

# United States Senate

WASHINGTON, DC 20510

January 8, 2019

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 write to express our support for the Department of Health and Human Services (HHS) proposed rule, titled “Patient Protection and Affordable Care Act; Exchange Program Integrity,” as it relates to changing the separate payment requirement in Section 1303 of the Patient Protection and Affordable Care Act (ACA). The proposed rule aligns with the clear meaning and congressional intent of Section 1303 by eliminating the hidden abortion surcharge in many ACA plans. We also request that the final rule clarify the illegality of the previous Administration’s interpretation of Section 1303.

The Hyde Amendment protects federal health care dollars from funding elective abortions and insurance plans that include elective abortion. The ACA deviated from this long-standing precedent by creating its own funding stream making taxpayer dollars available to buy abortion-covering health insurance plans in ACA exchanges throughout the country.

Section 1303 of the ACA requires qualified health plans (QHPs) that cover elective abortions to fund them by collecting a separate payment (sometimes referred to as an abortion surcharge) from each beneficiary and depositing these payments into a separate account. This surcharge was created to provide transparency for consumers by clearly differentiating the abortion surcharge. Section 1303 includes the following requirements<sup>1</sup>:

- The health insurance issuer must not use the subsidy amount to pay for any elective abortion
- The health insurance issuer must “collect from each plan” a “separate payment” of not less than \$1 per month for any elective abortions covered
- The health insurance issuer 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.

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<sup>1</sup> 42 U.S. Code § 18023

During a legislative debate on Section 1303, then-Senator Ben Nelson (D-Neb.), re-stated what was clear from the language of the text itself: “You have to write two checks: one for the basic policy and one for the additional coverage for abortion.”<sup>2</sup>

The Obama Administration undermined this requirement through subsequent regulations. Despite the plain meaning of the text, it interpreted “separate” to mean “together.” The regulations stated that the requirement could be satisfied by “sending the enrollee a single monthly invoice or bill that separately itemizes the premium amount for non-excepted abortion services” and by not requiring the QHP issuer to “separately identify the premium for non-excepted abortion services on the monthly premium bill.”<sup>3</sup> In other words, the “separate” payments could be made “together.” The Obama Administration’s misinterpretation created a hidden abortion surcharge on many health care plans in exchanges throughout the nation.

The meaning of Section 1303 is straightforward and congressional intent is clear. We are concerned that the proposed rule’s analysis fails to adequately acknowledge the illegality of the prior regulation. We ask that the final rule directly addresses this concern.

We thank HHS for issuing new regulations that align with the clear meaning and congressional intent of Section 1303. Congress clearly required a distinct payment and the current regulations instead allow the abortion surcharge to be hidden within the broader premium.

This proposed rule provides important and long overdue protections. We strongly encourage the Department to finalize it promptly.

Sincerely,



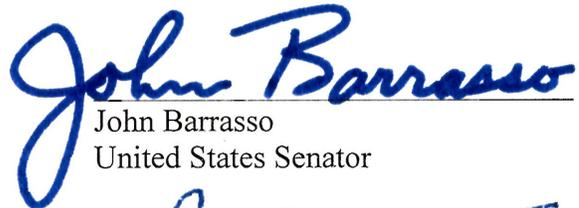
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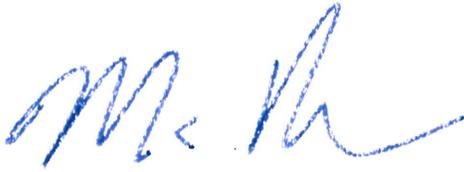
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Roy Blunt  
United States Senator

<sup>2</sup> 155 Cong. Rec. S14134 (Dec. 24, 2009) <http://www.gpo.gov/fdsys/pkg/CREC-2009-12-24/pdf/CREC-2009-12-24-pt1-PgS14134-2.pdf#page=1>

<sup>3</sup> Final Rule. “Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016.” February 27, 2015. <https://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf>



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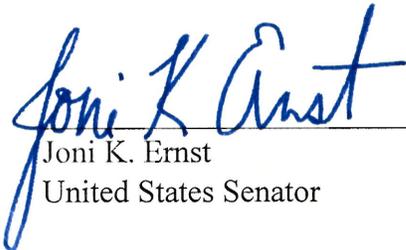
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