

U.S. Sen. Baldwin: Calls on Trump Administration to stop pushing health insurance plans that weaken pre-existing condition protections

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New Administration guidance encourages states to promote “junk” health plans that lack protections for individuals with pre-existing conditions and would increase costs for millions of Americans

WASHINGTON, D.C. – Today, U.S. Senators Tammy Baldwin, Mark R. Warner (D-VA), Ben Cardin (D-MD) and Jeanne Shaheen (D-NH) led a group of 38 Senators in calling on the Trump Administration to withdraw recent changes that make it easier for states to promote “junk” insurance plans. These health care plans typically lack protections for people with pre-existing conditions and would increase costs for millions of Americans. Under the Administration’s new guidance, states could use federal subsidies to pay for these subpar plans by utilizing a section of the Affordable Care Act (ACA) intended to give states additional flexibility to implement targeted improvements that expand coverage, reduce costs and provide more comprehensive benefits. The Senators argue that the Administration is improperly using Section 1332 to allow states to do the exact opposite.

“We have serious concerns they will increase health care costs for millions of consumers while weakening protections for individuals with pre-existing conditions. In light of substantive concerns that we have with the impact on patients, and

procedural concerns that we have with the manner in which these significant policy changes have been promulgated, we ask that you immediately withdraw this guidance and re-engage with stakeholders, states, and Congress,” **said the Senators in a letter to Health and Human Services Secretary Alex Azar, Centers for Medicare & Medicaid Services Administrator Seema Verma, and Treasury Secretary Steve Mnuchin.**

The Senators made it clear these actions did not reflect Congress’ intent in creating the 1332 waiver program, stating “the Administration’s recent guidance significantly changes enforcement of these four important guardrails, undermining Congressional intent and posing a significant risk to consumers that now have affordable and comprehensive health coverage.”

Additionally the proposed changes, which were outlined in guidance provided by the Administration and a discussion paper released a few months back, will allow states to increase out-of-pocket maximums and reduce the value of coverage, weaken essential health benefits, and implement changes that increase health care costs for the majority of beneficiaries if a state can demonstrate costs will be lower for some.

“We ask that you immediately withdraw this guidance and work with us and other stakeholders on policies that maintain protections for individuals with pre-existing conditions and improve affordability,” **concluded the Senators.**

In October, Senator Baldwin forced a vote in the Senate on her discharge petition that would have blocked the Trump Administration’s rule to expand “junk insurance” plans. [The measure was supported by 50 Senators](#), including one Republican. Ultimately, the petition did not receive the simple majority needed to pass the Senate and send it to the U.S. House of Representatives.

In addition to Baldwin, Warner, Cardin and Shaheen, the letter was signed by Senators Tom Carper (D-DE), Tim Kaine (D-VA), Amy Klobuchar (D-MN), Maggie Hassan (D-NH), Richard Blumenthal (D-CT), Jeff Merkley (D-OR), Chris Coons (D-DE), Bob Casey (D-PA), Chris Murphy (D-CT), Michael Bennet (D-CO), Elizabeth Warren (D-MA), Kamala Harris (D-CA), Debbie Stabenow (D-MI), Bob Menendez (D-NJ), Ron Wyden (D-OR), Gary Peters (D-MI), Chris Van Hollen (D-MD), Ed Markey (D-MA), Mazie Hirono (D-HI), Tina Smith (D-MN), Patty Murray (D-WA), Angus King (I-ME), Cory Booker (D-NJ), Bernie Sanders (I-VT), Dick Durbin (D-IL), Jack Reed (D-RI), Maria Cantwell (D-WA), Sherrod Brown (D-OH), Doug Jones (D-AL), Tammy Duckworth (D-

IL), Martin Heinrich (D-NM), Patrick Leahy (D-VT), Tom Udall (D-NM), Kirsten Gillibrand (D-NY), Sheldon Whitehouse (D-RI), Dianne Feinstein (D-CA), Catherine Cortez-Masto (D-NV), and Brian Schatz (D-HI).

The full text of the letter can be found [here](#) and below.

The Honorable Alex 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

The Honorable Steven Mnuchin

Secretary

U.S. Department of the Treasury

1500 Pennsylvania Avenue, NW

Washington, DC 20220

Dear Secretary Azar, Administrator Verma and Secretary Mnuchin:

We write to express concern with the Administration's October 22 guidance and November 29 discussion paper on new options for states pursuing a Section 1332 waiver under the Patient Protection and Affordable Care Act (ACA). The new guidance and discussion paper promote health plans that lack protections for people with pre-existing conditions and low-income families enshrined in the Centers for Medicare and Medicaid Services (CMS) guidance released in 2015 and adopt new principles that were not envisioned by Congress. We have serious concerns they will increase health care costs for millions of consumers while weakening protections for individuals with pre-existing conditions. In light of substantive concerns that we have with the impact on patients, and procedural concerns that we have with the manner in which these significant policy changes have been promulgated, we ask that you immediately withdraw this guidance and re-engage with stakeholders, states, and Congress.

Section 1332 of the ACA gives states additional flexibility to implement state-specific improvements that expand coverage, reduce costs and provide more comprehensive benefits. In fact, Congress enacted so-called "guardrails" that waiver proposals must meet in order for the Secretary to approve them. Specifically, waivers must ensure 1) health coverage is at least as comprehensive as it would be under the ACA, 2) cost-sharing and premiums are as affordable as they would be under the ACA, 3) the number of individuals with coverage remains comparable to the number of individuals covered under the ACA, and 4) the waiver does not increase the Federal deficit.

The Administration's recent guidance significantly changes enforcement of these four important guardrails, undermining Congressional intent and posing a significant risk to consumers that now have affordable and comprehensive health coverage. The "waiver concepts," published after the release of the recent guidance, suggests that the Secretary will permit states to use Federal subsidies for the purchase of short-term, limited-duration (STLDI) "junk plans" that do not meet Federal patient protections. The new guidance will also allow states to count junk plans as health insurance when determining how many individuals are enrolled in coverage.

This change will allow states to enroll more individuals in subpar plans that do not offer essential health benefits such as mental health care, maternity care, prescription drug coverage or substance use disorder treatment. Additionally, these subpar plans can discriminate against individuals with pre-existing conditions, older Americans and women by excluding these essential benefits. These plans may also charge certain customers more for their coverage, deny coverage entirely, impose

annual and lifetime limits on care, and other anti-consumer practices. This use of federal tax dollars for subpar, often deceptively-marketed insurance that barely provides coverage at all is completely unacceptable.

It is important to note that hospitals, insurers, patient groups and independent health experts have all agreed that the increased use of these junk plans will increase the cost of health care coverage for many Americans, undercut protections for individuals with pre-existing conditions and erode stability in the health insurance markets.

In addition to the increased use of junk plans, the discussion paper makes clear that the Secretary will also give states more flexibility to increase out-of-pocket maximums and reduce the value of coverage, weaken essential health benefits, and implement changes that increase health care costs for those who need it most if a state can demonstrate costs will be lower in the aggregate. We have serious concerns about how these changes will impact the quality and affordability of coverage, especially for vulnerable sub-populations.

Furthermore, we are concerned that this guidance may exceed the Secretary's legal authority by not requiring Congressional approval to change existing law and by subverting the full notice and comment rule-making process. The guidance violates the statute by allowing states to provide "access to" instead of "provision of" affordable and comprehensive coverage to at least the same number of residents. It also redefines "health insurance" to include plans that lack the ACA's consumer protections. In addition, by forgoing Congressional approval and the rule-making process the Administration has excluded an opportunity for public comment from millions of Americans and other stakeholders that will be impacted by these changes. In contrast, the Department finalized the 2015 guidance only after taking into account feedback from stakeholders and experts. The Department finalized this new guidance immediately, without getting any vital input from affected stakeholders.

For these reasons, we ask that you immediately withdraw this guidance and work with us and other stakeholders on policies that maintain protections for individuals with pre-existing conditions and improve affordability. Thank you for your consideration of our letter and we look forward to your response.

An online version of this release is available [here](#).