

**Congress of the United States**  
**Washington, DC 20515**

January 10, 2019

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

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

Dear Secretary Azar and Administrator Verma:

We write to request detailed information regarding how the Trump Administration is spending user fees intended to support the functions of the Federal Marketplace and State-Based Marketplaces (SBMs) that have opted to use the federal platform. The Administration's record of undermining enrollment in the Marketplaces, including by cutting funding for vital functions such as marketing and outreach, as well as spending agency funds on "repeal and replace" propaganda,<sup>1</sup> raises questions about whether the dedicated funding is being spent effectively, legally, and appropriately to enhance Americans' access to comprehensive health insurance.

Last year, the Centers for Medicare & Medicaid Services (CMS) made the decision to gut funding for consumer outreach and assistance for enrolling in the Marketplaces, reducing funding from \$100 million to just \$10 million—a 90 percent cut. The agency also slashed funding for Navigator programs by 40 percent, and employed a funding methodology that the Government Accountability Office (GAO) described as "problematic" and employed "unreliable" data.<sup>2</sup> Unsurprisingly, GAO also found that the Department's drastic reduction in outreach and advertising "likely detracted from 2018 enrollment," particularly "among younger and healthier consumers whose enrollment can help ensure the long-term stability of the exchanges."<sup>3</sup>

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<sup>1</sup> *The Same Agency That Runs Obamacare Is Using Taxpayer Money to Undermine It*, New York Times (Sept. 4, 2017).

<sup>2</sup> Government Accountability Office, *HHS Should Enhance Its Management of Open Enrollment Performance* (July 2018) (GAO-18-565).

<sup>3</sup> *Id.*

This year, CMS slashed funding for Navigators yet again to \$10 million – an 84 percent cut in funding from 2016.<sup>4</sup> Furthermore, the Administration is promoting the use of junk plans, as opposed to solely encouraging enrollment in qualified health plans (QHPs). According to CMS, Navigators will be “encouraged to demonstrate how they provide information” on association health plans (AHPs) and short-term, limited-duration insurance (STLDI).<sup>5</sup> These junk plans, which are not required to cover the Essential Health Benefits or include protections for people with preexisting health conditions, will not only leave consumers saddled with more medical debt, but will also raise premiums for individuals in the Affordable Care Act (ACA)-compliant market. Additionally, this year, CMS included a referral system on the Federal Marketplace operated by a for-profit software vendor that directs consumers to agents and brokers.<sup>6</sup> These efforts to undermine the ACA ahead of the 2019 open enrollment period have further contributed to rising premiums and made it more difficult for millions of consumers across the country to access high-quality, affordable health insurance.

Given the agency’s clear intent to undermine enrollment in the Marketplaces by reducing funding for vitally important Marketplace functions, it is unclear why CMS continues to charge states that use the federal platform a 3.5 percent user fee. Considering the significant reductions in spending on outreach and enrollment, and a likely increase in total user fees levied (due to the increase in total monthly premiums), we are concerned about whether these additional dollars are being spent efficiently, legally, and effectively and for their intended purpose.

Similarly, it is surprising that CMS recently decided to increase the user fee rate for SBMs that employ the federal platform from 2.0 percent to 3.0 percent.<sup>7</sup> States that use the federal platform are entitled to understand how these funds are being spent and whether they are getting good value for their dollars, so they may make informed decisions on whether to continue to employ the federal platform. In addition, Congress and the American public are entitled to understand how CMS is spending these funds, which likely represent billions of dollars in federal spending, and whether the agency is using them solely for the purpose of supporting the functions of the Federal Marketplace.

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<sup>4</sup> Centers for Medicare & Medicaid Services, *Cooperative Agreement to Support Navigators in Federally-Facilitated Exchanges* (July 10, 2018).

<sup>5</sup> Centers for Medicare & Medicaid Services, *CMS Announces New Funding Opportunity Announcement for the Federally-Facilitated Exchange Navigator Program* (July 10, 2018) (press release).

<sup>6</sup> Sunlight Foundation, *In overhaul of HealCare.gov webpage, information about ways to apply is gone* (Dec. 11, 2018) (<https://sunlightfoundation.com/2018/12/11/in-overhaul-of-healthcare-gov-webpage-information-about-ways-to-apply-is-gone>).

<sup>7</sup> Department of Health and Human Services, *Notice of Benefit and Payment Parameters for 2019*, 83 Federal Register 16930 (Apr. 17, 2018).

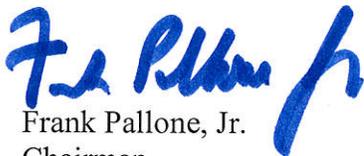
Therefore, we request the following documents and communications by January 24, 2019:

1. For 2017 and 2018, please provide the overall amount of user fees collected pursuant to 42 C.F.R. 156.50, as well as a detailed accounting of how these funds were spent in each year, broken down by the following categories of spending:
  - a. Federal payroll and other administrative and personnel costs;
  - b. Exchange-related information technology;
    - i. Please provide separate itemization for costs associated with the Enhanced Direct Enrollment Pathway.
  - c. Non-IT program costs, including health plan benefit and rate review;
  - d. Eligibility and enrollment;
  - e. Consumer information and outreach, including the call center, Navigator grants, consumer education and outreach;
  - f. Exchange quality review; and
  - g. Other (please specify), including spending unrelated to operation, maintenance, and improvement of the Federal Marketplace.
2. Separately, please provide detail on what capital investments have been made to improve the functioning of the Federal Marketplace in 2017 and 2018, as well as any plans for future investments.
3. Please provide a description of each contract currently in force that supports the Marketplace and all of its activities.
4. Please provide a briefing on the Administration's outreach and enrollment expenditures for 2019 Marketplace plans. Please provide the following documents and information:
  - a. An itemized list of all planned expenditures related to advertising, marketing, communications and outreach, call centers, and any new contracts being contemplated; and
  - b. A description of all contracts currently in force for such activities, and a copy of each such contract, including any and all agreements with web brokers.

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Should you have any questions, please contact Kevin Barstow of the Democratic Staff of the House Committee on Energy and Commerce at (202) 225-3641, Melanie Egorin of the Democratic Staff of the House Committee on Ways and Means at (202) 225-4021, Udochi Onwubiko of the Democratic Staff of the House Committee on Education and Labor at (202) 225-3725, Arielle Woronoff of the Democratic Staff of the Senate Committee on Finance at (202) 224-4515, or Colin Goldfinch of the Democratic Staff of the Senate Committee on Health, Education, Labor, and Pensions at (202) 224-7675. Thank you for your immediate attention to this matter.

Sincerely,



Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce



Richard E. Neal  
Chairman  
Committee on Ways and Means



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



Ron Wyden  
Ranking Member  
Senate Committee on Finance



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