

Congress of the United States
Washington, DC 20515

January 31, 2018

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 you with concerns regarding guidelines issued by the Idaho Department of Insurance that will allow insurers to offer “state-based plans” that do not satisfy consumer protections required of individual market insurance coverage under the Affordable Care Act (ACA).¹ These protections guarantee that families can get the care they need, without anyone—like people with pre-existing conditions, pregnant women, or older patients—falling through the cracks. We seek to understand how the U.S. Department of Health and Human Services (HHS) and the Centers for Medicare & Medicaid Services (CMS) worked or plan to work with the State of Idaho to ensure that plans comply with Federal law so that consumers in Idaho benefit from the same protections as consumers in every other state.

According to reports, the State of Idaho will allow insurers to offer plans that deny coverage for pre-existing conditions for up to 12 months if the consumer did not maintain continuous prior coverage.² Additionally, under Idaho’s new guidelines, insurers will no longer be required to cover pediatric dental or vision care and may exclude maternity and newborn coverage, so long as they offer at least one plan that covers these benefits.³ Furthermore, under the new guidelines, insurers will be able to charge consumers more based on their health history and age than is currently permitted under Federal law.⁴ There has been no public confirmation that the State of Idaho received Federal approval prior to releasing these guidelines.⁵

The State of Idaho’s new guidelines eviscerate critical protections that are enshrined in Federal law and have the potential to destabilize the health insurance market and raise premiums for thousands of consumers and families in the State of Idaho. Consumers in so-called “state-based plans” will lose access to coverage for critical services, and these plans will drive up costs for people who purchase insurance that satisfies Federal consumer protections, harming those who need health care most. We have questions regarding the extent of HHS’s and CMS’s engagement with the State of Idaho to ensure compliance with Federal law. We request the following documents and a response to the following questions by February 20, 2018.

¹ Bulletin from Dean Cameron, Director, State of Idaho Department of Insurance, to Health Insurance Carriers in Idaho’s Individual Market on Provisions for Health Carriers Submitting State-Based Health Benefit Plans (Jan. 24, 2018).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Idaho says no Obamacare needed for some new insurance plans*, Associated Press (Jan. 24, 2018).

1. Idaho's guidelines appear to violate Federal law that requires policies sold on individual insurance markets comply with certain consumer protections, such as the prohibition of discrimination against individuals with pre-existing conditions.
 - a. If HHS and/or CMS believes that the guidelines are in full compliance with Federal law, please provide any documents that demonstrate the legal justification HHS and/or CMS is relying upon to draw that conclusion.
 - b. If HHS and/or CMS have concluded that any or all provisions of the Idaho guidelines are in violation of Federal law, please provide a copy of any documentation of this conclusion.
 - c. If HHS and/or CMS have concluded that any or all provisions of the Idaho guidelines are in violation of Federal law, please provide a written explanation of the Department and/or Agency's plan to enforce the law, including potential engagement with state regulators and insurers.
2. Please provide all communications between HHS and/or CMS officials and officials from the Idaho Department of Insurance, the Idaho Department of Health and Welfare, the Office of the Governor of Idaho, other state employees, and/or affiliated consultants in which the new guidelines were discussed or mentioned. Such communications should include, but not be limited to, emails, letters, faxes and any other written materials, as well as a list of any meetings, calls or other oral communications that took place between the aforementioned parties. In the case of meetings, calls, and other oral communications, please include the date, time, and location at which such communications took place, as well as a list of individuals who participated.
3. Please provide any analysis HHS and/or CMS has performed to evaluate the effects that the Idaho Department of Insurance's new guidelines would have on coverage and market stability in the State of Idaho. Please also provide any analysis the State of Idaho performed to evaluate the effects of the Idaho Department of Insurance's new guidelines that was submitted to HHS and/or CMS.
4. Are these "state-based plans" risk-adjustment covered plans? If so, how will they comply, given that they do not meet other program rules (e.g., offer all essential health benefits, have actuarial value in a metal tier, etc.)? If not, under what authority and when did HHS and/or CMS exempt them?

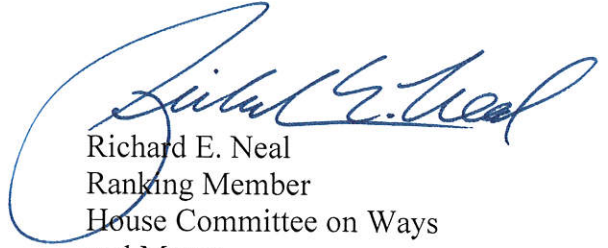
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Thank you for your prompt attention to this matter. Should you have any questions, please contact Miles Lichtman of the House Energy and Commerce Committee's minority staff at (202) 225-3641, Melanie Egorin of the House Ways and Means Committee's minority staff at (202) 225-4021, Elizabeth Letter of the Senate HELP Committee's minority staff at (202) 224-6403, or Peter Gartrell of the Senate Finance Committee's minority staff at (202) 224-4515.

Sincerely,



Frank Pallone, Jr.
Ranking Member
House Committee on Energy
and Commerce



Richard E. Neal
Ranking Member
House Committee on Ways
and Means



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



Ron Wyden
Ranking Member
Senate Committee on Finance