

October 2, 2017

Acting Secretary Wright  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
Attention: CMS-9928-NC  
P.O. Box 8016, Baltimore, MD 21244-8016.

*Submitted via email to ASH@hhs.gov*

### **RE: Recent HHS decisions that will harm consumers**

Dear Acting Secretary Wright:

Consumers Union, the policy division of nonprofit Consumer Reports, writes to express our concern over a troubling set of decisions by the Department of Health and Human Services (HHS) regarding open enrollment for the 2018 plan year for Affordable Care Act (ACA)-compliant individual and small group insurance products.

The mission of HHS is to “enhance and protect the health and well-being of all Americans,”<sup>1</sup> yet their decisions appear instead to undermine the Marketplaces created by the ACA, and to harm the consumers those markets were designed to serve. Furthermore, according to a site operated by the current Administration, “The Cabinet and independent federal agencies are responsible for the day-to-day enforcement and administration of federal laws.”<sup>2</sup> The Patient Protection and Affordable Care Act is one such federal law. However, the Department is taking steps that will diminish the effectiveness of the ACA in serving the American people.

Rather than easing the process for consumers to enroll in insurance, HHS is acting in a way that will undermine efforts to ensure that as many Americans as possible can access high quality, safe, and affordable care. HHS’ actions will likely reduce the number of insured, destabilize the individual and small group risk pools, drive insurers out of the market, and cause insurance premiums to rise. We are concerned about the following specific decisions.

- **The decision to shorten the open enrollment period to half the length of prior years.**  
As Consumers Union has stated in prior comment letters to HHS, shortening the

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<sup>1</sup> HHS.gov, *About HHS*, <https://www.hhs.gov/about/index.html> (accessed September 28, 2017).

<sup>2</sup> <https://www.whitehouse.gov/1600/executive-branch>

enrollment period will discourage healthy individuals from signing up for coverage.<sup>3</sup> A reduction in insurance plan sales would erode the individual market and lead to a sicker enrollee mix, with higher healthcare costs, and therefore higher insurance premiums overall.

- **The decision to shut down *Healthcare.gov* for extensive periods of maintenance during an abbreviated open enrollment period, including on the first day of open enrollment.** Compounding our concerns about the shorter enrollment period is the decision by HHS to shut down *Healthcare.gov* for extensive periods of time. This move will cut an additional approximately three days from that already abbreviated window for consumers in the 39 states served by *Healthcare.gov*,<sup>4</sup> and make it more difficult for consumers to find time to enroll. Based on new information, the Federally Facilitated Marketplace (FFM) will be shut down for “maintenance outages” from 12:00am ET to 12:00pm ET on November 5, November 12, November 19, November 26, and December 3 (i.e. Every Sunday of operation except for December 10.) The site will also be shut down on November 1, the first day of open enrollment. After *Healthcare.gov* got off to a rough start, it operated for 99.9% of the 90-day open enrollment periods for both 2015 and 2016. We wonder what technical challenges HHS anticipates that would necessitate *Healthcare.gov* be brought offline so many times, on weekend days when consumers are most likely to have free time to shop, and for such long periods of time. We also question why maintenance to the site must happen on the first day of open enrollment, rather than any other day prior to open enrollment.
- **The decision to cut outreach funding by 90%.** Proactive marketing prior to and during the open enrollment period fosters a healthier insurance pool and is especially important in attracting younger, healthier, enrollees to the risk pool. The more healthy enrollees in a risk pool, the lower the premium costs for all enrollees and the more attractive the market becomes for the carriers. In addition, when continuously insured, younger people have access to care--such as mental health care, substance use disorder treatment, maternity coverage, and preventive healthcare--which makes for a healthier and more productive population. Many young people will not enroll in insurance without continuous marketing and outreach<sup>5</sup> through the end of the open enrollment

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<sup>3</sup> Health Affairs, *Looking Ahead to 2018: Will a Shorter Open Enrollment Period Reduce Adverse Selection in Exchange Plans?*, April 14, 2017.

<sup>4</sup> As of January, 2017, according to the Kaiser Family Foundation, there were 34 FFM states and 5 state-based marketplaces (SBM) that rely on the Federally-facilitated Marketplace IT platform. See <http://kaiserf.am/2thweu1>.

<sup>5</sup> Deloitte, *Young Adults and Health Insurance: Not Invisible - But Perhaps Convincible* (2014). Available at <https://www2.deloitte.com/us/en/pages/life-sciences-and-health-care/articles/center-for-health-solutions-survey-of-young-adults-and-health-insurance.html>.

period, when young adults are most likely to enroll.<sup>6</sup> Not only is weak marketing likely to water down the quality of the enrollee pool, it is also likely to raise concerns from the carriers who need to know that they can rely on robust marketing by federal and state-based Marketplaces to promote enrollment and build a good risk mix.

- **The decision to reduce funding for in-person support by 40%.** “Navigator” groups serve an important role in enrolling individuals in Marketplace coverage. As a complement to broad advertising, navigators can engage targeted communities in person, educating them and helping with the nitty-gritty details of enrollment. Cutting funding for in-person support by about \$27 million means that many fewer potential enrollees will have one-on-one support with an application process that may be challenging, especially for those whose first language is not English. It also, again, reduces the likelihood that younger, healthier, consumers will buy in, leaving the risk pool vulnerable to upwardly spiraling premiums. Because of the drastic nature of this budget cut, and the limited notice given before the cut was instituted, navigator groups will experience severe budget shortfalls and will have to scramble with fundraising efforts when they should be focusing on preparing for open enrollment.<sup>7</sup> Some community groups will have to discontinue their navigator programs entirely. One Ohio group has already announced they will do precisely this; as a result, 15 navigators will serve 88 counties in Ohio, and the two most populous Ohio counties will have no navigators to assist with enrollment.<sup>8</sup>
- **The decision to prohibit regional HHS staff from participating in state-based outreach activities.** The Department’s reported recent decision to prohibit its regional directors from participating in outreach activities and publicizing local events compounds the cuts in resources for navigators, further undermining enrollment efforts.<sup>9</sup> In previous years, HHS staff helped state-based organizations prepare for open enrollment, provided technical assistance on eligibility, and publicized and participated in events organized and run by those organizations. The decision to not participate this year has already had a direct impact in Mississippi--within days of the announced decision--where two annual pre-enrollment meetings with insurance agents, community health centers, state

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<sup>6</sup> In 2016, the Centers for Medicare and Medicaid Services said they would schedule young adult outreach later in the open enrollment period going forward, to reach out to young people “when we know they’re paying attention and are most likely to enroll.” See: <https://www.cms.gov/newsroom/mediareleasedatabase/fact-sheets/2016-fact-sheets-items/2016-06-21.html>

<sup>7</sup> Politico Pro, *ACA navigators adjust to new reality*, September 28, 2017.

<sup>8</sup> Medium, *Snapshot: Trump Administration’s Cuts to Navigator Funding*, September 29, 2017.

<sup>9</sup> Vox, *Trump administration abruptly drops out of Obamacare events in Mississippi*, September 27, 2017.

officials and navigators for early October will be cancelled following late notice that HHS officials would not participate.<sup>10</sup>

Collectively, these actions by HHS mean that millions of consumers will likely not receive the information they need in order to sign up for insurance for 2018. Furthermore, the effect of these actions by the Department during this open enrollment period is likely to ripple out through future plan years, inflating premiums due to pressure from the weakened individual market's risk pool.

As a consumer-focused organization with a mission to create a fairer, safer, and healthier world, we strongly urge the Department to reevaluate the choices it is making for the upcoming open enrollment period in light of the almost certain outcome: fewer consumers insured, destabilized individual and small group risk pools, fewer insurance options, and unnecessarily inflated health insurance premiums. The role of HHS is to "enhance and protect the health and well-being of all Americans" and to enforce and implement the law. We urge the Department to fulfill this important role for the health and financial well-being of the American people.

Sincerely,



Dena B. Mendelsohn  
Senior Attorney  
Consumers Union

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<sup>10</sup> BuzzFeed News, *The Trump Administration is Pulling Out of Obamacare Enrollment Events*, September 27, 2017.