



MEMORANDUM

October 19, 2019

To: Subcommittee on Oversight and Investigations Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on “Sabotage: The Trump Administration’s Attack on Health Care”

On **Wednesday, October 23, 2019, at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building**, the Subcommittee on Oversight and Investigations will hold a hearing entitled, “Sabotage: The Trump Administration’s Attack on Health Care.” The hearing will examine the efforts of the Centers for Medicare & Medicaid Services to ensure quality and affordable health care for all Americans.

I. THE CENTERS FOR MEDICARE & MEDICAID SERVICES

The Centers for Medicare & Medicaid Services (CMS) is part of the U.S. Department of Health and Human Services (HHS). CMS is responsible for administering and managing several programs that provide health insurance to hundreds of millions of Americans. Specifically, CMS oversees Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and the private health insurance marketplaces established by the Affordable Care Act (ACA).

Taken together, these health programs pay for services for more than 130 million individuals.¹ Specifically, the CMS Administrator is responsible for establishing program goals, policies, guidelines, and objectives for these programs. In carrying out her responsibilities, the CMS Administrator works with states, other Federal agencies, and other stakeholders.²

The CMS budget exceeds \$1 trillion annually, which comprises more than 26 percent of the Federal budget.³

¹ Centers for Medicare & Medicaid Services, *CMS Leadership: Administrator Seema Verma* (www.cms.gov/about-cms/leadership/) (accessed Oct. 15, 2019).

² Centers for Medicare & Medicaid Services, *Office of the Administrator: Functional Statement* (www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_OA.html) (accessed Oct. 15, 2019).

³ Centers for Medicare & Medicaid Services, *CMS Leadership: Administrator Seema Verma* (www.cms.gov/about-cms/leadership/) (accessed Oct. 15, 2019).

II. CMS-ADMINISTERED PROGRAMS

Medicare is a Federal health insurance program for seniors over the age of 65 and individuals with disabilities, covering approximately 58 million people.⁴ Medicare consists of several different parts: Part A is insurance for hospital care; Part B covers physician services and physician-administered drugs; Part C authorizes private plans to provide Medicare benefits, known as the Medicare Advantage program; and Part D is the Medicare outpatient prescription drug benefit.

Medicaid is a health insurance program for low-income individuals that is jointly financed by the Federal Government and the states. Medicaid provides health insurance to approximately 70 million low-income children, adults, seniors, and individuals with disabilities. Each state operates its own Medicaid program within Federal statutory and regulatory guidelines. States are required to cover certain populations and provide certain benefits, but also have the option to cover additional populations and benefits. State expenditures on Medicaid are matched by Federal dollars that vary from state to state based on the state's per-capita income relative to the national average. This means that the Federal medical assistance percentage (FMAP) is higher in states with lower relative per-capita income.

CHIP is a health insurance program that covers low-income children and their parents, typically those with incomes too high for Medicaid eligibility. Like Medicaid, CHIP is jointly financed by states and the Federal Government.

CMS is also responsible for administering certain portions of the ACA. Among other things, the ACA established state and Federal insurance marketplaces to increase access to affordable, high quality health insurance coverage. The ACA also included comprehensive consumer protection provisions to ensure that all Americans are able to obtain health coverage regardless of health status or a pre-existing condition.

III. TRUMP ADMINISTRATION ACTIONS

A. Medicaid Demonstration Projects

Section 1115 of the Social Security Act authorizes the Secretary of HHS to waive certain provisions of the Medicaid law to allow states to test, for a limited period of time, different approaches to delivering care. States have used 1115 waivers to cover new populations, new benefits, and use different delivery systems. For the Secretary to approve an 1115 waiver, the waiver proposal must advance the goals of the Medicaid program and be determined to be budget neutral. The Secretary does not have the authority to waive certain provisions of Medicaid, including the state's FMAP.

⁴ Centers for Medicare & Medicaid Services, *Medicare Beneficiaries at a Glance* ([www.https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Beneficiary-Snapshot/Bene_Snapshot.html](https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/Beneficiary-Snapshot/Bene_Snapshot.html)) (accessed Oct. 18, 2019).

On January 11, 2018, CMS released a State Medicaid Director Letter to announce a new policy to allow states to use a Section 1115 waiver to condition receipt of Medicaid benefits on satisfying employment or job training requirements, sometimes referred to as community engagement requirements.⁵ Prior to the January 2018 guidance, CMS had rejected state waiver applications that contained work requirements.⁶ To date, CMS has approved work requirements in nine states.⁷ In March, a Federal district court judge struck down work requirements in Kentucky and Arkansas; in July, the same court struck down work requirements in New Hampshire.^{8,9} The Administration appealed the district court's decision on the Kentucky and Arkansas waivers. On October 11, 2019, the Court of Appeals for the District of Columbia heard oral arguments for the appeal.¹⁰

B. The ACA Health Insurance Marketplace

The Trump Administration has issued several regulations and implemented policy changes that have increased premiums in the Marketplace.¹¹ A study by the Kaiser Family Foundation estimates that 2019 premiums are 16 percent higher than they otherwise would be due to the Administration's actions.¹² The Administration's regulatory changes have also increased costs for individuals who are not eligible for the ACA's tax subsidies, and have caused a significant decrease in enrollment among this population.¹³

⁵ Letter from Brian Neale, Director, Center for Medicaid & CHIP Services, Center for Medicare & Medicaid Services, to State Medicaid Directors (Jan. 11, 2018).

⁶ *Arizona trying again to get Medicaid work requirement*, Associated Press (Nov. 30, 2017).

⁷ Kaiser Family Foundation, *Medicaid Waiver Tracker: Approved and Pending Section 1115 Waivers by State* (Oct. 9, 2019).

⁸ *Federal judge blocks Medicaid work requirements in Kentucky and Arkansas*, Washington Post (Mar. 27, 2019).

⁹ *U.S. judge blocks Medicaid work requirements in New Hampshire*, Reuters (Jul. 29, 2019).

¹⁰ *Federal judges grill Kentucky on Bevin's Medicaid work requirement plan*, Courier Journal (Oct. 11, 2019).

¹¹ The Brookings Institution, *How Would Individual Market Premiums Change in 2019 in a Stable Policy Environment?* (www.brookings.edu/wp-content/uploads/2018/08/Individual-Market-Premium-Outlook-20191.pdf) (accessed Oct. 16, 2019).

¹² Henry J Kaiser Family Foundation, *How Repeal of the Individual Mandate and Expansion of Loosely Regulated Plans are Affecting 2019 Premiums* (www.kff.org/health-costs/issue-brief/how-repeal-of-the-individual-mandate-and-expansion-of-loosely-regulated-plans-are-affecting-2019-premiums/) (accessed Oct. 16, 2019).

¹³ Centers for Medicare & Medicaid Services, *Trends in Subsidized and Unsubsidized Individual Health Insurance Market Enrollment* (www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/2018-07-02-Trends-Report-2.pdf) (accessed Oct. 16, 2019).

C. Short-Term, Limited Duration Insurance Plans

In 2018, HHS, the Department of Labor (DOL), and the Department of Treasury (Treasury) issued the Short-Term, Limited Duration Insurance (STLDI) final rule to expand the availability of STLDI plans.¹⁴ STLDI plans are exempt from all of ACA's consumer protection provisions and benefit standards. STLDI plans are also exempt from the ACA's guaranteed availability requirement, community rating (including gender and age rating protections), and the prohibition on pre-existing conditions exclusions. In addition, STLDI plans are not subject to the prohibition on annual and lifetime coverage limits, and the annual out-of-pocket limits that protect consumers from large health care costs. Lastly, STLDI plans are not required to cover the ACA's 10 categories of essential health benefits, including prescription drugs, hospitalization, maternity coverage, mental health, and substance use disorder.

D. Section 1332 Guidance

On October 22, 2018, CMS, HHS, and Treasury issued a guidance on Section 1332 of the ACA, entitled State Relief and Empowerment Waivers (2018 guidance).¹⁵ Section 1332 of the ACA—State Innovation Waivers—authorizes states to waive certain requirements of the law and experiment with health insurance strategies that must guarantee the same level of consumer protections as under the ACA.¹⁶ However, in the 2018 guidance, HHS and Treasury revised the agencies' interpretation of the statutory requirements, and significantly loosened the standards that states must meet in order to receive waiver approval.

The 2018 guidance set forth weaker requirements that must be met for affordability and comprehensiveness and adopted a new definition of what classifies as coverage. The 2018 guidance also allows states to receive waiver approval for proposals that direct the ACA's tax credit subsidies towards STLDI plans and other types of health insurance plans that do not provide protections for pre-existing conditions.

IV. WITNESS

The following witness has been invited to testify:

Hon. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services

¹⁴ Department of Health and Human Services and Department of Treasury, *Waivers for State Innovation*, 83 Fed. Reg. 53575 (Oct. 22, 2018).

¹⁵ *Id.*

¹⁶ Centers for Medicare & Medicaid Services, Center for Consumer Information & Insurance Oversight, *Section 1332: State Innovation Waivers* (www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_state_Innovation_Waivers-.html) (accessed Oct. 15, 2019).