February 19, 2019

Secretary Alex Azar
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

Re: Comments on Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2020; CMS-9926-P (RIN 0938-AT37) –Automatic Re-enrollment and Stability in Cost-Sharing Reduction Funding

Dear Secretary Azar:

As the directors of 13 state-based marketplaces (SBMs), pursuant to the request for comments in the proposed Notice of Benefit and Payment Parameters for 2020, we submit the following comments regarding the potential implications of future policy changes to the standard practice of automatic re-enrollment at renewal, and the practice adopted by many states to have health plans fund their required cost-sharing reduction obligation through the practice of "silver loading." State-based marketplaces across America represent 35 percent of the US population and these comments emphasize shared perspectives and experiences across SBMs, and are supplemental to comments our individual marketplaces may have submitted to share our state-specific experiences. While we make these comments based on our experiences as states served by state-based marketplaces, we believe our perspectives are relevant nationally and therefore inform policies affecting states served by the federally facilitated marketplace (FFM).

Automatic re-enrollment is an industry standard and an essential operation of marketplaces.

Automatic re-enrollment at renewal is standard practice in the insurance industry, including employer-sponsored health insurance and Medicare, because it plays a critical role in ensuring continuity of coverage and care, as well as easing burdens on consumers and insurance carriers. Despite its nature as an industry standard, the Centers for Medicare & Medicaid Services (CMS) sought comment on the impact of potential changes to automatic re-enrollment processes and capabilities in the FFM and among SBMs through future rule making.

We are unclear what problem a prohibition of automatic re-enrollment aims to solve. The Notice of Benefit and Payment Parameters identifies concerns related to the impact of automatic re-enrollment on program integrity and the appropriate administration of premium tax credits. However, federal rules and processes administered by SBMs and the FFM already provide a robust framework for ensuring program integrity. Marketplaces have comprehensive processes in place for verifying eligibility – they check consumer data against federal sources and require that changes are reported. This framework ensures eligibility is determined correctly throughout the year when changes in income and household composition occur, not just at renewal.

Automatic re-enrollment plays a vital role in enrollee retention and is an essential element of individual market operations. Prohibiting automatic re-enrollment would have significant negative impacts on consumers and the individual market generally, leading to instability, uncertainty, and the risk of plan withdrawals and increases in the number of uninsured individuals in our states. Prohibiting automatic re-enrollment of coverage would create significant disruption for consumers, carriers, and marketplaces for the following reasons:

- **It would increase the number of consumers without health insurance coverage.** For consumers, it would generate considerable confusion and unnecessarily introduce access and continuity of care issues to the extent consumers experience an unexpected gap in coverage, which could result in missed medical treatments or unfilled prescriptions. Consumers would need substantial education and support to navigate changes to established re-enrollment practices, which would require sizeable investment in consumer outreach, enrollment assistance, and marketing. Consumers who inadvertently fail to re-enroll during open enrollment would face barriers to resuming coverage if they do not have a Special Enrollment Period. Over the long term, consumers would also be very likely to face higher costs, as health plans would price their premiums on the assumption of lower retention rates for healthier individuals.

- **If automatic re-enrollment is prohibited, health plans are less likely to participate in the individual market.** Stable enrollment and retention are critical factors that plans take into consideration when deciding whether or not to offer coverage in a market. Automatic re-enrollment is a major driver of retention, leading to a more stable and healthier risk pool. The risk of enrollment loss resulting from consumers who may drop coverage because they do not understand new rules around re-enrollment could impact carrier participation decisions.

- **For the FFM and SBMs, eligibility and enrollment systems are built on a framework of automatic re-enrollment.** Prohibiting this process could require major system and operational changes for many marketplaces and carriers, which would be costly and complex to implement. It would also generate more calls to marketplace service centers as well as an increase in the number of appeals – both of which would put additional strain on marketplaces' resources.

Prohibiting automatic re-enrollment would place an undue hardship on consumers that is out of sync with the administration's policy of reducing consumer burden and limiting new regulations. Additionally, we are concerned that discontinuing automatic plan re-enrollment would impede consumers' right to guaranteed renewability, as required by state and federal law. Should this process be disallowed by regulatory action, it is unclear whether it would be permissible under existing law.

Prohibiting "silver loading" – absent other policy changes – would create market instability, harm consumers, and intrude on states' rights to manage their insurance markets.

In 2017, the federal government ended direct funding of cost-sharing reductions (CSRs) — federally required payments that insurers must make to subsidize out-of-pocket expenditures for certain silver-tier enrollees. In response, many states, through their departments of insurance or other regulatory bodies actions, permitted or directed their health plans to add the anticipated costs of the CSRs subsidies to their marketplaces' silver-tier products, a practice referred to as "silver loading." Some states permitted or directed health plans to offer virtually identical "silver" products that did not include a silver surcharge outside of the marketplace, a policy that insulates consumers ineligible for financial assistance from paying increased premiums for silver-tier health plans.

If silver loading is prohibited at the federal level, health plans would likely be forced to implement alternative strategies to protect themselves from financial losses — leading to increased market instability and cost-shifting, which could lead to premium increases for some consumers. In an attempt to maintain individual market stability both on and off-marketplace, silver loading or other mechanisms appropriate to local markets should be permitted as an option in each state until a permanent solution to fund the CSR program — and potentially other strategies to assure market stability — are put in place, such as a federal reinsurance program. Now is not the time to add further instability to the individual market.

Stability and certainty benefit consumers.

Significant uncertainty from federal policy actions, such as the defunding of CSRs and the zeroing out of the individual mandate, have increased instability in the individual market nationwide. Prohibiting automatic re-enrollment and silver loading would introduce major changes to existing program rules and processes that could have a detrimental impact on enrollment, substantially raise premiums, and create even more uncertainty for carriers and consumers. In addition, removing local oversight function of state insurance bodies runs counter to the Administration's philosophy of promoting local control.

We would be pleased to provide you with any data or information that may be helpful to you. We look forward to additional opportunities to work with you to develop solutions that address our health care challenges and provide stability across all markets.

Sincerely,

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