



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL  
HARRISBURG, PA 17120

16TH FLOOR  
STRAWBERRY SQUARE  
HARRISBURG, PA 17120  
(717) 787-3391

JOSH SHAPIRO  
ATTORNEY GENERAL

July 16, 2018

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

Dear Secretary Azar:

Since its passage in 2010, millions of Pennsylvania residents have benefited from increased health insurance coverage and other protections guaranteed by the Affordable Care Act. More than one million Pennsylvanians receive insurance through the ACA's marketplace and Medicaid expansion and, thanks to the ACA, up to 5.4 million Pennsylvanians with preexisting health conditions no longer worry about being denied coverage.<sup>1</sup> As a result, Pennsylvania's uninsured rate has fallen to 5.6 percent, the lowest on record for the Commonwealth.<sup>2</sup>

Given these benefits to Pennsylvanians, I am concerned by a recent filing by the Department of Justice in *Texas et al. v. United States et al.*, No. 18-cv-167 (N.D. Tex.), in which the Department chose not to defend certain key provisions of the ACA, including provisions protecting those with preexisting conditions and preventing discriminatory pricing.<sup>3</sup> Similarly, in a letter to congressional leaders on June 7, 2018, Attorney General Sessions advised that the Justice Department would no longer defend the constitutionality of the ACA's individual mandate and "will argue that certain provisions" of the ACA are "inseverable from" the mandate.<sup>4</sup> As a result, he asserted that the ACA's requirement that insurers offer health insurance to any customer who wishes to purchase it (the "guaranteed issue" provision) and its ban on discriminatory pricing (the "community rating" provision) will become invalid as of January 1, 2019.

The guaranteed issue and community rating provisions collectively ensure that individuals with preexisting conditions can purchase affordable health insurance. The Attorney General's refusal to defend them in court jeopardizes the coverage of millions of Pennsylvanians.

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<sup>1</sup> See Pennsylvania Insurance Department, *Affordable Care Act in Pennsylvania Fact Sheet*, available at <http://www.insurance.pa.gov/siteassets/pages/default/aca%20fact%20sheet.pdf>.

<sup>2</sup> See Press Release, *Governor Wolf Announces Decrease in State's Uninsured Rate* (Sept. 13, 2017), available at <https://www.governor.pa.gov/governor-wolf-announces-decrease-states-uninsured-rate/>.

<sup>3</sup> See Dkt. No. 92 (June 7, 2018).

<sup>4</sup> See, e.g., Letter from Hon. Jefferson B. Sessions III to Hon. Paul Ryan (June 7, 2018).

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Following the Attorney General's statements, you suggested that the Department of Health and Human Services intends to continue to enforce the guaranteed issue and community rating requirements. In testimony before the Senate Finance Committee, you responded to a question from Pennsylvania Senator Robert P. Casey, Jr. by stating, "We are operating the 2019 program under existing authority, existing interpretations, as if everything is remaining as it is, so we're doing everything to keep stability in the program and operate the program as it is."<sup>5</sup> Your position appears to conflict with the Attorney General's, creating confusion for regulators, insurers and patients alike.

Pennsylvanians need assurance now that the vital protections guaranteed under the ACA will not be taken from them. The Pennsylvania Insurance Department is currently reviewing health insurance plans to be offered in 2019 and proposed rates for those plans. The rate review process must be completed by August 15, 2018, and open enrollment for 2019 plans begins on November 1. These conflicting statements have created significant confusion in the insurance marketplace in Pennsylvania.

In light of the confusion caused by the Administration's conflicting statements, I respectfully request clarification as to whether HHS will continue enforcing the guaranteed issue and community rating provisions after January 1, 2019, in the absence of a binding court ruling preventing your department from doing so. To ensure that Pennsylvania residents and regulators have sufficient time to prepare for the 2019 plan year, kindly provide your response no later than July 31, 2018.

I thank you in advance for taking the time to review this important matter and I look forward to your reply.

All the best,



JOSH SHAPIRO

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<sup>5</sup> See Senate Finance Committee, *Prescription Drug Affordability and Innovation: Addressing Challenges in Today's Market* (June 26, 2018).