

Congress of the United States
Washington, DC 20515

October 13, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Secretary Azar:

In September, we learned of reports that the Trump Administration planned to send \$200 “Trump cards” branded with the President’s name to Medicare beneficiaries on the eve of the presidential election that would be paid for through the Medicare Trust Fund.¹ After four years of empty promises to lower drug prices for the American people, the President now appears to be attempting to buy votes just weeks before the election using taxpayer dollars. Exploiting the health needs of Medicare beneficiaries in the midst of a pandemic that has claimed 210,000 American lives is not only cruel, but raises serious legal questions about the misuse of taxpayer dollars to improperly influence the approaching election.

To be clear, drug prices for seniors under Medicare have increased dramatically on the President’s watch. Last year alone, more than 3,400 drugs reportedly saw price increases, with an average increase of five times the rate of inflation.² Even if the issuance of Trump cards were legal, which, to be clear, we do not think they are, these cards would not make up for the Trump Administration’s failure to address drug pricing in a meaningful way over the last four years, and would do nothing to lower the federal government’s spending on prescription drugs. Now, Centers for Medicare & Medicaid Services (CMS) employees have reportedly been told to rush to issue these cards before Election Day.³ The Administration is also reportedly planning to send letters – possibly from President Trump personally – to 39 million Medicare beneficiaries as early as this week to tout the cards, at a cost of \$19 million in taxpayer funds for mailing and processing the letters.⁴

The legal basis for this program is also dubious. The Administration characterizes this proposal as a Medicare demonstration. Such demonstrations are typically conducted by the CMS

¹ Dan Diamond, *Health officials scrambling to produce Trump's 'last-minute' drug cards by Election Day*, POLITICO, (Oct. 8, 2020).

² Aimee Picchi, *Drug prices in 2019 are surging, with hikes at 5 times inflation*, CBS NEWS (Jul. 1, 2019).

³ Dan Diamond, *Health officials scrambling to produce Trump's 'last-minute' drug cards by Election Day*, POLITICO, (Oct. 8, 2020).

⁴ *Id.*

Innovation Center (CMMI), which develops and tests models within CMS programs.⁵ However, in the 10 years since its creation, CMMI has not implemented a model testing direct payments to beneficiaries on a nationwide basis.⁶ CMMI must run models consistent with statutory authority, including: (1) section 1115A of the Social Security Act, which authorizes CMMI to conduct phases I and II model tests, subject to evaluation results; (2) demonstrations required under federal law; (3) health care quality demonstrations under section 1866C of the Social Security Act; and (4) demonstrations under section 402 of Public Law 92-603 for certain enumerated purposes related to the Medicare program.⁷

Regardless of the specific statute authorizing these beneficiary payments, technical expertise and stakeholder input are cornerstones of CMS initiatives that involve payment or benefit changes. If a demonstration or model's authorizing statute gives the Secretary of Health and Human Services (HHS) the ability to waive certain payment or program integrity laws that are necessary to conduct the test, then CMMI must coordinate with CMS and the Office of the Inspector General to develop and issue those waivers. CMMI also has a practice of conducting evaluations for *any* test it administers, regardless of the authorizing statute. These safeguards help to ensure that efforts to innovate payment and delivery do not come at the expense of the integrity of the Medicare and Medicaid programs as a whole.

We will be requesting a review and legal opinion from the Government Accountability Office into these payments. In the meantime, please provide responses to the following inquiries no later than October 19, 2020:

1. Under what statutory authority will CMS administer these payments? What are the necessary waivers of program or fraud and abuse laws that the HHS Secretary intends to waive?
2. Has CMS or HHS conducted legal reviews to ensure that these payments do not violate any federal laws or regulations, including but not limited to misuse of federal funds and election interference? If so, please provide those reviews. If not, when do you intend to conduct such reviews?
3. News reports indicate the prescription drug cards will cost \$8 billion. Please provide the reference to the Fiscal Year (FY) 2020 and/or FY 2021 budget in brief that describes this cost and provide projections for ensuring these payments maintain access and quality of care while ensuring expenditures do not increase.

⁵ CMS Leadership, https://www.cms.gov/About-CMS/Agency-Information/CMSLeadership/Office_CMMI (accessed Oct. 8, 2020).

⁶ *See generally* <https://innovation.cms.gov/files/reports/rtc-2018.pdf>; *see also* <https://innovation.cms.gov/files/reports/rtc-2016.pdf>

⁷ Medicare Access and CHIP Reauthorization Act of 2015, Pub. L. 114-10 (129 Stat. 87), Apr. 16, 2015; Section 402 of Social Security Amendments Of 1972, Pub. L. 92-603 (86 Stat. 1329), Oct. 30, 1972

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Should you have questions, please contact the Majority staff of the House Committee on Ways and Means at (202) 225-3625, the Majority staff of the House Energy and Commerce Committee at (202) 225-2927, and the Minority staff of the Senate Finance Committee at (202) 224-4515. We appreciate your prompt attention to these matters.

Sincerely,



Richard E. Neal
Chairman
House Committee on Ways and
Means



Frank Pallone, Jr.
Chairman
House Committee on Energy and
Commerce



Ron Wyden
Ranking Member
Senate Committee on Finance

CC: Russell T. Vought, Director, Office of Management and Budget, Executive Office of the President of the United States