>.

² *Medicaid Program; Methods for Assuring Access to Covered Medicaid Services*, 80 Fed. Reg. 67575 and *Medicaid and Children's Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability*, 81 Fed. Reg. 27498.

important network adequacy standards to help to ensure access to primary care, behavioral health, hospitals, pharmacies, specialists, and long-term services and supports for beneficiaries enrolled in managed care.³ Unfortunately, we are concerned that steps taken by CMS over the past year and a half undermine the important safeguards set forth in these final rules.

At the National Association of Medicaid Directors 2017 Fall Conference, you stated, “[o]ur promise to beneficiaries is that we will ensure that our programs address your specific needs and give you access to high quality healthcare.”⁴ However, just one week after this statement, CMS issued guidance to states through a State Medicaid Director letter proposing “additional policy direction” on the Medicaid access rule that weakened beneficiary access protections and reduced state accountability.⁵

This guidance was then followed up with a notice of proposed rulemaking to exempt states with high rates of Medicaid managed care from complying with access-related public comment and documentation requirements. This exemption, however, would extend to services for beneficiaries not enrolled in managed care, such as those with disabilities and special needs. Protections against provider payment cuts that could affect access to critical care were also put on the chopping block.⁶ These actions were followed up late last year with the notice of proposed rulemaking on Medicaid managed care. The proposed managed care rule would eliminate important time and distance standards that protect beneficiaries receiving care through managed care by ensuring that they have access to a sufficient network of providers. The rule also weakened other beneficiary protections focused on accessibility of information for individuals with disabilities and those with limited English proficiency.⁷

In remarks at the 2018 Medicaid Managed Care Summit, you stated, “[s]ince its inception Medicaid has served as a powerful tool in making sure that our nation’s most vulnerable can get the care they need.”⁸ We agree. Unfortunately, troubling reports continue to surface of beneficiaries in some states who cannot access medically necessary care. For example, in 2018,

³ *Medicaid and Children’s Health Insurance Program (CHIP) Programs; Medicaid Managed Care, CHIP Delivered in Managed Care, and Revisions Related to Third Party Liability*, 81 Fed. Reg. 27494.

⁴ Seema Verma, Administrator, Centers for Medicare & Medicaid Services, Remarks at the National Association of Medicaid Directors (NAMD) 2017 Fall Conference (Nov. 7, 2017), available at <https://www.cms.gov/newsroom/fact-sheets/speech-remarks-administrator-seema-verma-national-association-medicaid-directors-namd-2017-fall>.

⁵ Letter from Brian Neale, Director, Center for Medicaid and CHIP Services, Centers for Medicare and Medicaid Services to State Medicaid Directors (SMD# 17-004) regarding “Medicaid Access to Care Implementation Guidance.” (Nov. 16, 2017).

⁶ *Medicaid Program; Methods for Assuring Access to Covered Medicaid Services – Exemptions for States With High Managed Care Penetration Rates and Rate Reduction Threshold*, 83 Fed. Reg. 12696.

⁷ *Medicaid Program; Medicaid and Children’s Health Insurance Plan (CHIP) Managed Care*, 83 Fed. Reg. 57264

⁸ Seema Verma, Administrator, Centers for Medicare & Medicaid Services, Remarks at the 2018 Medicaid Managed Care Summit (Sep. 27, 2018), available at <https://www.cms.gov/newsroom/press-releases/speech-remarks-administrator-seema-verma-2018-medicaid-managed-care-summit>.

Letter to Administer Verma re Medicaid access standards

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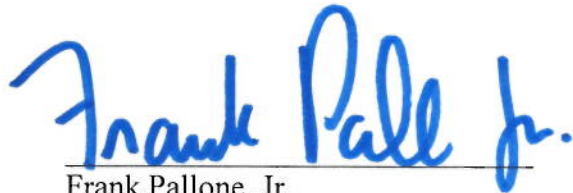
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the Dallas Morning News published a 6-part series that documented significant problems with access to care among medically fragile children and adults served by the Texas Medicaid program.⁹ It is for these reasons that robust enforcement and oversight of Medicaid's access provisions and related protections is critically important. We therefore urge CMS to renew its commitment to ensuring access and take the necessary steps to ensure all beneficiaries have access to the care that they need and deserve.

Sincerely,



Ron Wyden
Ranking Member
Senate Finance Committee



Frank Pallone, Jr.
Chairman
House Energy & Commerce Committee

⁹ J. David McSwane and Andrew Chavez, *Pain & Profit: Investigating Medicaid managed care in Texas*, Dallas News, Jun. 20, 2018, available at <https://www.dallasnews.com/news/medicaid-managed-care/collection/pain-profit-investigating-medicaid-managed-care-texas>.