

Congress of the United States
Washington, DC 20515

July 28, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra,

We urge you to withdraw the proposed rule, titled “Patient Protection and Affordable Care Act: Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond.”¹ Instead, we strongly encourage your Administration to comply with the law by enforcing the clear requirements in Section 1303 of the Affordable Care Act (ACA), which requires Qualified Health Plans (QHPs) that include elective abortion to collect a separate premium payment from enrollees.

Section 1303 of the Affordable Care Act established the requirement for an abortion surcharge in QHPs that cover elective abortion. While this requirement is not a pro-life protection that prevents taxpayer funding for abortion, it does provide transparency for consumers. First, Section 1303 states that the federal subsidy amount may not be used to pay for any elective abortion, although it ignores the fact that the subsidy still makes taxpayer funds available to help individuals afford plans that cover abortion on demand. Second, Section 1303 states that QHPs must “collect from each enrollee in the plan” a “separate payment” of not less than \$1 per month for any elective abortions covered.² Third, 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 abortion].”³ When these requirements are enforced, consumers are notified that a plan covers abortion and that they are required to pay a separate surcharge.

However, the Obama Administration refused to enforce the law. In 2016, President Barack Obama’s Department of Health and Human Services (HHS) issued guidance interpreting “separate” to mean “together,” in violation of the plain meaning of the law.⁴ This guidance hid the abortion surcharge making it difficult for consumers to even know they were paying an abortion surcharge. The Trump Administration finalized the Program Integrity Rule in 2019,

¹ Proposed Rule published in the Federal Register on July 1, 2021: <https://www.federalregister.gov/public-inspection/2021-13993/patient-protection-and-affordable-care-act-updating-payment-parameters-section-1332-waiver>

² Section 1303 of the Patient Protection and Affordable Care Act. <<https://www.govinfo.gov/content/pkg/BILLS-111hr3590enr/pdf/BILLS-111hr3590enr.pdf>>

³ *Ibid.*

⁴ <https://www.govinfo.gov/content/pkg/FR-2015-02-27/pdf/2015-03751.pdf#page=92>

restoring transparency by requiring QHPs to send a separate bill for the abortion surcharge, in compliance with the law.⁵

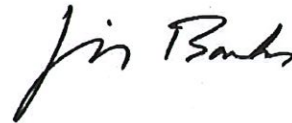
We strongly oppose the proposed rule, which would again interpret separate to mean together for the purpose of hiding the abortion surcharge in direct violation of Section 1303 of the ACA. The Biden Administration has the responsibility to enforce the law, including the separate payment requirements in Section 1303, but this proposed rule breaks the law by permitting insurance companies to hide the abortion surcharge from consumers. This policy is unethical as well as illegal: consumers deserve to know they are paying a surcharge for elective abortion.

The ACA broke with the Hyde Amendment, a longstanding consensus that taxpayer dollars should not be used to pay for elective abortion and health care plans that cover elective abortion. We continue to work toward permanently codifying the Hyde Amendment. In the meantime, we remind you that your duty to uphold the law includes ensuring that the abortion surcharge is not hidden from Americans enrolled in QHPs on the Health Exchange. We urge you not to finalize this proposed rule.

Sincerely,



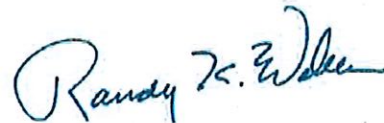
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⁵ <https://www.federalregister.gov/documents/2019/12/27/2019-27713/patient-protection-and-affordable-care-act-exchange-program-integrity>



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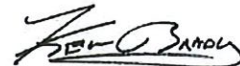
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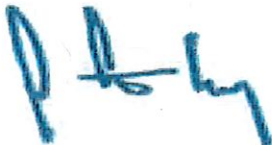
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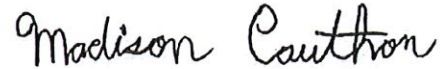
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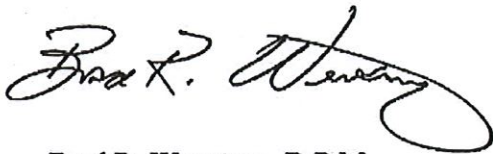
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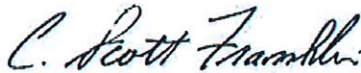
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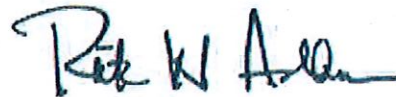
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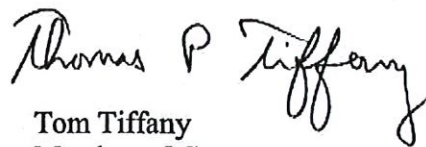
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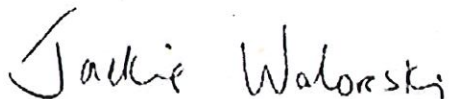
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