

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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July 19, 2018

The Honorable Alex M. 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

Dear Secretary Azar and Administrator Verma:

We write to you with serious concerns regarding the Trump Administration's intentional effort to end assistance for consumers shopping for affordable health care options, specifically authorized in the Affordable Care Act (ACA). Given the Administration's repeated attempts to sabotage the ACA at the expense of consumers across the nation, the practical elimination of Navigators constitutes another costly blow to consumers simply for partisan gain. This latest effort to undermine the ACA ahead of the upcoming 2019 open enrollment period will further contribute to rising premiums and make it more difficult for millions of consumers across the country to access high-quality, affordable health insurance.

Navigators empower community nonprofits and health care organizations to provide in-person assistance to consumers with Marketplace enrollment. Under federal law, Navigators are tasked with a number of Marketplace enrollment responsibilities that are critical in reducing the uninsured rate.¹ Navigators conduct public education activities to raise awareness of qualified health plan availability and are responsible for the distribution of "fair and impartial

¹ Patient Protection and Affordable Care Act, Pub. L. No. 111-148; 45 C.F.R. § 115.210 (2018); 45 C.F.R. § 115.215 (2018).

information” on enrollment and financial assistance.² The statute requires that Navigators “provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges,” which means that Navigators, by law, are required to perform targeted outreach to individuals and communities that may experience difficulty with enrollment, such as those with language barriers or those without access to the Internet.³ In addition, Navigators serve as valuable resources for enrollees seeking to better understand their coverage, and many enrollees rely on Navigators for assistance even after they have signed up for coverage. For instance, Navigators also assist enrollees with appealing claims denials.

This year, CMS slashed funding for Navigators to \$10 million – an 84 percent cut in funding from the \$63 million awarded to Navigators during the final years of the Obama Administration.⁴ Last year, abrupt cuts to funding prompted some Navigators to shut down completely.⁵ This year, Trump Administration cuts to the Navigator program once again threaten the ability of Navigators to perform their crucial work. Per the Funding Opportunity Announcement (FOA), numerous states, such as North Dakota and West Virginia, are eligible for only \$100,000 in Navigator funding.⁶ In response to the funding cuts, numerous Navigators are sounding the alarm. For example, Fred Ammons, who oversees Insure Georgia, stated: “This is a huge cut to navigator programs across the country. It will virtually eliminate face-to-face, in-person assistance. It means less help to, much less help, to underserved, hard-to-reach populations, people who live in rural areas or have low literacy or don’t speak English as their primary language.”⁷ Additionally, Jodi Ray who is the director of Florida Covering Kids & Families, which has consistently won the largest Navigator grant in the country, recently said: “The part that I’m dismayed by is that navigators are the only folks providing objective assistance and connecting people to health services and in complex situations year-round.”⁸

In addition to making deep cuts to the Navigator program, the Centers for Medicare & Medicaid Services (CMS) stipulates that funding awards will be based on Navigator performance from previous years.⁹ According to CMS, “accomplishments” constitute ten percent of the

² 42 U.S.C. § 18031.

³ *Id.*

⁴ Centers for Medicare & Medicaid Services, *Cooperative Agreement to Support Navigators in Federally-Facilitated Exchanges* (July 10, 2018).

⁵ *Obamacare Navigators In The Dark About 2019*, Politico Pro (June 12, 2018).

⁶ Centers for Medicare & Medicaid Services, *Cooperative Agreement to Support Navigators in Federally-Facilitated Exchanges* (July 10, 2018).

⁷ *Trump Officials Slash Grants That Help Consumers Get Obamacare*, New York Times (July 10, 2018).

⁸ *Obamacare navigator money cut by 70%*, Orlando Sentinel (July 12, 2018).

⁹ See note 6.

criteria that will be used to evaluate a Navigator's funding application to "ensure accountability within the program."¹⁰ However, it remains unclear what methodology CMS will employ to evaluate these "accomplishments."

Furthermore, the Administration is promoting the use of junk plans, as opposed to solely encouraging enrollment in qualified health plans (QHPs). According to CMS, Navigators will be "encouraged to demonstrate how they provide information" on association health plans (AHPs) and short-term, limited-duration insurance (STLDI).¹¹ The Administration appears to tie Navigator funding to the promotion of junk plans by evaluating funding applications on a Navigator's ability to establish relationships with "left behind" individuals who "may be unaware of the range of available options in addition to qualified health plans (QHPs), such as association health plans [and] short-term, limited-duration insurance."¹² These junk plans, which are not required to cover the Essential Health Benefits or include protections for people with preexisting health conditions, will not only leave consumers saddled with more medical debt, but will also raise premiums for individuals in the ACA-compliant market. That the Trump Administration continues in its attempts to promote junk plans over high-quality insurance and raise premiums for people with preexisting conditions further draws into question the President's commitment to enforcing the law of the land and preserving the well-being of the American people.

We remain committed to ensuring that consumers across the country are able to access high-quality, affordable health insurance, despite repeated efforts by the Trump Administration and congressional Republicans to sabotage the ACA. In addition, we are deeply concerned that the Trump Administration is not making adequate preparations for the upcoming 2019 enrollment period. Therefore, we request responses to the following by August 2, 2018:

1. Please provide an explanation of how the Department arrived at the \$10 million funding level, as well as an explanation of how the Department expects Navigators to fulfill the wide breadth of responsibilities legally required under 42 U.S.C. § 18031 at the \$10 million funding level:

¹⁰ Centers for Medicare & Medicaid Services, *Cooperative Agreement to Support Navigators in Federally-Facilitated Exchanges* (July 10, 2018); Centers for Medicare & Medicaid Services, *CMS Announces New Funding Opportunity Announcement for the Federally-Facilitated Exchange Navigator Program* (July 10, 2018) (press release).

¹¹ Centers for Medicare & Medicaid Services, *CMS Announces New Funding Opportunity Announcement for the Federally-Facilitated Exchange Navigator Program* (July 10, 2018) (press release).

¹² See note 6.

- a. At this funding level, how will Navigators be able to fulfill their legally mandated responsibility to “conduct public education activities to raise awareness of the availability of qualified health plans?”¹³
 - b. At this funding level, how will Navigators be able to fulfill their legally mandated responsibility to “distribute fair and impartial information concerning enrollment in qualified health plans, and the availability of premium tax credits... and cost-sharing reductions?”¹⁴
 - c. At this funding level, how will Navigators be able to fulfill their legally mandated responsibility to “provide information in a manner that is culturally and linguistically appropriate to the needs of the population being served by the Exchange or Exchanges?”¹⁵
2. CMS claims in the FOA that the decision to slash funding for the Navigator program was based on the percent of people Navigators enrolled in QHPs, as well as a comparison of the average cost for a Navigator to assist an enrollee against that for agents and brokers. Please provide the underlying data used to arrive at these conclusions.
 3. Please explain why the Navigator funding period was reduced from three years – as was the case in the previous grant period – to one year. Please provide all communications pertaining to this decision. Such communications should include, but not be limited to, emails, letters, faxes, and any other written materials, as well as a list of any meetings, calls, or other oral communications that took place regarding the decision. In the case of meetings, calls, and other oral communications, please include the date, time, and location at which such communications took place, as well as a list of individuals who participated.
 4. Given that 42 U.S.C. § 18031 stipulates that Navigator responsibilities pertain to QHPs, please explain why the criteria used to evaluate a Navigator’s grant application for this funding period includes its ability to promote plans that do not satisfy consumer protections required under the ACA.¹⁶
 5. Please provide a detailed explanation of how Navigators’ performance in previous years will be evaluated as part of the “Accomplishments” criteria for scoring applications. As part of this explanation, please specify which metrics will be used to quantify and evaluate past performance, and what process will be used to review applications.

¹³ See note 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 42 U.S.C. § 18031.

6. How does the Department intend to use the funds slashed from the Navigator program this year? Please provide an itemized list of how these funds will be used, including whether any of these funds will be directed to activities that promote enrollment in AHPs and STLDI, as well as enrollment through agents and brokers.
7. How did the Department use the funds diverted from the Navigator program last August? Please provide an itemized list of how these funds were used.
8. Please provide all analyses conducted by the Department to determine the impact that reductions to Navigator funding will have on the upcoming enrollment period, as well as any analysis conducted by the Department to determine the impact that last year's funding cuts had on enrollment during the 2018 open enrollment period.
9. Please provide a justification for the Navigator funding distribution methodology implemented last year.
10. Please provide all self-reported performance data by current Navigators for the 2016-2017 year and for the 2017-2018 year.

Thank you for your prompt attention to this matter. Should you have any questions, please contact Una Lee of the Democratic Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Ranking Member



Kathy Castor
Vice Ranking Member