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April 23, 2020

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

Dear Secretary Azar:

I am following up on multiple reports indicating the Trump administration plans to use funds from the \$100 billion Public Health and Social Services Emergency Fund (Emergency Fund) to reimburse hospitals for providing care to uninsured Americans. If the Department of Health and Human Services (HHS) plans to use funds this way, it is critical that hospitals and other health providers are not allowed to balance bill patients who seek testing and treatment for COVID-19 and end up having a non-related illness. The Prudent Layperson Standard must apply to those uninsured patients seeking emergency care in order to protect them from high out-of-pocket costs and further economic hardship.

The Prudent Layperson Standard defines an "emergency medical condition" as one that manifests itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possess an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical attention may place his or her health in serious jeopardy, seriously harm bodily functions, or cause serious dysfunction of any bodily organ or part.<sup>1</sup> While the Prudent Layperson Standard applies to Medicare, Medicaid managed care plans, and group and individual health insurance plans sold on the federal and state exchanges, this standard should also apply to those individuals who are currently uninsured and who seek medical care for COVID-19 even if they end up having an unrelated illness.

During this public health emergency, all patients, whether insured or uninsured, must be able to get the services they need, when they need them. This is especially true during the COVID-19 pandemic, as patients who may have been exposed to the virus and develop symptoms must immediately seek appropriate medical care. Patients should not be forced to act as their own

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<sup>1</sup> [P.L. 111-148; 29 C.F.R. §2590.715-2719A\(b\)\(4\)\(i\)](#).

doctors and second-guess themselves when they truly believe that they are having a medical emergency.

While I agree that HHS should take additional steps to help support hospitals and other providers who care for the uninsured and protect uninsured patients from high health costs, the best way to do this is to ensure that all Americans have access to comprehensive, affordable health insurance. I ask HHS to consider creating a special enrollment period for the federal exchange. Already, many States with state-based exchanges, including Maryland, have taken this action. The Maryland Health Benefit Exchange created an open enrollment period starting on March 16 and extended it through June 15 to help Marylanders obtain health insurance during the COVID-19 pandemic. So far, more than 22,300 people have signed up for health coverage through the special enrollment period and more than 88 percent have qualified for Medicaid or received financial assistance to lower the cost of their health plans. Creating a special enrollment period for the federal exchange would allow all Americans to sign up for health coverage and reduce the potential burden of uncompensated care on hospitals across the country.

Thank you in advance for your attention to this matter. I look forward to working with you to ensure the Emergency Fund is operationalized in the most comprehensive and effective manner, and that it be used to provide equitable, transparent support to health care providers caring for our communities during this crisis.

Sincerely,

/s/ Benjamin L. Cardin

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Benjamin L. Cardin  
United States Senator