

Congress of the United States
Washington, DC 20510

August 7, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Attention: CMS-2413-P
P.O. Box 8016
Baltimore, MD 21244-8016

Dear Administrator Verma:

We write to express strong concern with the Centers for Medicare and Medicaid Services' (CMS) "Reassignment of Medicaid Provider Claims" proposed rule, which could affect tens of thousands of home care workers in Massachusetts and across the country.¹ As noted in the proposed rule, this change is apparently intended to prevent home care workers who have chosen to join a union, and accordingly pay dues to their union, from having those dues automatically deducted from their paychecks. Many workers have chosen, for the sake of convenience, to use automatic dues deduction and your proposal to restrict their ability to do so would serve only to undermine workers' rights to form and join unions and bargain collectively for higher wages, better benefits, and good working conditions.

In Massachusetts, around 45,000 individual provider home care workers, also known as Personal Care Attendants, are represented by a union, along with hundreds of thousands more around the country. These workers provide crucial supports and services for older Americans and individuals with disabilities, including bathing, toileting, dressing, preparing meals, and transportation, without which independent living for many seniors and people with disabilities would simply be impossible.

The home care workforce is made up disproportionately of women and workers of color, and, along with other domestic workers, it has historically been excluded from basic worker protections related to pay, occupational health and safety, and collective bargaining, which has further contributed to poor job quality and the resulting worker shortage that threatens this country's ability to properly care for its growing aging population.² Incredibly, while home care

¹ Centers for Medicare & Medicaid Services, "Medicaid Program; Reassignment of Medicaid Provider Claims," proposed rule, July 12, 2018, <https://www.federalregister.gov/documents/2018/07/12/2018-14786/medicaid-program-reassignment-of-medicare-provider-claims>.

² Paraprofessional Healthcare Institute, "U.S. Home Care Workers: Key Facts," <https://phinational.org/wp-content/uploads/legacy/phi-home-care-workers-key-facts.pdf>.

jobs are some of the fastest growing occupations in the United States, the median hourly wage for home care workers is just over \$10, and more than half of home care workers rely on some sort of public support program themselves, such as Medicaid or the Supplemental Nutrition Assistance Program.³

The right to form unions and to bargain collectively for better wages and conditions—which individual provider home care workers in Massachusetts won in 2006—is a fundamental step toward ensuring these workers have dignity and a meaningful voice on the job that they have been unjustly denied for far too long.⁴

The proposal to prohibit these workers from requesting that union dues be deducted from their paychecks—money that they have earned with their own hard work—is insulting, counterproductive, and hard to view as anything other than an attempt to roll back home care workers’ collective bargaining rights. While not all workers represented by unions choose to pay dues, those who do decide to pay dues should be allowed to do so in the least burdensome way possible, such as through voluntary, automatic dues deduction, just like workers in other industries in the public and private sectors. Automatic dues deduction may seem like a minor convenience to some, but for many workers—especially those who earn low wages, do not report to a central work location, and may not have access to a bank account—it is crucial to exercising their right to join unions and participate in the collective bargaining process. Eliminating this option for Medicaid-funded home care amounts to erecting an unnecessary barrier to home care workers using their own paychecks however they wish.

The suggestion that home care workers should not maintain personal control over their union dues is particularly baffling in light of the Trump administration’s position in a case recently decided by the U.S. Supreme Court, *Janus v. American Federation of State, County, and Municipal Employees, Council 31*. In his amicus brief, the Solicitor General argued that “compelled financial support for a public sector union’s positions in collective bargaining necessarily implicates a public employee’s speech ‘as a citizen,’ not merely as an employee.”⁵ In other words, the administration argued, by requiring an employee to pay fees to a union for the services it provides, the state is forcing an employee to spend his or her compensation on an activity with which he or she disagrees.

CMS’s reassignment proposal, which would restrict employees’ control over payments to a union that are entirely *voluntary*, implies the opposite—that employee wages are not truly the employee’s property and cannot be spent in ways that the employee sees fit. Unlike the third parties in the kinds of practices meant to be addressed by the reassignment provision of the Medicaid law at 42 U.S.C. § 1396a(a)(32), unions are unable to independently bill for Medicaid

³ Paraprofessional Healthcare Institute, “Low Wages, Insufficient Hours, & High Rates of Poverty,” Stephen Campbell and Kezia Scales, <https://phinational.org/issue/wages-benefits/>.


⁴ An Act Establishing a Personal Care Attendant Quality Home Care Workforce Council, Chapter 268, 2006, <https://malegislature.gov/Laws/SessionLaws/Acts/2006/Chapter268>.

⁵ Supreme Court of the United States, “Brief for the United States as Amicus Curiae Supporting Petitioner,” Noel J. Francisco, https://www.supremecourt.gov/DocketPDF/16/16-1466/22919/20171206205129333_16-1466tsacUnitedStates.pdf.

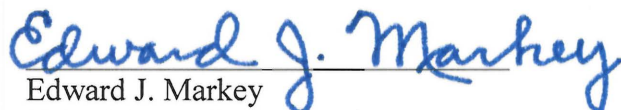
services.⁶ Nonetheless, this proposal would limit home care workers' control of the compensation that they have earned themselves under the auspices of the reassignment provision. The Trump administration's positions in *Janus* and in this proposal therefore seem completely contradictory, but for one aspect: they propose curtailing the ability of hard-working Americans to join together and bargain collectively for better wages, benefits, and conditions.

Because of these concerns, we strongly urge you to refrain from proceeding with this rulemaking and interfering in home care workers' ability to voluntarily pay union dues in the manner that they choose. Proceeding with this proposal could erode the ability of hundreds of thousands of home care workers to effectively seek improved wages, benefits, and working conditions; threaten to exacerbate the nationwide shortage of home care workers; and undermine the quality of crucial care on which seniors and Americans with disabilities rely every day.

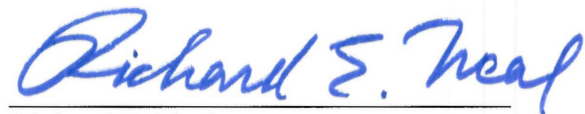
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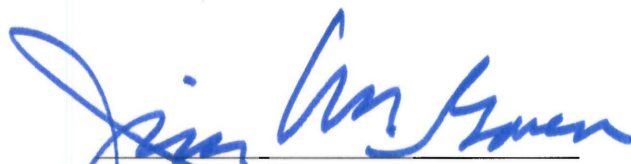
Elizabeth Warren
United States Senator



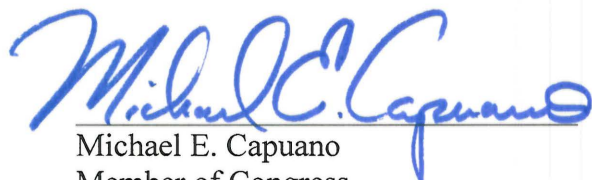
Edward J. Markey
United States Senator



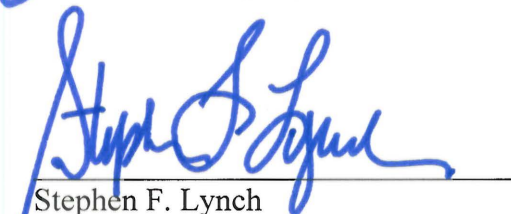
Richard E. Neal
Member of Congress



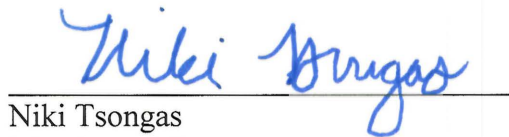
James P. McGovern
Member of Congress



Michael E. Capuano
Member of Congress



Stephen F. Lynch
Member of Congress

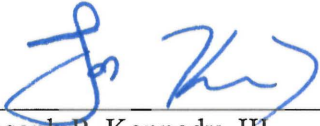


Niki Tsongas
Member of Congress

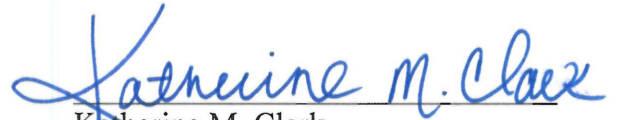


William R. Keating
Member of Congress

⁶ 42 U.S.C. 1396a(a)(32), <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title42/pdf/USCODE-2010-title42-chap7-subchapXIX-sec1396a.pdf>.



Joseph P. Kennedy, III
Member of Congress



Katherine M. Clark
Member of Congress



Seth Moulton
Member of Congress