

Congress of the United States

Washington, D.C. 20515

April 6, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Secretary Becerra:

We congratulate you on your recent confirmation as Secretary of the U.S. Department of Health and Human Services (HHS). We look forward to working with you and the new Administration as you lead our country through the many challenges facing the health care system during this historic time.

To that end, we write to bring to your attention an important step that the Administration could immediately take as you implement key health-related provisions of the *American Rescue Plan Act of 2021* (ARPA).¹ Specifically, we urge you to announce the availability of a Special Enrollment Period (SEP) for qualified eligible individuals following the conclusion of ARPA's premium support program for job-based coverage.

As you know, ARPA provides substantial financial assistance to improve the affordability of health coverage during the ongoing COVID-19 pandemic. Importantly, it temporarily eliminates premiums for continuation coverage under the *Consolidated Omnibus Budget Reconciliation Act of 1985* (COBRA)² for workers and their families who have been impacted by layoffs and reductions in hours. This critical support will be available to assistance eligible individuals beginning April 1, 2021 and ending September 30, 2021.

While this financial assistance will provide a crucial lifeline to millions of people, additional steps are needed to ensure workers and their families are able to access the health coverage they need when this subsidy expires. As you know, premiums for unsubsidized COBRA continuation coverage are high, as qualified beneficiaries can be required to pay the full cost of their employer-sponsored coverage plus an administrative fee.³ According to the Kaiser Family Foundation, the average premium for health plans sponsored by employers with 20 or more employees is \$7,012 for individual coverage and \$20,599 for family coverage.⁴ Following the termination of the ARPA subsidy, this coverage may be unaffordable for many laid-off workers

¹ Pub. L. No. 117-2.

² Pub. L. No. 99-272.

³ 29 U.S.C. § 1162(3), I.R.C. § 4980B(f)(2)(C), 42 U.S.C. § 2202(3).

⁴ Karen Pollitz et al., *Key Issues Related to COBRA Subsidies*, Kaiser Family Found. (May 28, 2020), <https://www.kff.org/private-insurance/issue-brief/key-issues-related-to-cobra-subsidies/>.

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and their families. Without a SEP, these individuals will also not have the opportunity to enroll in Marketplace coverage and receive the *Affordable Care Act* (ACA)⁵ premium tax credits and cost-sharing reductions. This will leave many consumers without a realistic option to find affordable coverage until the Open Enrollment Period for plans beginning in 2022.

The ACA provides the Secretary of HHS broad authority to specify events that trigger a SEP during which eligible individuals may enroll in Marketplace coverage.⁶ HHS has previously clarified that this authority includes the ability to provide for additional SEPs through sub-regulatory guidance during extraordinary circumstances.⁷ Accordingly, we urge you to identify the loss of COBRA premium assistance as a triggering event that entitles individuals to access affordable Marketplace coverage through a SEP.

In addition, we urge you to coordinate your efforts with the U.S. Department of Labor (DOL) to ensure that consumers are made fully aware of the SEP, as well as the availability of premium tax credits and cost-sharing reductions that make health coverage more affordable. This information should be provided in clear and understandable language on all model notices developed by DOL and incorporated in the outreach plan required by ARPA. These efforts will help ensure that awareness of critical financial assistance reaches as many individuals as possible.

Thank you for your attention to this matter. We look forward to your prompt action to address this issue. If you have any questions, please contact Daniel Foster with Chairman Scott at 202-225-3725, Saha Khaterzai with Chairman Pallone at 202-225-2927, Zachary Baron with Chairman Neal at 202-225-3625, Colin Goldfinch with Chair Murray at 202-224-7675 and Elizabeth Dervan with Chair Wyden at 202-224-4515.

Sincerely,



ROBERT C. "BOBBY" SCOTT
Chairman
Committee on Education and Labor
U.S. House of Representatives



FRANK PALLONE, JR.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives

⁵ Pub. L. No. 111-148 (as amended by Pub. L. No. 111-152).

⁶ 42 U.S.C. § 18031(c)(6)(C).

⁷ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, 80 Fed. Reg. 10,740, 10,798 (Feb. 27, 2015) <https://www.govinfo.gov/content/pkg/FR-2015-02-27/pdf/2015-03751.pdf>.

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