

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

October 10, 2017

The Honorable Don J. Wright  
Acting Secretary  
U.S. Department of Health and Human  
Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

The Honorable Steven Mnuchin  
Secretary  
U.S. Department of Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Acting Secretary Wright and Secretary Mnuchin:

I write today regarding the Administration's failure to approve Oklahoma's 1332<sup>1</sup> reinsurance waiver in a timely manner. The inability of the Department of Health and Human Services and Department of Treasury ("Departments") to uphold their stated commitment to state flexibility has reduced access to affordable health care for tens of thousands of Oklahomans and reduces states' confidence in the Executive Branch.

As the author of Section 1332 of the Affordable Care Act (ACA), I am monitoring this Administration's waiver approval process closely. I have been concerned that the Administration may go too far and allow states to gut popular patient protections, but I agreed with former Secretary Price's emphasis on using 1332 waivers for reinsurance. Reinsurance is a commonsense way to help consumers by lowering premiums. I am, however, troubled by the Departments' inability to deliver on this commitment to states.

After months of touting a desire to work with states, your Departments have failed to provide Oklahoma with the commitment it needed, thus increasing instability in the individual market and diminishing the Departments' reputation as a viable partner for states. On March 13, 2017, former Secretary Price invited all governors to pursue approval of high-risk pool or state-operating reinsurance program waiver proposals. Former Secretary Price promised the Departments would "do our best to work with states to review their applications on an expedited basis."<sup>2</sup> Two months later, on May 11, 2017, the Departments issued a checklist specifying the items states should include to receive approval for a Section 1332 waiver.<sup>3</sup>

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<sup>1</sup> Section 1332 of the Affordable Care Act (P. Law 111-148) allows states to apply for State Innovation Waivers.

<sup>2</sup> Letter from Secretary Price to state governors, March 13, 2017, [https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter\\_508.pdf](https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/March-13-2017-letter_508.pdf)

<sup>3</sup> Centers for Medicare and Medicaid Services, "Checklist for Section 1332 State Innovation Waiver Applications, including specific items applicable to High-Risk Pool/State-Operated Reinsurance Program Applications," May 11, 2017, <https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Downloads/Checklist-for-Section-1332-State-Innovation-Waiver-Applications-5517-c.pdf>

Public statements and documents indicated your Departments were committed to working with states to quickly approve state waivers. These statements led Oklahoma state officials to believe that the waiver would be approved by September 25, 2017.<sup>4</sup> Yet, when you did not provide waiver approval by September 25, 2017, as was expected by Oklahoma, you rendered the state's months of work and resources moot. More importantly, this Administration "will prevent thousands of Oklahomans from realizing the benefits of significantly lower insurance premiums in 2018," according to Oklahoma's Secretary of Health and Human Services, who stated, "waiver approval would have helped more than 130,000 Oklahomans who today are struggling with dramatic price increases, provided greater than a 30% premium reduction and allowed nearly 30,000 individuals to buy insurance."<sup>5</sup>

In light of your Departments' recent failure to approve Oklahoma's waiver in a timely manner, I request answers to the following questions no later than October 20, 2017:

1. Regarding the sufficiency of Oklahoma's 1332 waiver application:
  - a. Was Oklahoma's application complete and technically sound? If not, what elements were lacking? When were any deficiencies communicated to the state?
  - b. Did Oklahoma follow the instructions included on the May 11, 2017 checklist that CMS provided for states?
  - c. Did the Departments provide technical assistance prior to Oklahoma's application submission on August 16, 2017? Please provide any such guidance.
  - d. How did Oklahoma's application differ in policy from the previously approved applications for a state reinsurance program, such as Alaska's?
  
2. Regarding federal communication with state officials:
  - a. During the preliminary review period and the subsequent approval process, how frequently did federal officials communicate with state officials in Oklahoma?
  - b. As noted above, Oklahoma state officials believed that the state and CMS would have an agreement by September 25, 2017. Did state and federal officials formally agree that Oklahoma's waiver must be approved by September 25, 2017? If so, please send any documentation. If not, why was Oklahoma under the impression they would have an agreement by September 25, 2017?

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<sup>4</sup> Letter from Terry Cline to Secretary Mnuchin and Secretary Price, September 29, 2017, <https://www.ok.gov/health2/documents/Oklahoma%201332%20Waiver%20Withdrawal%209.29.17.pdf>

<sup>5</sup> *Supra*

- c. When did your Departments determine that you would not be able to approve Oklahoma's waiver by September 25, 2017? When was this communicated to the state?
3. The Departments are currently considering two other 1332 waiver applications. Given the concerns being raised about the process used for the Oklahoma application:
  - a. Do you anticipate other states, such as Oregon, will face the same delays when applying for reinsurance waivers?
  - b. What assurances will be made to other states who may now be wary of committing their resources to development a waiver application?

If either of your staffs has questions, please have them contact Peter Gartrell or Arielle Woronoff on my Committee staff, at (202) 224-4515. Thank you for your prompt attention to this matter.

Sincerely,



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Ron Wyden  
Ranking Member  
Senate Finance Committee

CC: Eric Hargan, Deputy Secretary, U.S. Department of Health and Human Services  
Seema Verma, Administrator, Centers for Medicare and Medicaid Services, U.S.  
Department of Health and Human Services