The Honorable Alex Azar  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Azar,

We encourage swift finalization of the proposed rule, titled “Patient Protection and Affordable Care Act; Exchange Program Integrity,” as it relates to compliance with the separate payment requirement in Section 1303 of the Patient Protection and Affordable Care Act (ACA). We support the rule and sincerely thank the Department of Health and Human Services (HHS) for proposing it. Finalization of this rule is critical and very time sensitive, as Open Enrollment for 2020 begins November 1, 2019.

Section 1303 of the ACA required qualified health plans (QHPs) that covered elective abortions to collect a separate payment—sometimes referred to as an abortion surcharge—of at least $1 per enrollee per month and deposit it into an abortion account. By no means is this measure consistent with the principle of the long-standing Hyde Amendment; however, it is important that the administration comply with these minimal requirements with transparency. Section 1303 specifically requires:

- QHPs must “collect from each plan” a “separate payment” of not less than $1 per month for any elective abortions covered.
- QHPs must deposit these separate elective abortion payments into “a separate account that consists solely of such payments and that is used exclusively to pay” for elective abortions.

Unfortunately, in an exercise of executive overreach, the Obama Administration undermined Section 1303 by interpreting “separate” to mean “together” in subsequent regulatory guidance. Blatantly disregarding congressional authority, the guidance stated that simply sending a single notice about the surcharge or itemizing the abortion surcharge on monthly bills would satisfy the requirement under Section 1303. This meant QHPs could collect the “separate” abortion surcharge payment “together” with the remaining premium in one check. This misinterpretation of the law created a hidden abortion surcharge in many health care plans on exchanges throughout the nation, requiring enrollees to—in some cases unknowingly—subsidize elective abortion.

The proposed rule is consistent with the clear meaning and congressional intent of Section 1303 and eliminates the hidden abortion surcharge in many ACA plans. While this requirement does
not change the fact that the ACA violates the precedent of the long-standing Hyde Amendment through its involvement of tax dollars in subsidies to abortion-covering plans, it is an important step in providing transparency and awareness for enrollees.

As stated in a letter sent to HHS in January, we are concerned that the proposed rule neglected to directly address the Obama Administration’s deliberate misinterpretation of the law. We hope the final rule will clearly acknowledge the illegality and extent of this executive overreach in the prior regulation.

We were grateful to see an indication from the Office of Management and Budget that the rule may be finalized in August. We continue to urge swift action to finalize the rule in time for 2020 Open Enrollment. Failing to do so will result in another year of noncompliance with the requirements of Section 1303. It is time for the Obama-era regulation to be replaced.

Sincerely,

Cindy Hyde-Smith
United States Senator

Michael Cloud
Member of Congress

Deb Fischer
United States Senator

Steve Scalise
Member of Congress

Joni K. Ernst
United States Senator

Vicky Hartzler
Member of Congress

Marsha Blackburn
United States Senator

Christopher H. Smith
Member of Congress

Jim Inhofe
United States Senator

Daniel W. Lipinski
Member of Congress
Pat Roberts
United States Senator

Michael B. Enzi
United States Senator

Mike Crapo
United States Senator

John Thune
United States Senator

John Barrasso
United States Senator

Roger F. Wicker
United States Senator

James E. Risch
United States Senator

Roy Blunt
United States Senator

Jackie Walorski
Member of Congress

David P. Roe, M.D.
Member of Congress

Randy K. Weber
Member of Congress

Ted Budd
Member of Congress

Bradley Byrne
Member of Congress

Lloyd Smucker
Member of Congress

Gary Palmer
Member of Congress

Bruce Westerman
Member of Congress
John Hoeven
United States Senator

Marco Rubio
United States Senator

Mike Lee
United States Senator

Tim Scott
United States Senator

James Lankford
United States Senator

Steve Daines
United States Senator

M. Michael Rounds
United States Senator

Thom Tillis
United States Senator

Paul Mitchell
Member of Congress

John Ratcliffe
Member of Congress

Ross Spano
Member of Congress

Michael Guest
Member of Congress

Roger W. Marshall
Roger Marshall, M.D.
Member of Congress

William R. Timmons, IV
Member of Congress

Tom Emmer
Member of Congress

Ralph Norman
Member of Congress
Todd Young
United States Senator

Kevin Cramer
United States Senator

Josh Hawley
United States Senator

Rick Scott
United States Senator

Doug LaMalfa
Member of Congress

Jim Hagedorn
Member of Congress

Jody B. Hice
Member of Congress

Jack Bergman
Member of Congress

Ralph Abraham, M.D.
Member of Congress

Mike Johnson
Member of Congress

Barry Loudermilk
Member of Congress

Rodney Davis
Member of Congress

Ron Wright
Member of Congress

W. Gregory Steube
Member of Congress

David Kustoff
Member of Congress

Mark E. Green, M.D.
Member of Congress
Glenn Grothman  
Member of Congress

Dusty Johnson  
Member of Congress

Ron Estes  
Member of Congress

Mike Kelly  
Member of Congress

Jim Banks  
Member of Congress

Matt Gaetz  
Member of Congress

Ted S. Yoho, D.V.M.  
Member of Congress

Paul Gosar, D.D.S.  
Member of Congress

Joe Wilson  
Member of Congress

Jeff Fortenberry  
Member of Congress

David Schweikert  
Member of Congress

Roger Williams  
Member of Congress

Sean Duffy  
Member of Congress

Mark Walker  
Member of Congress

Jim Jordan  
Member of Congress

Tom Graves  
Member of Congress
Pete Olson  
Member of Congress

Mark Meadows  
Member of Congress

Steve King  
Member of Congress

Bill Flores  
Member of Congress

Blaine Luetkemeyer  
Member of Congress

Brian Babin  
Member of Congress

Tim Walberg  
Member of Congress

Kenny Marchant  
Member of Congress

Bill Posey  
Member of Congress

Tom Cole  
Member of Congress

Gus M. Bilirakis  
Member of Congress

Jeff Duncan  
Member of Congress

Bill Huizenga  
Member of Congress

Chris Stewart  
Member of Congress

Louie Gohmert  
Member of Congress

Andy Harris, M.D.  
Member of Congress
Bill Johnson
Member of Congress

Doug Lamborn
Member of Congress

Rick W. Allen
Member of Congress

Jason Smith
Member of Congress

Rick Crawford
Member of Congress

Earl L. "Buddy" Carter
Member of Congress

Alex X. Mooney
Member of Congress

Billy Long
Member of Congress

Steven Palazzo
Member of Congress

Debbie Lesko
Member of Congress

Steve Chabot
Member of Congress

Brad Wenstrup
Member of Congress

Duncan Hunter
Member of Congress

David Rouzer
Member of Congress

Bob Gibbs
Member of Congress

Robert E. Latta
Member of Congress
K. Michael Conaway
Member of Congress

Clay Higgins
Member of Congress

Carol D. Miller
Member of Congress

Dan Crenshaw
Member of Congress

Anthony Gonzalez
Member of Congress

Rob Wittman
Member of Congress
October 21, 2019

Administrator Seema Verma
Centers for Medicare & Medicaid Services
Department of Health & Human Services
200 Independence Ave. SW
Washington, D.C. 20201

Dear Administrator Verma,

We are grateful for the ongoing efforts within the Trump administration and the Department of Health and Human Services to align health-related policies with pro-life principles, to protect women and their unborn babies, and to protect taxpayers from being unwilling participants in abortion funding. To continue this goal, we write to urge the finalization of the abortion separate payments rule.

Since 1976, the Hyde Amendment has prohibited federal funding through Health and Human Services to cover elective abortions or insurance plans that include elective abortion coverage. Research shows that by the end of 2018, over 2.3 million babies have been saved as a result of this amendment. This policy applies to Medicaid and other federal health care programs.

The sole deviation from the Hyde principle is Obamacare. Contrary to the Hyde principle, Section 1303 of the Affordable Care Act expressly allows abortion coverage in taxpayer-funded health insurance plans as long as the insurer collects a separate abortion surcharge of at least $1 per enrollee per month.

The Obama administration went on to implement their own law with a gross misinterpretation of it, requiring “separate” to mean “together.” This gave insurance companies the ability not only to cover elective abortion, but to do so while creating hidden abortion surcharges, for enrollees who are unknowingly paying into plans that subsidize elective abortion.

We were very supportive of the November 2018 Department of Health and Human Services proposed rule, “Patient Protection and Affordable Care Act; Exchange Program Integrity,” which would bring federal regulations into compliance with the clear meaning of Section 1303. While including abortion at all in government subsidized health insurance plans runs afool of the long-standing principle of the Hyde Amendment, requiring separate payments is an important first step in correcting this wrong and providing transparency.

As we near the one year anniversary of the proposal of this rule, we strongly urge its finalization and swift implementation.

Sincerely,

Marjorie Dannenfelser
President
Susan B. Anthony List

Tom McClusky
President
March for Life Action

Catherine Glenn Foster
President & CEO
Americans United for Life

Carol Tobias
President
National Right to Life Committee

Donna J. Harrison, M.D.
Executive Director
American Association of Pro-Life Obstetricians and Gynecologists

Lila Rose
Founder and President
Live Action
Travis Weber
Vice President for Policy and Government Affairs
Family Research Council

Kristan Hawkins
President
Students for Life

Fr. Frank Pavone
National Director
Priests for Life

Austin Ruse
President
C-Fam

Eunie Smith
President
Eagle Forum

Thomas A. Glessner, J.D.
President
National Institute of Family and Life Advocates

Alexandra Snyder, Esq.
Executive Director
Life Legal Defense Foundation

Janet Morana
Co-founder
Silent No More Awareness Campaign

Joe Langfeld
Executive Director
Human Life Alliance

Eric J. Scheidler
Executive Director
Pro-Life Action League

James Nolan
President
Crossroads Pro-Life

Fr. Shenan J. Bouquet
President
Human Life International

Brian Gibson
Executive Director
Pro-Life Action Ministries

Penny Young Nance
CEO & President
Concerned Women for America LAC

Russell Moore
President
Southern Baptist Ethics & Religious Liberty Commission

Jessica Anderson
Vice President
Heritage Action for America

Ryan Bomberger
Chief Creative Officer
The Radiance Foundation

Roland C Warren
President & CEO
Care Net

Allan E. Parker Jr
President
The Justice Foundation

Cynthia Collins
Global Advisor
Operation Outcry

Cheryl Sullenger
Senior Vice President
Operation Rescue

Jordan Sekulow
Executive Director
American Center for Law and Justice

Jo Ann Gerling
Director
Coalition on Abortion Breast Cancer

Rabbi Pesach Lerner
President
Coalition for Jewish Values

Steven Ertelt
Editor
LifeNews.com

Terry Schilling
Executive Director
American Principles Project
Bev Ciehnicky  
President  
Crusade for Life, Inc.

David NAMMO  
CEO & Executive Director  
Christian Legal Society

Cathie Humarger  
Executive Director  
Allen County Right to Life

John Helmberger  
Chief Executive Officer  
Minnesota Family Council

Elisa Martinez  
Founder and Executive Director  
New Mexico Alliance for Life

Lois Anderson  
Executive Director  
Oregon Right to Life

Brad Mattes  
President  
Life Issues Institute

Larry Cirignano  
DC Representative  
Children First Foundation

Cathi Herrod  
President  
Center for Arizona Policy

Melissa Clement  
President  
Nevada Right to Life

Tami Fitzgerald  
Executive Director  
NC Values Coalition

Julaine K. Appling  
President  
Wisconsin Family Action