

Congress of the United States

House of Representatives

Washington, D.C. 20515

June 22, 2015

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Burwell:

The United States House Committee on Energy and Commerce and Senate Committee on Finance have jurisdiction over Medicaid and the Children's Health Insurance Program (CHIP), and the United State House Committee on Ways and Means shares jurisdiction for those beneficiaries that are dually eligible for Medicare and Medicaid; programs which are administered by the Department of Health and Human Services (HHS). As Ranking Members of the relevant committees of jurisdiction, we have the responsibility and privilege of protecting the rights of the 70 plus million Americans who receive health care under Medicaid and CHIP. With shared jurisdiction over dually eligible beneficiaries who receive services through Medicare and Medicaid, the Ranking Member of the House Committee on Ways and Means joins us in this regard.

Accordingly, we write to urge you to take steps to finalize regulatory guidance proposed by the Centers for Medicare and Medicaid Services (CMS), nearly five years ago, entitled *Medicaid Program: Methods for Assuring Access to Covered Medicaid Services*, 76 Fed. Reg. 26,342 (May 6, 2011).

With millions of Americans around the nation covered by Medicaid and millions more gaining eligibility for Medicaid benefits, oversight and enforcement of the Medicaid Act's equal access provision is of critical importance. Over the past several years, states have often made drastic and oftentimes, arbitrary, provider payment reductions due to increasing concern over budgetary constraints. Historically, lawsuits by Medicaid providers have helped keep pressure on states to prevent them from arbitrarily reducing provider rates to meet certain budgetary objectives without considering the impact on enrollees' access to care.

Unfortunately, on March 31, 2015, the U.S. Supreme Court held that health care providers cannot enforce the Medicaid Act's payment provision, 42 U.S.C. § 1396a(a)(30)(A), against states in federal court. *See Armstrong v. Exceptional Child*, 135 S. Ct. 1378 (2014). The ramifications of this decision are such that the recourse now for providers to enforce Medicaid's equal access provision is through HHS's administrative process.

Former HHS officials spoke to the Supreme Court about its historical reliance on these actions, stating, "Every aspect of [HHS's] administration of the Medicaid program—from its

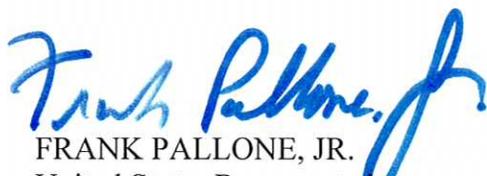
regulations to its annual budget—is premised on the understanding that private parties will shoulder much of the enforcement burden.” Brief for Former HHS Officials as *Amici Curiae* in Support of Respondents at 6, *Armstrong v. Exceptional Child*, 135 S. Ct. 1378 (2015) (No. 14-15). With the Court’s ruling in *Armstrong*, however, the enforcement burden has immediately shifted onto CMS.

CMS must provide firm and immediate oversight to ensure that states are setting and maintaining their Medicaid rate structures as Congress intends in section 1902(a)(30)(A) of the Medicaid Act—consistent with efficiency, economy and quality of care *and* at levels sufficient to ensure that care and services are available to Medicaid enrollees at least to the extent they are available to the general population in the geographic area.

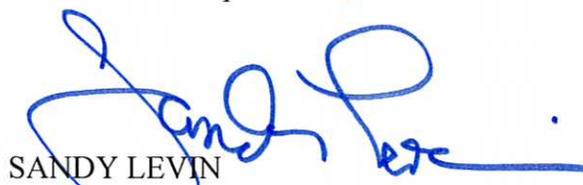
We understand that HHS received numerous comments in response to the proposed regulation and that your agency needs to consider those comments carefully. However, given the *Armstrong* ruling, and the rapidly changing landscape of the Medicaid program, we urge HHS to take all necessary steps to finalize the Medicaid payment regulation as soon as possible.

Thank you for your attention to this issue of great importance to Medicaid enrollees and Medicaid participating providers and for your commitment to the steadfast enforcement of the requirements of the Medicaid Act.

Sincerely,


FRANK PALLONE, JR.
United States Representative


RON WYDEN
United States Senator


SANDY LEVIN
United States Representative


GENE GREEN
United States Representative


DEBBIE STABENOW
United States Senator


JIM MCDERMOTT
United States Representative

cc: Andy Slavitt, Administrator, Center for Medicare and Medicaid Services
Victoria Wachino, Director, CMS Center for Medicaid and CHIP Services