

March 13, 2025

Dr. Mehmet Oz  
Administrator-Designate, Centers for Medicare & Medicaid Services  
The White House  
1600 Pennsylvania Avenue  
Washington D.C., 20050

Dear Dr. Oz,

On November 19, 2024, President Donald Trump nominated you to serve as the Administrator of the Centers for Medicare & Medicaid (CMS) in his Administration. In this position, you would be responsible for overseeing Medicare, Medicaid, and Affordable Care Act coverage, setting the rules for and managing programs that provide health care coverage for 160 million Americans.<sup>1</sup>

As I outlined in a letter on December 10, 2024 – which you have failed to respond to – I have serious concerns about your ability to adequately fulfill the responsibilities of the position. In particular, I am troubled by your advocacy for completely privatizing Medicare and your deep financial ties to health care companies that receive significant payments from CMS. I lack confidence in your ability to protect Medicare, Medicaid, the Affordable Care Act, and the millions of Americans that rely on these programs to provide access to the health care they need.

These concerns, and a series of questions about them, are described in detail in the remainder of this letter. I ask that you review these questions and arrive prepared to answer them at your appearance before the Senate Finance Committee on March 14, 2025, and that you provide written responses to them promptly thereafter.

### **Eliminating Traditional Medicare**

In June 2020, ahead of your unsuccessful Pennsylvania Senate campaign, you outlined a plan to eliminate Traditional Medicare by forcing all non-Medicaid-eligible seniors into Medicare Advantage (MA), the program that allows private insurers to administer Medicare coverage instead of the federal government.<sup>2</sup> In defense of your privatization plan, you called the Traditional Medicare program “highly dysfunctional” and argued that private insurers in MA offer cheaper and more accessible coverage than the government-administered program.<sup>3</sup> At the same time, you held over half a million dollars of stock in the largest private insurer in MA –

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<sup>1</sup> Centers for Medicare & Medicaid, “About Us,” <https://www.cms.gov/about-cms>.

<sup>2</sup> Forbes, “Medicare Advantage For All Can Save Our Health-Care System,” Dr. Mehmet Oz and George Halvorson, June 11, 2020, <https://www.forbes.com/sites/steveforbes/2020/06/11/medicare-advantage-for-all-can-save-our-health-care-system/>.

<sup>3</sup> *Id.*

UnitedHealth Group (UnitedHealth) – whose revenue from the MA program alone would double to \$274 billion annually if your plan is implemented, and you were paid as a licensed insurance broker to peddle private MA plans.<sup>4</sup>

Of course, your statements promoting the MA program are patently false – perhaps due to your deep financial ties to the MA industry. In fact, the non-partisan Medicare Payment Advisory Committee (MedPAC) estimated that private insurers in MA overcharged the government (i.e., American taxpayers) by roughly \$83 billion relative to Traditional Medicare in 2024 alone,<sup>5</sup> while academic researchers put the dollar figure as high as \$140 billion.<sup>6</sup> Most of these overpayments are due to outright fraud, including through “upcoding,” the strategy by which private insurers in MA exaggerate the medical diagnoses of their enrollees’ to secure higher payments from CMS – even if patients receive no treatment for those alleged conditions.<sup>7</sup> According to federal watchdogs and investigative reporting, including by the Wall Street Journal, UnitedHealth leads all private insurers in upcoding. The company has pressured its own doctors to add unsupported diagnoses to MA patients,<sup>8</sup> sent nurses to do home visits to identify coding opportunities,<sup>9</sup> and leveraged unregulated artificial intelligence algorithms to streamline their coding practices.<sup>10</sup>

Despite these gross overpayments, federal watchdogs have revealed that private insurers in MA are increasingly obstructing access to care to further pad profits. A 2022 investigation by the Department of Health and Human Services Inspector General (HHS IG), for example, found that among all requests private insurers in MA denied, 13 percent of prior authorization denials and 18 percent of payment denials were unlawful under Medicare coverage guidelines, meaning the MA plans delayed or denied enrollees access to services that otherwise would have been approved under Traditional Medicare.<sup>11</sup> Meanwhile, patients in Traditional Medicare have open networks and rarely, if ever, have to receive prior authorization approval for services recommended by their doctors.<sup>12</sup> In addition, federal watchdogs have revealed that private insurers in MA routinely use deceptive marketing tactics to lure seniors into their plans, impose burdensome utilization

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<sup>4</sup> The New York Times, “Dr. Oz: How His Millions Collide With Medicare,” Reed Abelson and Susanne Craig, February 24, 2025, <https://www.nytimes.com/2025/02/24/health/dr-oz-medicare-finances-conflicts.html>; People’s Action, “UnitedHealth Will Be a Top Beneficiary of Trump’s Project 2025,” October 15, 2024, <https://peoplesaction.org/unitedhealth-will-be-a-top-beneficiary-of-trumps-project-2025/>.

<sup>5</sup> Medicare Payment Advisory Commission, “Report to the Congress: Medicare Payment Policy,” June 2024, p. 373, [https://www.medpac.gov/wp-content/uploads/2024/03/Mar24\\_Ch12\\_MedPAC\\_Report\\_To\\_Congress\\_SEC-1.pdf](https://www.medpac.gov/wp-content/uploads/2024/03/Mar24_Ch12_MedPAC_Report_To_Congress_SEC-1.pdf).

<sup>6</sup> Physicians for a National Health Program, “Our Payments, Their Profits,” October 4, 2023, <https://pnhp.org/news/our-payments-their-profits/>.

<sup>7</sup> Office of U.S. Senator Elizabeth Warren, Senator Warren letter to CMS Administrator-Designate Oz, December 10, 2024, [https://www.warren.senate.gov/imo/media/doc/warren\\_letter\\_to\\_droz1.pdf](https://www.warren.senate.gov/imo/media/doc/warren_letter_to_droz1.pdf).

<sup>8</sup> The Wall Street Journal, “UnitedHealth’s Army of Doctors Helped it Collect Billions More From Medicare,” Christopher Weaver, Anna Wilde Matthews, and Tom McGinty, December 29, 2024, <https://www.wsj.com/health/healthcare/unitedhealth-medicare-payments-doctors-c2a343db>.

<sup>9</sup> The U.S. Department of Health and Human Services Office of Inspector General, “Medicare Advantage: Questionable Use of Health Risk Assessments Continues to Drive Up Payments to Plans by Billions,” October 24, 2024, <https://oig.hhs.gov/reports/all/2024/medicare-advantage-questionable-use-of-health-risk-assessments-continues-to-drive-up-payments-to-plans-by-billions/>.

<sup>10</sup> Optum, “Enhance risk and quality performance,” 2023, <https://www.optum.com/content/dam/optum3/optum/en/resources/white-papers/enhancing-rq-performance-through-digital-clinical-data-acquisition-ai-nlp.pdf>.

<sup>11</sup> The U.S. Department of Health and Human Services Office of Inspector General, “Some Medicare Advantage Organization Denials of Prior Authorization Requests Raise Concerns About Beneficiary Access to Medically Necessary Care,” November, 27, 2022, <https://oig.hhs.gov/reports/all/2022/some-medicare-advantage-organization-denials-of-prior-authorization-requests-raise-concerns-about-beneficiary-access-to-medically-necessary-care/>.

<sup>12</sup> The Center for Medicare Advocacy, “Medicare Prior Authorization,” <https://medicareadvocacy.org/prior-authorization/>.

management techniques on unaffiliated providers, restrict provider networks, and send inflated payments to their provider subsidiaries.<sup>13</sup>

As CMS Administrator, you would be tasked with overseeing Medicare and ensuring that the tens of millions of seniors that rely on the program receive the care they deserve. This includes cracking down on abuses by private insurers in Medicare Advantage, which cover over 34 million seniors and people with disabilities.<sup>14</sup> Your unwavering support for Medicare Advantage and financial ties to the MA industry raises serious questions about whether you will adequately regulate the deeply flawed program and ensure seniors have access to Traditional Medicare.

I have the following questions on the subject:

1. Will you commit to opposing any and all efforts to privatize or cut Medicare if you are confirmed as CMS Administrator?
2. Do you support any policies that would make MA the default enrollment option for Medicare enrollees? If so, which ones?
3. Do you believe it is important to preserve the traditional Medicare program? If so, how do you plan to preserve the traditional Medicare program, and preserve it such that all seniors have the choice to enroll in it?
4. Do you still continue to support policies that would eliminate Traditional Medicare?
  1. If so, how will you address concerns from seniors that will be forced out of the program?
5. How do you reconcile your support for turning Medicare over to private insurers with findings from federal watchdogs and whistleblowers indicating that these private companies overcharge taxpayers and unlawfully deny care? What would you do to ensure that private insurance companies in Medicare do not overcharge taxpayers and unlawfully deny care?
6. What measures will you take at CMS to prevent coding abuse and overpayments in Medicare Advantage?
7. What will be your approach to handling the increasing rate of prior authorizations and other limits on Medicare enrollees' care in the Medicare Advantage program?
8. Do you support automatic enrollment in Medicare Advantage?
9. What are your views on the Medicare Advantage benchmark system? How would you combat favorable selection?

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<sup>13</sup> Office of U.S. Senator Elizabeth Warren, Senator Warren letter to CMS Administrator-Designate Oz, December 10, 2024, [https://www.warren.senate.gov/imo/media/doc/warren\\_letter\\_to\\_droz1.pdf](https://www.warren.senate.gov/imo/media/doc/warren_letter_to_droz1.pdf).

<sup>14</sup> Centers for Medicare & Medicaid Services, "Medicare Monthly Enrollment," <https://data.cms.gov/summary-statistics-on-beneficiary-enrollment/medicare-and-medicare-reports/medicare-monthly-enrollment>.

10. The Biden administration has taken steps and issued rules to crack down on abuse in Medicare Advantage. Will you commit to implementing these policies?
  1. Specifically, will you finalize the CY26 proposed Medicare Advantage rule and the CY26 Advanced Notice for payment policies, including the third-year implementation of the changes to the risk adjustment model?
11. Numerous reports have documented high pressure and misleading marketing tactics by insurance brokers seeking to enroll beneficiaries in private plans. What would you do to protect beneficiaries from these marketing strategies?
  1. Will you not walk back existing or pending CMS regulations to crack down on misleading marketing in MA?
12. According to the New York Times, you are a licensed insurance broker in more than 20 states.<sup>15</sup> Please list all the states where you are still licensed.
13. Medicare Advantage enrollment has grown significantly in recent years and now outpaces enrollment in Traditional Medicare. What steps would you take to ensure that the program remains financially sustainable while delivering high-quality care to beneficiaries?
14. The five percent of worst performing MA plans are responsible for tens of thousands of needless deaths each year.<sup>16</sup> Would you support allowing beneficiaries to enroll in those plans? If not, how could you prevent it?
15. Do you support adding an out-of-pocket cap to Traditional Medicare?
16. Given Medicare Advantage plans' incentive to deny care, do you support requiring such plans to use existing Medicare administrative contractors (MACs) or an independent third party to make prior authorization decisions and adjudicate claims based on medical necessity and without conflicts of interest?
17. While you have called traditional Medicare "highly dysfunctional," Traditional Medicare does not have provider network restrictions and requires very little prior authorization, whereas most MA plans have restricted provider networks and 99% of all MA enrollees are subject to prior authorization requirements, most often for higher cost services. Are you supportive of restricted provider networks?
18. An American Medical Association (AMA) 2023 annual survey on prior authorizations found that 93% of physicians reported that prior authorizations led to delays to patients' "access to necessary care," 78% reported that the process can at least sometimes lead to patients abandoning their physicians' recommended course of treatment, and 24% reported that prior authorization has led to a serious adverse event for a patient in their care.<sup>17</sup>

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<sup>15</sup> The New York Times, "Dr. Oz: How His Millions Collide With Medicare," Reed Abelson and Susanne Craig, February 24, 2025, <https://www.nytimes.com/2025/02/24/health/dr-oz-medicare-finances-conflicts.html>.

<sup>16</sup> National Bureau of Economic Research, "Mortality Effects and Choice Across Private Health Insurance Plans," Jason Abaluck et. al., July 2020, <https://www.nber.org/papers/w27578>.

<sup>17</sup> American Medical Association, "2024 AMA prior authorization physician survey," <https://www.ama-assn.org/system/files/prior-authorization-survey.pdf>; American Medical Association, "Exhausted by prior auth, many patients abandon care: AMA survey,"

1. Would you call these barriers to care imposed by MA plans “dysfunctional”?
  2. Are these estimates of the percentage of patients affected by these MA plan tactics acceptable to you? If not, how do you intend to improve the program?
19. Less than 10% of people appeal MA plan denials, but when they do, more than 80% win their appeal.<sup>18</sup> Does this suggest to you that MA plans are denying more medically necessary care than they should?
  20. CMS recently limited the times when low-income individuals can join, switch, or leave Medicare Advantage or Part D plans.<sup>19</sup> What are your thoughts about the necessity of an annual enrollment period, which results in intense and often misleading marketing tactics, versus more frequent special election periods to allow low-income beneficiaries to change plans as needed?
  21. How do you plan to increase enforcement of site-neutral payment requirements in Medicare?
  22. HHS Secretary Robert F. Kennedy Jr. recently rescinded a 54-year-old department policy – known as the Richardson Waiver – to provide advanced notice and opportunity for public comment on proposed regulations.<sup>20</sup> During the confirmation process, Kennedy promised U.S. senators that he would usher in a “new era of radical transparency” at HHS. Which version of Kennedy do you side with?
  23. Do you commit to following 54 years of precedent and inviting full public notice and comment to any and all proposed CMS regulations?
  24. Will you use the Richardson Waiver to take any steps to make Medicare Advantage the default Medicare option for seniors?

### **Conflicts of Interest**

If confirmed as CMS Administrator, you would be primarily responsible for the health care and financing decisions of an agency with an annual budget of roughly \$1.5 trillion,<sup>21</sup> which determines payments to health insurers, health care providers, drug companies, and other health care entities. However, your 2025 financial disclosure form and ethics agreement raise questions about your ability to impartially regulate the health care industry.

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Tanya Albert Henry, July 18, 2024, <https://www.ama-assn.org/practice-management/prior-authorization/exhausted-prior-auth-many-patients-abandon-care-ama-survey>.

<sup>18</sup> Kaiser Family Foundation, “Medicare Advantage Insurers Made Nearly 50 Million Prior Authorization Determinations in 2023,” Jeannie Fuglesten Biniek, Nolan Sroczynski, Meredith Freed, and Tricia Neuman, January 28, 2025, <https://www.kff.org/medicare/issue-brief/use-of-prior-authorization-in-medicare-advantage-exceeded-46-million-requests-in-2022/>.

<sup>19</sup> Justice in Aging, “Important Changes in 2025 to Special Enrollment Periods for Low-Income Medicare Enrollees,” October 15, 2024, <https://justiceinaging.org/important-changes-in-2025-to-special-enrollment-periods-for-low-income-medicare-enrollees/>.

<sup>20</sup> Healthcare Brew, “HHS overturns 54-year-old public comment rule,” Cassie McGrath, March 4, 2025, <https://www.healthcare-brew.com/stories/2025/03/04/hhs-overturns-54-year-old-public-comment-rule>.

<sup>21</sup> Centers for Medicare & Medicaid Services, “Fiscal Year 2024 Financial Report,” November 2024, <https://www.cms.gov/files/document/cms-financial-report-fiscal-year-2024.pdf>.

You have deep ties to companies that could profit from your decisions at CMS. You currently serve as a managing member or advisor of multiple health care and pharmaceutical firms with a financial stake in CMS policy, and much of your financial portfolio is invested in health care and pharmaceutical companies whose value is tied to CMS' regulatory work.<sup>22</sup> While you have agreed to divest much of your portfolio, you should make clear to the American public whether you intend to retain a financial interest in any health-related companies that you will have the power to influence at CMS. Furthermore, you should make clear whether you intend to work on matters in which your former employers or clients are parties and whether you intend to return to working for companies that directly engage with CMS after leaving office.

Accordingly, I have the following questions on this subject:

1. Please provide the committee with a full accounting of your financial connections to companies that make and sell drugs or dietary supplements or provide services to the drug or dietary supplements industry, as well as any investments in insurance companies, including the nature and monetary value of each connection from five years ago to the present.
2. Please list all health-related companies that have paid you, either directly or through an entity with which you are affiliated, to promote their products or services in the past 5 years. For each payment, specify how much you have been paid, the dates of payments, and the entity to which the payment was made.
  - a. Do you plan to continue receiving any such payments for future or past promotional services while at CMS?
3. Do you plan to continue posting content that promotes any health company's product or service to your website, YouTube channel, social media page, or any other media platform while serving at CMS?
  - a. Will you commit to not promoting health-related products or services via any media outlet while at CMS, to avoid a conflict of interest or the appearance thereof?
4. Please list any active media platforms that you own.
  - a. Do you plan to continue speaking about health-related matters on any media platform you own while serving at CMS?
  - b. Given that your leadership position at CMS could drive viewers to your platforms in ways that could enrich you, please describe any steps you will take to cease or alter your media appearances on platforms you own.
5. Will you divest or forfeit all vested and unvested restricted stock units and any other form of equity in iHerb before taking office?

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<sup>22</sup> The New York Times, "Dr. Oz: How His Millions Collide With Medicare," Reed Abelson and Susanne Craig, February 24, 2025, <https://www.nytimes.com/2025/02/24/health/dr-oz-medicare-finances-conflicts.html>

6. Do you plan to seek a waiver pursuant to 18 U.S.C. § 208(b) so that you can perform work related to health care companies in which you are invested, while you still own those investments for up to 90 days after taking office?
7. Please describe the work of iHerb Oz Partners LLC and the precise relationship between iHerb LLC and iHerb Oz Partners LLC.
8. Please describe in detail the work of each of the following: Oz Works LLC, Zoco Productions LLC, Oz Parents Apartments LLC, Oz Property Holdings LLC, and Oz Media LLC.
  - a. Your ethics agreement notes: “I will not at any time receive compensation for services that I perform during my Federal appointment.” However, during your time at CMS, do you plan to receive compensation for services that you performed for any of these entities *before* your federal appointment?
9. Please describe your understanding of how the following entities’ work relate to the work of CMS: SandboxAQ, Housey Pharma, EKO Health Inc., iHerb, LLC, and Cardiology Partners Co., LP.
10. Will you commit to recuse yourself from all particular matters involving your former clients and employers for at least four years?
11. Will you commit to not seeking employment, board membership with, or another form of compensation from any company that you regulated or otherwise interacted with while at CMS, for at least four years after leaving office?
12. Will you commit to not lobbying CMS — either as a formal registered lobbyist or informal “shadow lobbyist” — for at least four years after leaving office?

### **Promotion of Quack Science**

You have a long history of peddling dangerous products on television and social media to pad your profits. In 2022, you were accused of failing to follow Federal Trade Commission (FTC) advertising guidelines by posting social media content promoting dietary supplements without disclosing that you had a financial connection to the supplement company.<sup>23</sup> That same year, you endorsed hydroxychloroquine – a now thoroughly debunked, dangerous COVID-19 remedy – while you had financial ties to two pharmaceutical companies that manufactured the drug.<sup>24</sup>

Moreover, in a 2014 study, researchers found that you averaged “12 recommendations per episode,” on your television show, the Dr. Oz Show, largely for dietary advice. However, 15% of those recommendations contradicted actual scientific evidence while 39% lacked any evidence at

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<sup>23</sup> Public Citizen, “Letter to FTC: Investigate Dr. Oz’s Potential Violations of Influencer Marketing Standards,” December 3, 2024, <https://www.citizen.org/article/letter-to-ftc-investigate-dr-ozs-potential-violations-of-influencer-marketing-standards/>.

<sup>24</sup> CNBC, “Dr. Oz owns shares of companies that supply hydroxychloroquine, a drug he has backed as a Covid treatment,” Brian Schwartz, September 7, 2022, <https://www.cnbc.com/2022/09/07/dr-oz-has-ties-to-hydroxychloroquine-companies-as-he-backs-covid-treatment.html>.

all.<sup>25</sup> You have also promoted homeopathy on your show, a practice that relies on diluting substances until they are essentially absent from the product, effectively cheating consumers with placebo.<sup>26</sup>

Accordingly, I have the following questions on the subject:

1. What actions have you taken to comply with FTC social media disclosure requirements?
2. If confirmed, will you endorse treatments that have not been shown to be safe and effective by the FDA for reimbursement by Medicare?
3. How do you come to scientific conclusions before promoting products on your platform? What data do you consider to be evidence?
4. Do you now believe that hydroxychloroquine is an effective COVID-19 treatment?
5. In 2009, the New York Times ran a story saying that a company you advised and advertised for, Realage.com, administered questionnaires to patients and then sold their identified data to pharmaceutical companies.<sup>27</sup> This included sensitive information and data for over twenty-seven million people. Sharecare, the home-health MA company that you founded, was also subject to a significant data breach of personal health information in 2018.<sup>28</sup>
  - a. Do you still have any relationship with Realage.com?
  - b. CMS is part of HHS, which administers HIPAA. Can we trust you to safeguard the medical information of the millions of Medicare and Medicaid beneficiaries better than you did those of realage.com?
  - c. Were you aware of the 2018 data breach at Sharecare? If so, did you take any action as a result?

### **Drug Pricing**

If confirmed as CMS Administrator, you would have enormous influence over U.S. prescription drug prices, which are nearly three times higher than in other advanced economies.<sup>29</sup> For example,

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<sup>25</sup> ResearchGate, “The Case of Dr. Oz: Ethics, Evidence, and Does Professional Self-Regulation Work?” Megan Allyse, February 2017, [file:///C:/Users/mcano/Downloads/The\\_Case\\_of\\_Dr\\_Oz\\_Ethics\\_Evidence\\_and\\_Does\\_Profess.pdf](file:///C:/Users/mcano/Downloads/The_Case_of_Dr_Oz_Ethics_Evidence_and_Does_Profess.pdf); National Library of Medicine, “Televised medical talk shows--what they recommend and the evidence to support their recommendations: a prospective observational study,” Christina Korownyk et. al., December 2014, <https://pubmed.ncbi.nlm.nih.gov/25520234/#:~:text=For%20recommendations%20in%20The%20Dr%20Oz%20Show%2C,14%%2C%20and%20was%20not%20found%20for%2024%20>.

<sup>26</sup> Youtube.com, “Dr. Lisa Samet at Dr. Oz Show: Homeopathic Starter Kit 2,” January 1, 2018, [https://www.youtube.com/watch?v=5RH-CDN\\_sBo](https://www.youtube.com/watch?v=5RH-CDN_sBo).

<sup>27</sup> New York Times, “Online Age Quick is a Window for Drug Makers,” Stephanie Clifford, March 25, 2009, <https://www.nytimes.com/2009/03/26/technology/internet/26privacy.html#:~:text=Online%20Age%20Quiz%20Is%20a,technology/internet/26privacy.html>.

<sup>28</sup> The HIPAA Journal, “Patients Receive Notifications of PHI Theft 8 Months After Business Associate Data Breach was Detected,” Steve Alder, February 19, 2019, <https://www.hipaajournal.com/patients-receive-notifications-of-phi-theft-8-months-after-business-associate-data-breach-was-detected/>.

<sup>29</sup> RAND, “Prescription Drug Prices in the U.S. Are 2.78 Times Those in Other Countries,” February 1, 2024, <https://www.rand.org/news/press/2024/02/01.html>.



the CMS Administrator is responsible for implementing the drug pricing provisions in the Inflation Reduction Act of 2022 (IRA), which, for the first time, authorized CMS to negotiate drug prices directly with pharmaceutical companies on behalf of Medicare beneficiaries. Since the law's passage in 2022, CMS has negotiated lower prices on 10 of the most expensive and common drugs in the Medicare program, reducing list prices by up to 79 percent.<sup>30</sup> Price negotiations are expected to save Americans \$1.5 billion in out-of-pocket costs in 2026, and, if continued, will save taxpayers roughly \$237 billion between 2022 and 2031.<sup>31</sup>

These reforms are common sense; prior to the passage of the IRA, the U.S. was the only advanced country in the world that was prohibited from negotiating drug prices, largely due to the influence of the pharmaceutical lobby.<sup>32</sup> However, Congressional Republicans are currently advancing proposals to end the program, and executives from the pharmaceutical companies that are subject to negotiations have spent millions of dollars on private dinners with President Trump to lobby against negotiations.<sup>33</sup> Notably, Health and Human Services (HHS) Secretary Kennedy, has accompanied President Trump at these dinners, despite his claims that he would “end the corruption, end the corporate capture” of regulatory agencies that oversee the industry.<sup>34</sup>

If confirmed, you would have vast discretion to do the pharmaceutical industry's bidding and undermine the outcome of IRA negotiations: you could slow down implementation, avoid enforcing penalties for noncompliance by drug manufacturers, and fail to treat different dosages and strengths of a drug as the same selected drug for the purposes of negotiations. You could also put your thumb on the scale for drug manufacturers that you have deep connections to. For example, you have promoted Novo Nordisk's drugs, Ozempic and Wegovy, two drugs that you will be tasked with negotiating prices on if confirmed.<sup>35</sup> You would also be responsible for deciding whether to finalize a proposed rule granting the drugs expanded coverage under Medicare and Medicaid, which would result in a huge windfall for the company.

In addition to negotiations, the CMS Secretary has broad authority to rein in abuses by dominant middlemen in the pharmaceutical supply chain, including in Medicare and Medicaid. This includes abuses by pharmacy benefit managers (PBMs), which President-Elect Trump has branded as “famous middlemen” that “rip[] off Medicare patients with high prescription prices.”<sup>36</sup> While PBM reform was stripped from the Continuing Resolution due to objections from Elon Musk, if confirmed as CMS Administrator, you could use your administrative authority to ramp up enforcement against PBMs by mandating complete drug price reporting; including manufacturer rebates and reimbursements to pharmacies; conduct audits of PBMs that contract with the federal government; propose rules that require PBMs to favor lower-cost generics on insurers’

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<sup>30</sup> Centers for Medicare & Medicaid Services, “Negotiating for Lower Drug Prices Works, Saves Billions,” August 15, 2024, <https://www.cms.gov/newsroom/press-releases/negotiating-lower-drug-prices-works-saves-billions>.

<sup>31</sup> *Id.*

<sup>32</sup> The New York Times, “The 4 Arguments You Will Hear Against Drug Price Negotiation,” Larry Levitt, September 6, 2023, <https://www.nytimes.com/2023/09/06/opinion/medicare-drug-price-negotiation.html>.

<sup>33</sup> Senator Elizabeth Warren letter HHS Secretary Kennedy, March 10, 2025, [https://www.warren.senate.gov/imo/media/doc/warren\\_letter\\_to\\_rfk\\_redinnerswithbigpharma.pdf](https://www.warren.senate.gov/imo/media/doc/warren_letter_to_rfk_redinnerswithbigpharma.pdf).

<sup>34</sup> *Id.*

<sup>35</sup> Oz, “Are Semaglutide drugs like Ozempic or Wegovy Right for You?” <https://www.doctoroz.com/newsletter>.

<sup>36</sup> The White House, “Remarks by President Trump on Delivering Lower Prescription Drug Prices for All Americans,” November 20, 2020, <https://trumpwhitehouse.archives.gov/briefings-statements/remarks-president-trump-delivering-lower-prescription-drug-prices-americans/>.

formularies; and revisit PBMs' safe harbor from the federal Anti-Kickback statute. You could also address abuse by other prescription drug middlemen, including group purchasing organizations and wholesalers, which contribute to persistent drug shortages.

I have the following questions on the subject:

1. If confirmed as CMS Administrator, would you continue to support implementation, without interruption, of the drug price negotiation program of the IRA?
2. Are you supportive of the \$2,000 out-of-pocket cap and the \$35 cap on insulin in the IRA?
3. Do you support expanding the number of drugs Medicare negotiates?
4. Will you retain Medicare and Medicaid coverage of anti-obesity medications, such as Ozempic and Wegovy, for weight loss for people with obesity? Will you direct the Medicare drug price negotiation team at CMS to aggressively negotiate the lowest possible price on Ozempic and Wegovy for Medicare patients, consistent with the law?
5. Do you support incorporating a ceiling in Medicare drug price negotiations so U.S. patients and taxpayers don't pay more for the same drug as people in countries like France, Germany, and the UK?
6. Do you support removing lengthy delay periods that prohibit negotiations until a drug has been on the market for nearly a decade or even longer?
7. Do you support extending these already lengthy delay periods that prohibit negotiations until a drug has been on the market for nearly a decade or even longer, yes or no?
8. Do you support expanding access to prices negotiated by Medicare to people with private health insurance?
9. Do you support expanding the orphan drug exemption for drugs approved for more than one rare disease or condition?
10. The IRA provided a mechanism to protect Medicare beneficiaries from vaccine-preventable diseases by requiring Medicare drug plans to make vaccines recommended by the Advisory Committee on Immunization Practices free for enrollees.<sup>37</sup> The IRA requirement guarantees nearly 53 million Medicare Part D beneficiaries access to free vaccines.<sup>38</sup> Where do you stand on preserving this benefit, particularly at a time when vaccine policy has become politicized?
11. When you go to buy a car or take out a mortgage when you buy a house, the costs are clearly spelled out for everyone. But when you purchase medicine, the pharmaceutical

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<sup>37</sup> ASPE, "Inflation Reduction Act Research Series—Medicare Part D Enrollee Vaccine Use After Elimination of Cost Sharing for Recommended Vaccines in 2023," May 2024, <https://aspe.hhs.gov/sites/default/files/documents/3854c8f172045f5e5a4e000d1928124d/part-d-covered-vaccines-no-cost-sharing.pdf>.

<sup>38</sup> Kaiser Family Foundation, "A Current Snapshot of the Medicare Part D Prescription Drug Benefit," Juliette Cubanski, October 9, 2024, <https://www.kff.org/medicare/issue-brief/a-current-snapshot-of-the-medicare-part-d-prescription-drug-benefit/>.

companies and the PBM middle-players keep that information secret. Consumers and competitors cannot make informed choices. What will you do to improve transparency in the system?

12. Are you supportive of the FTC's lawsuit against the three largest PBMs?<sup>39</sup>
13. Medicare Advantage and Part D plans frequently use "preferred cost-sharing pharmacies." The underlying statutes require that any such preference shall not result in an increase in payments. However, the FTC's recent interim report on PBMs demonstrates that UnitedHealthcare, among other health plans, pays its preferred pharmacies, including Walgreens and its own mail-order pharmacy, substantially more than non-preferred pharmacies, such as Costco and independent pharmacies.<sup>40</sup> Will you direct CMS to examine the prevalence of and enforce the prohibition against plans' increased payments to preferred pharmacies?
14. Do you support updating the conditions of participation in Medicare Part D to prohibit anticompetitive practices, including kickbacks, rebates, and exclusive contracts?
  - a. Do you support repealing the safe harbor to the federal anti-kickback statute, which enables pharmaceutical middlemen such as PBMs and group purchasing organizations to accept kickbacks and rebates from drug manufacturers that would otherwise be a felony offense?
15. The Medicare Modernization Act requires CMS to define "reasonable and relevant" terms and conditions for contracts between Part D plans and pharmacies. CMS has never defined these terms.<sup>41</sup> Will you commit to doing so in a way that ensures independent pharmacy access for beneficiaries?
16. Do you support comprehensive PBM reform, including banning spread pricing in Medicare managed care programs and requiring PBMs to reimburse pharmacies according to fair benchmarks that account for their costs?
17. If confirmed, would you finalize CMS' 2024 proposed rule to cover obesity medications, such as Ozempic, under Medicare & Medicaid?<sup>42</sup>
18. The Bayh-Dole Act, codified at 35 U.S.C. § 203, gives the federal government the right to grant licenses to "responsible applicant[s]" for patented inventions developed with federal funds if those inventions are not "available to the public on reasonable terms," which

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<sup>39</sup> Federal Trade Commission, "FTC Sues Prescription Drug Middlemen for Artificially Inflating Insulin Drug Prices," September 20, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-sues-prescription-drug-middlemen-artificially-inflating-insulin-drug-prices>.

<sup>40</sup> Federal Trade Commission, "FTC Releases Interim Staff Report on Prescription Drug Middlemen," July 9, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-releases-interim-staff-report-prescription-drug-middlemen>.

<sup>41</sup> Bass Berry Sims, "The 2019 Part D Final Rule: Any Willing Pharmacy and Network Participation Requirements' Relevance to Specialty Pharmacies," November 29, 2018, <https://www.bassberry.com/news/the-2019-part-d-final-rule-any-willing-pharmacy-and-network-participation-requirements-relevance-to-specialty-pharmacies/>.

<sup>42</sup> NBC News, "Biden proposes weight loss drug coverage for people on Medicare and Medicaid," Berkeley Lovelace and Evan Bush, November 26, 2024, <https://www.nbcnews.com/health/health-news/biden-proposes-requiring-medicare-medicaid-cover-weight-loss-drugs-rcna181756>.

includes price. Do you support the use of march-in rights to help lower drug costs for Americans?

- a. If so, do you believe that a drug's price is an appropriate factor to consider in determining if the government should exercise march-in rights?

## **Medicaid**

The CMS Administrator is responsible for overseeing and administering Medicaid, which provides affordable coverage to 80 million children, people with disabilities, and low-income Americans.<sup>43</sup> While you have not made your position on Medicaid clear, your Republican colleagues in Congress, urged on by President Trump, passed a budget framework last month to cut Medicaid by \$880 billion – just to bankroll tax cuts to the ultra-wealthy and giant corporations.<sup>44</sup>

Republican Medicaid cuts will kick tens of millions of people off Medicaid, close community providers and hospitals, and strain state budgets. One option on the table, for example, is to cut funding to states that expanded Medicaid under the Affordable Care Act. If this passes Congress and President Trump signs it into law, up to 20 million people from 41 states – including 19 red states – could lose their coverage immediately.<sup>45</sup> Other options, such as per capita caps or block grants, would force states to restrict eligibility, benefits, and payments to providers.

Because these proposals are wildly unpopular across the political spectrum, Congressional Republicans have also proposed backdoor cuts that would dramatically increase barriers to accessing Medicaid coverage. For example, playing into dangerous tropes about low-income communities, Republicans have pushed ineffective and complex work requirements in Medicaid, despite the fact that virtually all Medicaid recipients work or would qualify for an exemption under a federal work requirement policy. Indeed, these onerous work requirements would put 36 million Medicaid enrollees at risk of losing their coverage without resulting in employment increases.<sup>46</sup>

As CMS Administrator, you would have the power to streamline and approve these harmful and ineffective state work requirements for Medicaid. President Trump's CMS Administrator, Seema

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<sup>43</sup> Families USA, "More Than 300 Organizations Urge New Congress to Protect and Strengthen Medicaid," January 3, 2025, <https://familiesusa.org/press-releases/more-than-300-organizations-urge-new-congress-to-protect-and-strengthen-medicaid/>.

<sup>44</sup> Georgetown University McCourt School of Public Policy, "Congressional Republican Leaders Start to Show Their Hand: Draconian Medicaid Cuts on the Agenda for Next Year," Edwin Park, November 18, 2024, <https://ccf.georgetown.edu/2024/11/18/congressional-republican-leaders-start-to-show-their-hand-draconian-medicaid-cuts-on-the-agenda-for-next-year/>.

<sup>45</sup> Medicare Rights Center, "Potential Target for Medicaid Cuts Would End Coverage for 20 million People," Julie Carter, February 20, 2025, <https://www.medicarerights.org/medicare-watch/2025/02/20/potential-target-for-medicaid-cuts-would-end-coverage-for-20-million-people>.

<sup>46</sup> Center on Budget and Policy Priorities, "Medicaid Work Requirements Could Put 36 Million People at Risk of Losing Health Coverage," Gideon Lukens and Elizabeth Zhang, February 5, 2025, <https://www.cbpp.org/research/health/medicaid-work-requirements-could-put-36-million-people-at-risk-of-losing-health#:~:text=Tens%20of%20Millions%20at%20Risk,percent%20of%20all%20Medicaid%20enrollees>.

Verma, for example, approved the first Medicaid work requirements waiver Arkansas in 2018.<sup>47</sup> Shortly thereafter, one in four adults subject to work requirements lost their health coverage – despite the fact that 95% of all enrollees were already working or qualified for an exemption.<sup>48</sup> In other words, Medicaid-eligible Americans lost coverage because of a maze of red tape imposed by Republican extremists, forcing people to ration medication, delay medical care, and even take on medical debt. Six years later, there is no evidence that Arkansas’ work requirement increased employment; it did, however, result in reduced Medicaid funding for the state.<sup>49</sup>

Verma also approved a 2020 Georgia waiver to expand Medicaid access under the Affordable Care Act – but only if Georgia agreed to institute work requirements.<sup>50</sup> Four years later, the work requirements have been so onerous that only 6,500 Georgians have gained coverage – roughly 75 percent of what was expected under expansion. Meanwhile, three quarters of the \$86 million taxpayers spent on the program is going to administrative and consulting costs, including \$50 million to Deloitte, the consulting company that has been embroiled in controversy over its handling of state Medicaid contracts.<sup>51</sup>

As CMS Administrator, you would also have the power to expand Medicaid managed care, the privatized version of Medicaid. Private Medicaid managed care insurers operate similarly to private insurers in Medicare Advantage, receiving lump sum government payments to administer Medicaid coverage. As seen in the Medicare Advantage market, private insurers in Medicaid managed care engage in upcoding practices, limit provider networks, and deny care more aggressively than government-administered Medicaid coverage.<sup>52</sup> While you have not commented on Medicaid managed care, your unwavering support for Medicare Advantage raises questions about the further privatization of Medicaid and its effect on taxpayers and patients.

I have the following questions on this subject:

1. Do you believe that all low-income people, and people with disabilities, should be able to access Medicaid? By low-income, I mean family income of up to 138% of the Federal Poverty Rate, the Medicaid eligibility threshold established under the Affordable Care Act.

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<sup>47</sup> Fierce Healthcare, “Verma doubles down on supporting Medicaid work requirements as enrollment swells,” Robert King, October 7, 2020, <https://www.fiercehealthcare.com/payer/verma-doubles-down-supporting-medicaid-work-requirements-as-enrollment-swells>.

<sup>48</sup> Arkansas Advocate, “Under Trump, many states might pursue Medicaid work requirements,” Shalina Chatlani, November 25, 2024, <https://arkansasadvocate.com/2024/11/25/under-trump-many-states-might-pursue-medicaid-work-requirements/#:~:text=More%20than%2095%25%20of%20the,were%20complying%20with%20the%20rules>.

<sup>49</sup> Center on Budget and Policy Priorities, “Pain But No Gain: Arkansas’ Failed Medicaid Work-Reporting Requirements Should Not Be a Model,” Laura Harker, August 8, 2023, <https://www.cbpp.org/research/health/pain-but-no-gain-arkansas-failed-medicaid-work-reporting-requirements-should-not-be>.

<sup>50</sup> WABE, “Georgia’s work requirement slows processing of applications for Medicaid, food stamps,” Andy Miller, Renuka Rayasam, and Sam Whitehead, December 5, 2024, <https://www.wabe.org/georgias-work-requirement-slows-processing-of-applications-for-medicaid-food-stamps/>.

<sup>51</sup> Kaiser Family Foundation Health News, “Georgia’s Medicaid Work Requirements Costing Taxpayers Millions Despite Low Enrollment,” Andy Miller and Renuka Rayasam, March 20, 2024, <https://kffhealthnews.org/news/article/georgia-medicaid-work-requirements-experiment-high-cost-low-enrollment/>; ProPublica, “Georgia Touts Its Medicaid Experiment as a Success. The Numbers Tell a Different Story,” Margaret Coker, February 19, 2025, <https://www.propublica.org/article/georgia-medicaid-work-requirement-pathways-to-coverage-hurdles>.

<sup>52</sup> GAO, “Medicaid Managed Care: Additional Federal Action Needed to Fully Leverage New Appeals and Grievances Data,” March 14, 2024, <https://www.gao.gov/products/gao-24-106627>; [https://oig.hhs.gov/reports/all/2023/high-rates-of-prior-authorization-denials-by-some-plans-and-limited-state-oversight-raise-concerns-about-access-to-care-in-medicaid-managed-care/#:~:text=Three%20factors%20raise%20concerns%20that,most%20States%2C%20and%20\(3\)](https://oig.hhs.gov/reports/all/2023/high-rates-of-prior-authorization-denials-by-some-plans-and-limited-state-oversight-raise-concerns-about-access-to-care-in-medicaid-managed-care/#:~:text=Three%20factors%20raise%20concerns%20that,most%20States%2C%20and%20(3)).

2. In some states, like Texas, the bar for qualifying for Medicaid is exceptionally high. For example, a parent in a two-person household making \$2,500 per month makes too much money to qualify for Medicaid. Do you think this is acceptable?
3. The HHS Office of the General Counsel issued an advisory opinion about the disutility of work requirements – which seeks to deprive extremely low-income people of health care at great administrative waste to the federal government.<sup>53</sup> Will you commit to preventing states from enacting this harmful, wasteful policy?
4. Many of your colleagues have called for limiting federal support to the Medicaid program, which would throw state budgets into disarray and result in substantial coverage losses.<sup>54</sup> Do you believe federal Medicaid funding to states should be capped? If so, do you believe that not all low-income people should have access to health insurance?
5. Medicaid is the largest payer of Opioid Use Disorder treatment in the nation.<sup>55</sup> How would you support expansion of medications for opioid use disorder?
6. In recent months, CMS has approved a number of state 1115 waivers to facilitate access to Medication for Opioid Use Disorder (MOUD) for an extremely vulnerable population – incarcerated individuals re-entering society. Formerly incarcerated individuals are up to 129 times more likely to die of overdose in their first two weeks after release. However, evidence shows that providing MOUD reduces post-release overdose deaths by helping individuals maintain recovery during this critical transition period. There has been bipartisan support for the approval for these waivers.<sup>56</sup> If confirmed, would you expeditiously review and approve Section 1115 waiver applications that would expand access to this life-saving medication?
  - a. What specific steps would you take to ensure these applications receive timely consideration?
7. Do you believe it is important for all children and adults on Medicaid and Medicare to have access to lifesaving vaccines? Will you commit to ensuring that vaccines remain covered without cost-sharing?
8. What are your primary concerns with the Medicaid program? What are your top priorities for improving it?

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<sup>53</sup> U.S. Department of Health & Human Services, “Advisory Opinion 24-01 on Medicaid Section 1115 Demonstrations Imposing Work Requirements,” December 11, 2024, <https://www.hhs.gov/guidance/document/advisory-opinion-24-01-medicaid-section-1115-demonstrations-imposing-work-requirements#:~:text=This%20Advisory%20Opinion%20explains%20that,Medicaid%20eligibility%20or%20continued%20enrollment>.

<sup>54</sup> Center on Budget and Policy Priorities, “Medicaid Threats in the Upcoming Congress,” Allison Orris and Gideon Lukens, December 13, 2024, <https://www.cbpp.org/research/health/medicaid-threats-in-the-upcoming-congress>.

<sup>55</sup> Office of U.S. Senator Elizabeth Warren, “ICYMI: At Hearing, Warren Warns Republican Cuts to Medicaid Would Harm Millions of Americans Struggling with Opioid Addiction,” February 27, 2025, <https://www.warren.senate.gov/newsroom/press-releases/icymi-at-hearing-warren-warns-republican-cuts-to-medicaid-would-harm-millions-of-americans-struggling-with-opioid-addiction>.

<sup>56</sup> Office of U.S. Senator Margaret Hassan, Letter to CMS Administrator Brooks La-Sure, June 21, 2024, [https://www.hassan.senate.gov/imo/media/doc/cms\\_mat\\_letter.pdf](https://www.hassan.senate.gov/imo/media/doc/cms_mat_letter.pdf).

9. The Biden Administration finalized rules to increase oversight of private Medicaid managed care organizations.<sup>57</sup> Are you supportive of these rules? If not, what would you propose instead?
10. Do you support allowing flexibilities in the Medicaid program to cover social needs that contribute to poor health outcomes, such as housing support services, nutrition services, and home environment improvements (air ventilation, refrigeration, accessibility modifications)? Do you also support recent expansions to allow substance use coverage under Medicaid pre-release for people transitioning out of incarceration?
11. Over 40 states have expanded Medicaid under the Affordable Care Act, significantly reducing uninsured rates among low-income individuals. Do you believe the remaining 10 states should expand Medicaid, and if not, how would you address the coverage gap for low-income adults in non-expansion states?
12. Are you supportive of using impoundment to cut or withhold federal spending, including for Medicaid?
13. Do you commit to following 50 years of precedent and inviting full public notice and comment to any and all changes to the Medicaid program?

### **The Affordable Care Act**

The ACA has expanded health care access to roughly 40 million people nationwide since the bill's passage in 2010.<sup>58</sup> But despite once supporting the law, during your failed 2022 Senate campaign, you tweeted "Obamacare caused havoc on our health care system. It destabilized insurance markets while raising taxes & imposing harmful mandates on Pennsylvanians. I wouldn't have voted for it."<sup>59</sup> As CMS Administrator, you would be responsible for overseeing and implementing the ACA, including managing the health insurance marketplace, administering premium assistance, and approving state plans to expand Medicaid under the ACA. Your past comments suggest you would use your authority to undermine the law.

1. Do you support repealing the ACA?
2. The ACA includes several protections for individuals to safeguard against abuse by private health insurers. Will you commit that you will not seek to unravel or delay any of these protections through the rulemaking process or by issuing new agency guidance? Please provide answers with respect to the specific protections listed below:

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<sup>57</sup> Centers for Medicare & Medicaid Services, "Medicaid and Children's Health Insurance Program Managed Care Access, Finance, and Quality Final Rule (CMS-2439-F)," April 22, 2024, <https://www.cms.gov/newsroom/fact-sheets/medicaid-and-childrens-health-insurance-program-managed-care-access-finance-and-quality-final-rule>.

<sup>58</sup> Center for American Progress, "14 Years After the ACA's Passage, Policymakers Should Build on Its Pillars of Affordable and Accessible Care," Natasha Murphy and Andrea Ducas, March 18, 2024, <https://www.americanprogress.org/article/14-years-after-the-acas-passage-policymakers-should-build-on-its-pillars-of-affordable-and-accessible-care/#:~:text=The%20ACA%20has%20led%20to,families%20to%20purchase%20marketplace%20insurance.>

<sup>59</sup> NOTUS, "Dr. Oz Celebrated Obamacare for Years Before He Was Against It," Katherine Swartz, December 24, 2024, <https://www.notus.org/policy/oz-medicare-medicaid-obamacare>.

- a. Provisions that prevent insurers from refusing coverage to patients with pre-existing conditions;
  - b. Provisions that prevent insurers from charging exorbitant out of pocket costs;
  - c. Provisions that prevent insurers from charging women more for coverage than men;
  - d. Provisions that prohibit insurers from establishing annual or lifetime limits on coverage;
  - e. Provisions that prohibit insurers from rescinding coverage for the seriously ill;
  - f. Provisions that require certain insurers to provide preventive health care with no cost-sharing;
  - g. Provisions that guarantee insurance renewal for patients who pay their premiums in full; and
  - h. Provisions that expand insurance coverage of mental health and substance use disorder services.
3. Are you supportive of the ACA's protections for individuals with pre-existing conditions? Do you believe private insurance companies should be required to cover individuals with pre-existing conditions without raising their premiums?
  4. During his first term, President Trump expanded the availability of short-term health plans, also known as "junk plans." These plans are not required to comply with protections under the ACA, allowing private health insurers to deny coverage based on pre-existing conditions and skirt requirements on essential benefits. The Biden Administration reversed this damaging policy in 2024.
    - a. If confirmed as CMS Administrator, would you expand the availability of short-term health plans?
  5. Are you supportive of the ACA's advanced premium tax credit? If not, what changes would you make to it?
  6. Do you support expanding Medicaid coverage through the ACA?
  7. How would you address gaps in coverage for low-income individuals living in states that have not expanded Medicaid?
  8. Do you commit to following 50 years of precedent and inviting full public notice and comment to any and all changes to the ACA?

### **Reproductive Rights**

CMS plays a crucial role in shaping access to reproductive healthcare through its administration of Medicare, Medicaid, and the Affordable Care Act. This includes overseeing Medicare and



Medicaid's coverage of sexual and reproductive health services;<sup>60</sup> ensuring access to contraceptive services through the ACA;<sup>61</sup> and enforcing the Emergency Medical Treatment and Labor Act (EMTALA), which requires Medicare-participating hospitals to provide necessary emergency care, including abortions for patients when it is the necessary stabilizing treatment.<sup>62</sup>

Your hostile record on abortion raises significant concerns about how you would use your role at CMS to limit or eliminate access to critical reproductive health care.<sup>63</sup> In May 2022, you praised the Supreme Court's *Dobbs* decision to overturn *Roe v. Wade* and lay the foundation for abortion bans across the country, saying, "Roe was wrongly decided."<sup>64</sup> During your 2022 campaign for the U.S. Senate, your campaign page described you as "100% Pro-Life,"<sup>65</sup> and you said you looked "forward to supporting" anti-abortion policy.<sup>66</sup> Though you once said you supported exceptions to abortion bans, including to allow women to seek an abortion in cases of rape, incest, or where the woman's health is at risk,<sup>67</sup> you have since reversed course, saying that abortion at any stage of pregnancy is "murder" because you "believe that life starts at conception"—a view known as fetal personhood.<sup>68</sup> Proponents of fetal personhood believe that a fetus or embryo should have the same rights as a person under the Constitution, which could lead to outlawing not only abortion without exceptions, but also medical treatments such as in vitro fertilization (IVF).<sup>69</sup>

Perhaps most concerning are your comments that a woman's decision to have an abortion should be up to "women, doctors, [and] *local political leaders* [emphasis added]."<sup>70</sup> The implication that elected officials should be involved in a woman's personal health treatment decision is terrifying and antithetical to patient health. Furthermore, leaving the issue of women's reproductive freedom to the whims of local officials—a position you have consistently expressed<sup>71</sup>—is dangerous and

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<sup>60</sup> Guttmacher Institute, "State Funding of Abortion Under Medicaid," March 6, 2025, <https://www.guttmacher.org/state-policy/explore/state-funding-abortion-under-medicare>; Kaiser Family Foundation, "Coverage of Sexual and Reproductive Health Services in Medicare," Meredith Freed, Juliette Cubanski, Michelle Long, Nancy Ochieng, and Alina Salganicoff, April 30, 2024, <https://www.kff.org/medicare/issue-brief/coverage-of-sexual-and-reproductive-health-services-in-medicare/>.

<sup>61</sup> Planned Parenthood Action Fund, "Affordable Care Act (ACA)," <https://www.plannedparenthoodaction.org/issues/health-care-equity/affordable-care-act-aca>.

<sup>62</sup> The 19th, "Trump picks Dr. Oz, the celebrity TV doctor, to run Medicare and Medicaid," Shefali Luthra and Sara Luterman, November 19, 2024, <https://19thnews.org/2024/11/trump-picks-dr-oz-celebrity-tv-doctor-medicare-medicaid/>; Centers for Medicare & Medicaid Services, "Emergency Medical Treatment & Labor Act (EMTALA)," December 6, 2024, <https://www.cms.gov/medicare/regulations-guidance/legislation/emergency-medical-treatment-labor-act>.

<sup>63</sup> Reproductive Freedom for All, "Reproductive Freedom for All Responds to Trump's Nomination of Mehmet Oz for Centers for Medicaid and Medicare Services Administrator," press release, November 19, 2024, <https://reproductivfreedomforall.org/news/reproductive-freedom-for-all-responds-to-trumps-nomination-of-mehmet-oz-for-centers-for-medicare-and-medicare-services-administrator/>.

<sup>64</sup> Tweet by Dr. Mehmet Oz, May 3, 2022, <https://twitter.com/DrOz/status/1521493490449928193>.

<sup>65</sup> NBC News, "Mehmet Oz in May audio: Abortion is 'murder' at any stage of pregnancy," Sahil Kapur, August 31, 2022, <https://www.nbcnews.com/politics/2022-election/mehmet-oz-may-audio-abortion-murder-stage-pregnancy-rcna45621>.

<sup>66</sup> The Independent, "Dr Oz says all abortion is 'murder' in audio resurfaced days after he publicly opposed federal ban," Johanna Chisholm, August 31, 2022, <https://www.the-independent.com/news/world/americas/us-politics/dr-oz-abortion-conception-pennsylvania-b2156860.html>.

<sup>67</sup> Newsweek, "Dr. Oz Struggles to Answer Abortion Question on Fox News," Ewan Palmer, December 16, 2021, <https://www.newsweek.com/dr-oz-abortion-fox-news-pennsylvania-1659989>.

<sup>68</sup> NBC News, "Mehmet Oz in May audio: Abortion is 'murder' at any stage of pregnancy," Sahil Kapur, August 31, 2022, <https://www.nbcnews.com/politics/2022-election/mehmet-oz-may-audio-abortion-murder-stage-pregnancy-rcna45621>.

<sup>69</sup> TIME, "Fetal Personhood Laws Are a New Frontier in the Battle Over Reproductive Rights," Madeleine Carlisle, June 28, 2022, <https://time.com/6191886/fetal-personhood-laws-roe-abortion/>.

<sup>70</sup> CNN, "Dr. Oz's awful answer on abortion," Chris Cillizza, October 26, 2022, <https://www.cnn.com/2022/10/26/politics/oz-abortion-debate-pennsylvania-senate/index.html>.

<sup>71</sup> Tweet by Dr. Mehmet Oz, May 3, 2022, <https://twitter.com/DrOz/status/1521493490449928193>.

has already produced a patchwork of abortion laws across the country, creating legal confusion, harms to public health, and vast disparities in access to care.<sup>72</sup>

While you expressed support for some forms of contraception over a decade ago,<sup>73</sup> your current position on contraception access is unclear. This ambiguity is concerning given CMS' responsibility for promulgating and enforcing rules on contraception access<sup>74</sup> and providing guidance on administering and expanding contraception benefits.<sup>75</sup>

Only a little over a month into the second Trump Administration, women's reproductive health care in the United States is in danger. The Administration has scrubbed information about abortion care from government websites,<sup>76</sup> eliminated the Department of Health and Human Services' (HHS) Interagency Task Force on Reproductive Healthcare Access,<sup>77</sup> revoked guidance that directed CMS and HHS to explore ways to increase access to abortion services,<sup>78</sup> and reversed Biden-era efforts to prosecute demonstrators who interfere with patient access to reproductive health clinics.<sup>79</sup> Women's access to reproductive health care also continues to be under attack at the state level. For example, prosecutors in Texas and Louisiana have recently brought suit against a New York physician, alleging she broke their states' laws by mailing medication to a woman in each state.<sup>80</sup>

Given the role CMS plays in shaping reproductive health care access, the CMS Administrator will cause grave damage if they do not stand firmly in defense of women's reproductive rights. Yet throughout your career, you have staunchly opposed abortion, which makes it difficult to believe you would take women's sexual and reproductive health seriously.<sup>81</sup> Your record is alarming, and

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<sup>72</sup> Guttmacher Institute, "The State Abortion Policy Landscape One Year Post-Roe," Kelly Baden and Jennifer Driver, June 15, 2023, <https://www.guttmacher.org/2023/06/state-abortion-policy-landscape-one-year-post-roe>.

<sup>73</sup> Oprah Winfrey Network, "Dr. Phil and Dr. Oz on Birth Control | Ask Oprah's All Stars | Oprah Winfrey Network," October 24, 2011, <https://www.youtube.com/watch?v=CVS3ZrqVWoU>.

<sup>74</sup> Centers for Medicare & Medicaid Services, "Biden-Harris Administration Proposes Expanding Coverage of Birth Control and Other Preventive Services," press release, October 21, 2024, <https://www.cms.gov/newsroom/press-releases/biden-harris-administration-proposes-expanding-coverage-birth-control-and-other-preventive-services>; Centers for Medicare & Medicaid Services, "2021–2024 CMS Accomplishments," October 2024, p. 9, <https://www.cms.gov/files/document/cms-accomplishments-2021-2024.pdf>.

<sup>75</sup> Centers for Medicare & Medicaid Services, "2021–2024 CMS Accomplishments," October 2024, p. 9, <https://www.cms.gov/files/document/cms-accomplishments-2021-2024.pdf>.

<sup>76</sup> NPR, "Trump's federal health website scrubs 'abortion' search results," Selena Simmons-Duffin, January 21, 2025, <https://www.npr.org/sections/health-news/2025/01/21/nx-s1-5269875/trump-abortion-hhs-reproductive-rights>.

<sup>77</sup> Center for Reproductive Rights, "Revoking Biden-era executive orders protecting access to reproductive healthcare," January 24, 2025, <https://reproductiverights.org/revoking-biden-era-executive-orders-protecting-access-to-reproductive-healthcare/>.

<sup>78</sup> The Washington Post, "Trump reverses Biden actions intended to protect abortion access," Maegan Vazquez and Sammy Westfall, January 24, 2025, <https://www.washingtonpost.com/politics/2025/01/24/trump-abortion/>.

<sup>79</sup> CBS News, "Trump Justice Dept. limits enforcement of FACE Act, which protects reproductive health facilities," Nicole Sganga and Robert Legare, January 24, 2025, <https://www.cbsnews.com/amp/news/trump-face-act-abortion-related-actions-justice-department/>.

<sup>80</sup> State Court Report, "Texas Suit Against New York Doctor Ushers in New Era of Abortion Litigation," Mary Ziegler, January 14, 2025, <https://statecourtreport.org/our-work/analysis-opinion/texas-suit-against-new-york-doctor-ushers-new-era-abortion-litigation/>; The New York Times, "New York Doctor Indicted in Louisiana for Sending Abortion Pills There," Pam Belluck and Emily Cochrane, January 31, 2025, <https://www.nytimes.com/2025/01/31/health/abortion-louisiana-new-york-prosecution-shield-law.html>.

<sup>81</sup> The 19th, "Trump picks Dr. Oz, the celebrity TV doctor, to run Medicare and Medicaid," Shefali Luthra and Sara Luterman, November 19, 2024, <https://19thnews.org/2024/11/trump-picks-dr-oz-celebrity-tv-doctor-medicare-medicare/>; Democratic Senatorial Campaign Committee, "ICYMI: Dr. Oz Has a Long History of Being Extremely Creepy to—and About—Women [Jezebel]," press release, August 2, 2022, <https://www.dscc.org/news/icymi-dr-oz-has-a-long-history-of-being-extremely-creepy-to-and-about-women-jezebel/>.

it is important that Congress and the public understand how you would use CMS authorities to impact reproductive care access if confirmed to serve as CMS Administrator.

On February 12, 2025, I sent you a letter outlining my concerns about your hostile record toward abortion and questioning how you would use CMS authorities to impact access to care if confirmed.<sup>82</sup> Since you still have not responded to my letter, I again request your answers to the following questions:

1. The Biden Administration challenged Idaho's abortion ban under the Emergency Medical Treatment and Labor Act (EMTALA), arguing that Idaho's ban is preempted to the extent that it restricts providers from providing stabilizing care that is federally required under EMTALA.<sup>83</sup> Project 2025 directs HHS to take several steps to limit EMTALA's protections, including but not limited to withdrawing the Biden Administration's July 2022 guidance on EMTALA's preemption of state-level abortion bans, ending investigations into alleged EMTALA violations, and eliminating existing injunctions and withdrawing or settling existing lawsuits under EMTALA.<sup>84</sup>
  - a. If confirmed as Administrator of CMS, would you ensure access to emergency abortion under EMTALA, including continuing the current Department of Justice (DOJ) lawsuits, and to help enforce the rights of women under this life-saving law?
2. In August 2022, the Biden Administration encouraged states to apply for Medicaid funding under Section 1115 demonstration authority to expand access to reproductive care.<sup>85</sup> Project 2025 directs the HHS Secretary to withdraw that guidance and any Section 1115 waivers issued thereunder.<sup>86</sup>
  - a. If confirmed as Administrator of CMS, would you commit to protecting states' right to use Section 1115 waivers for programs to help women access reproductive care?
  - b. Will you commit to encouraging CMS to approve such waivers?
3. Project 2025 directs HHS to issue guidance or regulations stating that states can exclude Planned Parenthood health centers and other providers of abortions from their state Medicaid plans.<sup>87</sup>

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<sup>82</sup> Office of U.S. Senator Elizabeth Warren, Letter from Senators Warren and Duckworth to Dr. Oz, February 12, 2025, [https://www.warren.senate.gov/imo/media/doc/warren\\_duckworth\\_letter\\_to\\_dr\\_oz\\_rerepro.pdf](https://www.warren.senate.gov/imo/media/doc/warren_duckworth_letter_to_dr_oz_rerepro.pdf).

<sup>83</sup> FIERCE Healthcare, "SCOTUS restores emergency abortions in Idaho, hands EMTALA challenge back to lower courts," Dave Muoio, June 27, 2024, <https://www.fiercehealthcare.com/providers/scotus-restores-emergency-abortion-idaho-emptala-challenge-plays-out-lower-courts>.

<sup>84</sup> Heritage Foundation, "Mandate for Leadership: The Conservative Promise," 2023, pp. 473-474, [https://static.project2025.org/2025\\_MandateForLeadership\\_FULL.pdf](https://static.project2025.org/2025_MandateForLeadership_FULL.pdf).

<sup>85</sup> Centers for Medicare & Medicaid Services, "HHS Takes Action to Strengthen Access to Reproductive Health Care, Including Abortion Care," August 26, 2022, <https://www.cms.gov/newsroom/press-releases/hhs-takes-action-strengthen-access-reproductive-health-care-including-abortion-care>.

<sup>86</sup> Heritage Foundation, "Mandate for Leadership: The Conservative Promise," 2023, p. 471. [https://static.project2025.org/2025\\_MandateForLeadership\\_FULL.pdf](https://static.project2025.org/2025_MandateForLeadership_FULL.pdf).

<sup>87</sup> *Id.*, p. 472.

- a. If confirmed as Administrator of CMS, would you issue guidance that could lead to the defunding of Planned Parenthood and other providers of abortions?
4. Project 2025 directs CMS to “resolve pending Section 1115 waivers from Idaho, South Carolina, and Tennessee, which...are seeking...to prohibit abortion providers from participating in state-run Medicaid programs.”<sup>88</sup> Additionally, Texas has a pending waiver seeking to exclude abortion providers from the Healthy Texas Women family planning program.<sup>89</sup>
  - a. If confirmed as Administrator of CMS, would you commit to direct HHS to deny states from excluding abortion providers from participating in Medicaid programs as seen in these waivers?
5. Project 2025 directs CMS to withdraw up to 10 percent of Medicaid funds from states that require private health insurance plans to cover abortion care or that terminate state contracts with pharmacies that do not carry abortion medication.<sup>90</sup>
  - a. Do you commit to oppose any such attempts to withdraw Medicaid funds from such states?

In addition to these questions on whether you would follow Project 2025’s roadmap to gut reproductive health access at CMS, I have additional questions about your past statements and current views on women’s reproductive rights:

1. In December 2011, you said you support women’s access to a range of contraception, including forms of Long-Acting Reversible Contraception (LARC) like Intrauterine devices (IUDs).<sup>91</sup>
  - a. Do you support women’s access to a full range of contraception, including LARCs and emergency contraception?
  - b. How would you use CMS authorities to expand women’s access to, and coverage of, FDA-approved forms of contraception?
2. Planned Parenthood health centers help women across the country access birth control methods.<sup>92</sup> In 2015, you wrote in your column in the Idaho Statesman, “If You Want To Find The Best Birth Control For You And Yours, Go To The Planned Parenthood Website (Plannedparenthood.Org) And Talk To Your Doctor.”<sup>93</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> Texas Health and Human Services, “Healthy Texas Women 1115 Demonstration,” <https://www.hhs.texas.gov/regulations/policies-rules/waivers/healthy-texas-women-1115-demonstration>.

<sup>90</sup> Heritage Foundation, “Mandate for Leadership: The Conservative Promise,” 2023, p. 472, [https://static.project2025.org/2025\\_MandateForLeadership\\_FULL.pdf](https://static.project2025.org/2025_MandateForLeadership_FULL.pdf).

<sup>91</sup> Oprah Winfrey Network, “Dr. Phil and Dr. Oz on Birth Control | Ask Oprah’s All Stars | Oprah Winfrey Network,” October 24, 2011, <https://www.youtube.com/watch?v=CVS3ZrqVWoU>.

<sup>92</sup> Planned Parenthood, “Birth Control,” <https://www.plannedparenthood.org/get-care/our-services/birth-control>.

<sup>93</sup> American Bridge 21<sup>st</sup> Century: Repro Files, “Mehmet Oz on Contraception,” October 24, 2024, <https://repro-files.com/candidates/mehmetoz/issues/abortion/contraception>.

- a. Do you still support a woman’s right to seek out the best birth control treatment option at Planned Parenthood health centers or other abortion providers?
3. In December 2021, you said that you are “pro-life,” except in three situations: rape, incest and cases in which the woman’s health is at risk.<sup>94</sup>
  - a. Do you still support exceptions to abortion bans in these three situations?
  - b. Do you believe women should have access to abortion care outside of these three situations?
4. In May 2022, you said that abortion at any stage of pregnancy is “still murder” because you believe that life begins at conception.<sup>95</sup> This also could indicate a view that a fetus or embryo should be considered a “person” under the U.S. Constitution, a view known as fetal personhood.<sup>96</sup> This concept could be used to outlaw not only abortion but also fertility treatments such as in vitro fertilization (IVF).<sup>97</sup> Indeed, over a dozen states have Wrongful Death and/or Fetal Personhood laws or statutes that could encompass frozen embryos.<sup>98</sup>
  - a. Do you still stand by the statement that abortion at any stage of pregnancy is “still murder”?
  - b. Do you believe that a fetus or embryo should be considered a “person” under the U.S. Constitution and have the same rights as a person who is currently alive?
  - c. Do you believe that health care, like IVF, which when performed in accordance with widely accepted and evidence-based medical standards of care involves the creation, cryopreservation, and sometimes the discarding of embryos is “murder”?
  - d. Would you support access to IVF if appointed Administrator of CMS?
5. In October 2022, you said that a woman’s decision to have an abortion should be left to “women, doctors, [and] local political leaders.”<sup>99</sup>
  - a. Do you still hold this view? Which political leaders do you believe should have a say in women’s decisions about abortions?
  - b. More broadly, who do you believe should be involved in a women’s reproductive choice and why?

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<sup>94</sup> Newsweek, “Dr. Oz Struggles to Answer Abortion Question on Fox News,” Ewan Palmer, December 16, 2021, <https://www.newsweek.com/dr-oz-abortion-fox-news-pennsylvania-1659989>.

<sup>95</sup> NBC News, “Mehmet Oz in May audio: Abortion is ‘murder’ at any stage of pregnancy,” Sahil Kapur, August 31, 2022, <https://www.nbcnews.com/politics/2022-election/mehmet-oz-may-audio-abortion-murder-stage-pregnancy-rcna45621>.

<sup>96</sup> TIME, “Fetal Personhood Laws Are A New Frontier in the Battle Over Reproductive Rights,” Madeline Carlisle, June 28, 2022, <https://time.com/6191886/fetal-personhood-laws-roe-abortion/>.

<sup>97</sup> *Id.*

<sup>98</sup> Pregnancy Justice, “Fetal Personhood Legal Landscape,” September 24, 2024, <https://www.pregnancyjusticeus.org/legal-landscape/>.

<sup>99</sup> CNN, “Dr. Oz’s awful answer on abortion,” Chris Cillizza, October 26, 2022, <https://www.cnn.com/2022/10/26/politics/oz-abortion-debate-pennsylvania-senate/index.html>.

## **Nursing Home Quality of Care and Staffing Standards**

CMS provides Medicaid and Medicare payments to more than 15,000 nursing homes, serving approximately 1.3 million residents.<sup>100</sup> On April 22, 2024, CMS finalized a new rule to set, for the first time, a floor for minimum staffing requirements in nursing homes. The rule requires that Medicare and Medicaid-certified nursing home facilities meet a minimum staffing ratio of 0.55 hours of registered nurse (RN) care per patient per day and 2.45 hours of nurse aide (NA) care per patient per day.<sup>101</sup> In addition, the new standards require that all nursing homes have at least one registered nurse on site 24 hours per day, 7 days a week.

This rule will have an extraordinary impact on nursing homes residents, saving 13,000 lives per year.<sup>102</sup> But the for-profit nursing home industry is trying to overturn the rule, and congressional Republicans are pushing to repeal the rule to pay for tax cuts for billionaires and giant corporations. Indeed, Secretary Kennedy has called the rule a “disaster.”<sup>103</sup> I remain concerned that this opposition – and other attempts by the for-profit industry, including private equity firms, to prioritize profits over patients – will have irreversible and tragic impacts on nursing home residents and staff in the U.S.

I have the following questions on this subject:

1. Are you aware of the analysis conducted by experts at the University of Pennsylvania revealing that the new nursing home standards would save approximately 13,000 lives per year?<sup>104</sup>
2. If confirmed, would you commit to implementing and enforcing the CMS staffing rule on its current timeline?
2. Nursing home staffing is directly linked to the quality of care residents receive. A report prepared by my staff in November 2023 revealed that nursing homes with higher staffing levels have higher overall quality ratings, lower levels of patient abuse, and higher quality care. In addition, an analysis by researchers at the University of Pennsylvania finds that CMS’ final rule would save approximately 13,000 lives per year.
  1. Do you agree with the broad consensus from experts that there are benefits to increasing staff levels and reducing workforce turnover in nursing homes?

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<sup>100</sup> Assistant Secretary for Planning and Evaluation, “Changes in Ownership Among Skilled Nursing Facilities From 2016 TO 2021: Variations by Size, Occupancy Rate, Penalty Amount, and Type of Ownership,” May 10, 2025, <https://aspe.hhs.gov/sites/default/files/documents/9c4c5c8f2d48309c83e87f544b1aed90/snf-ownership-changes-variations.pdf>.

<sup>101</sup> Centers for Medicare & Medicaid, “Medicare and Medicaid Programs: Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting Final Rule (CMS 3442-F),” April 22, 2024, <https://www.cms.gov/newsroom/fact-sheets/medicare-and-medicicaid-programs-minimum-staffing-standards-long-term-care-facilities-and-medicicaid-0>.

<sup>102</sup> Senator Elizabeth Warren, “New Analysis by Independent Nursing Home Experts Shows Biden-Harris Administration’s Nursing Home Staffing Rule Would Save 13,000 Lives Per Year,” July 22, 2024, <https://www.warren.senate.gov/newsroom/press-releases/new-analysis-by-independent-nursing-home-experts-showsbiden-harris-administrationsnursing-home-staffing-rule-would-save-13000-lives-per-year>.

<sup>103</sup> The New York Times, “Your Parents Deserve More From Their Nursing Home,” Norma Coe and Rachel Werner, February 7, 2025, <https://www.nytimes.com/2025/02/07/opinion/nursing-home-care-parents.html>.

<sup>104</sup> Office of U.S. Senator Elizabeth Warren, Penn Leonard Davis Institute of Health Economics letter to Senator Elizabeth Warren, July 8, 2024, [https://www.warren.senate.gov/imo/media/doc/letter\\_from\\_researchers\\_to\\_sen\\_warren\\_070824.pdf](https://www.warren.senate.gov/imo/media/doc/letter_from_researchers_to_sen_warren_070824.pdf).

3. The for-profit nursing home industry is fighting to overturn CMS' final rule on nursing home staffing, and the industry is reportedly hopeful that President Trump will rescind the rule or that the Republican Congress will overturn it legislatively.
  1. If confirmed, would you commit to oppose any and all efforts to repeal the rule?
  2. If the rule is repealed, what would you do to mitigate the catastrophic health impacts caused by low staffing levels and high staff turnover in nursing homes?
4. If confirmed, would improving quality of care in nursing homes be a priority for CMS? How would you go about tackling this issue? Would improving conditions for nursing home staff and reducing staff turnover be part of your strategy?
5. Private equity ownership of health care facilities, including nursing homes, has resulted in problems for taxpayers and patients.
  1. Do you believe that CMS has the tools it needs to address the problems caused by private equity in health care?
  2. If confirmed, would you use all tools CMS has available to it to mitigate the negative impact of private equity in health care, including enforcing quality of care standards at nursing homes, hospitals, and other health care facilities?

### **Competition**

Today, the U.S. health care system is dominated by giant, vertically-integrated conglomerates that own insurers, pharmacies, pharmacy benefit managers (PBMs), wholesalers, physician groups, home health providers, claims processors, and more. These arrangements allow giant conglomerates, such as UnitedHealth Group (UnitedHealth) and CVS, to operate on both sides of health care transactions: as the providers of health care services *and* the entities responsible for paying, or reimbursing, for those services. Using this structure, corporate entities effectively shift profits from the payer arm of the business to various provider subsidiaries – all while stifling competitors through under-reimbursements, care denials, and steering.

These trends have been fueled, in part, by the health care industry's shift to value-based financing, in which insurers and providers receive lump sum payments – adjusted based on the health of their patients – to deliver care. The intention behind this model was to disincentivize unnecessary treatment and keep costs down, but insurers, private equity firms, and large health systems have found ways to exploit the system, including by acquiring entities that are eligible, or can influence the size of, value-based payments. Once in control, corporate actors game patients' medical records and billing practices to secure higher government payments, aggressively deny care to pad profits, and exert control over providers' business and clinical decisions.

In addition, private equity companies have recently begun “rolling up” smaller health care companies into a dominant group that could then leverage monopoly power to raise patient costs and force physicians to prioritize profits over patients.<sup>105</sup> These serial roll ups – defined as a series

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<sup>105</sup> Office of U.S. Senator Elizabeth Warren, Senator Warren letter to U.S. Anesthesia Partners CEO Robert Coward, November 26, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.11.22%20Letter%20to%20USAP%20on%20Anti-Competitive%20Tactics1.pdf>.

of smaller acquisitions by firms that result in a considerable increase in market share<sup>106</sup> – are designed to fly under the radar of antitrust scrutiny. The FTC and DOJ merger review guidelines clarify that antitrust law allows agencies to examine “the whole series” of mergers by a company to determine the cumulative effect of multiple transactions that are part of an overall pattern or strategy.<sup>107</sup> Serial roll-ups have become pervasive in the health care industry, and have resulted in market dominance leading to higher prices, particularly when private equity has been involved.<sup>108</sup>

I have the following questions on this subject:

1. Extensive research shows that health care consolidation and privatization of public programs are significant factors causing out-of-control health care costs and declining care quality. How do you propose to address this consolidation and privatization?
2. Would you support legislation that structurally separates payers (e.g., insurers, pharmacy benefit managers (PBMs), and wholesale drug distributors) from providers (e.g., medical practices and pharmacies), including the *Patients Before Monopolies Act*, which I introduced with Senator Hawley?
3. To comply with the federal medical loss ratio (MLR) requirement, health insurers must spend at least 85% of premium dollars on medical care.<sup>109</sup> However, recent state audits, federal watchdog reports, and media investigations show that insurers – including those administering Medicare Advantage and Medicaid managed care plans – waste public money by skirting this requirement, often through subcontracting arrangements with PBMs and others. How would you prevent such regulatory gaming?
4. Would you support legislation that caps and standardizes healthcare prices to undo corporations’ incentives to consolidate, overcharge, and withhold care?
5. Lax enforcement of state prohibitions on the corporate practice of medicine (CPOM) has further greased the wheels for the corporatization of health care. Do you support state efforts to strengthen corporate practice of medicine laws?
6. What policies would you propose to ensure truly independent physician practices remain viable?
7. Do you believe site neutral payment reform would help combat increasing hospital consolidation?

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<sup>106</sup> American Economic Liberties Project, “The Roll-Up Economy: The Business of Consolidating Industries with Serial Acquisitions,” December 2022, p. 6, <https://www.economicliberties.us/wp-content/uploads/2022/12/Serial-Acquisitions-Working-Paper-R4-2.pdf>.

<sup>107</sup> U.S. Department of Justice and Federal Trade Commission, “Merger Guidelines,” p.23, <https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf>.

<sup>108</sup> Antitrust Institute, “Monetizing Medicine: Private Equity and Competition in Physician Practice Markets,” Richard Scheffler et al., July 10, 2023, p. 32, [https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG\\_Private-Equity-I-Physician-Practice-Report\\_FINAL.pdf](https://www.antitrustinstitute.org/wp-content/uploads/2023/07/AAI-UCB-EG_Private-Equity-I-Physician-Practice-Report_FINAL.pdf).

<sup>109</sup> Office of U.S. Senator Elizabeth Warren, Senator Warren letter to CMS Administrator Brooks-LaSure, May 29, 2024, <https://www.warren.senate.gov/imo/media/doc/final-warren-letter-to-cms-on-ma-data-rfi-on-intercompany-transfers.pdf>.



8. Do you commit to working with Secretary Kennedy and the Administration’s antitrust enforcers to promote competition in the health care industry, including by monitoring the impact of serial roll-ups on the cost and quality of health care?
9. Chronic kidney disease is an epidemic, affecting 36 million — or one in seven — American adults.<sup>110</sup> Despite Medicare alone spending \$130 billion annually on patients with this disease, U.S. outcomes are worse than in other countries.<sup>111</sup> Just two for-profit dialysis providers, DaVita Kidney Care and Fresenius Medical Care, control more than 80% of the U.S. market.<sup>112</sup> This duopoly exacerbates predatory pricing and reduces care quality, as measured by hospitalization and mortality rates.<sup>113</sup> If confirmed, will you commit to prioritize addressing the chronic kidney disease crisis, including by directing CMS to create new clinical practice standards that define dialysis adequacy according to current evidence, enforcing CMS requirements that patients be informed of all dialysis options and where to find them, and increasing staffing ratio requirements for dialysis clinics?

### **Physician Payment**

CMS relies heavily on the recommendations it receives from the American Medical Association’s (AMA’s) Specialty Society Relative Value Scale Update Committee (RUC) to set payment rates for Medicare physicians’ services. In Calendar Year 2024, CMS accepted 97 percent of the RUC’s recommendations.<sup>114</sup>

Unfortunately, government watchdogs, including the Government Accountability Office, have revealed that recommendations by the RUC are deeply flawed, given that the physicians on the Committee are more likely to over-value services performed by their specific specialties — a clear conflict of interest. Secretary Kennedy has correctly proposed removing the AMA from this process in favor of an in-house process conducted by CMS. However, your views remain unclear.

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<sup>110</sup> Centers for Disease Control and Prevention, “Chronic Kidney Disease in the United States, 2023,” May 2023, <https://www.cdc.gov/kidney-disease/media/pdfs/CKD-Factsheet-H.pdf>.

<sup>111</sup> National Institute of Diabetes and Digestive and Kidney Diseases, “Kidney Disease Statistics for the United States,” 2024, [https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease#:~:text=Annual%20per-person%20spending%20attributable%20to%20Medicare%20Parts%20A%2C%20beneficiaries%20with%20ESKD%20totaled%20%2450.8%20billion%20in%202020](https://www.niddk.nih.gov/health-information/health-statistics/kidney-disease#:~:text=Annual%20per-person%20spending%20attributable%20to%20Medicare%20Parts%20A%2C%20beneficiaries%20with%20ESKD%20totaled%20%2450.8%20billion%20in%202020;); Kidney News, “CKD More Prominent in the U.S. Than in Europe,” Karen Blum, November 14, 2019, <https://www.kidneynews.org/display/post/clinical-2/ckd-more-prominent-in-the-u.s.-than-in-europe.xml>; Frontiers in Public Health, “Comparison of trend in chronic kidney disease burden between Chian, Japan, the United Kingdom, and the United States,” Haoyu Wen et al., 2022, <https://pmc.ncbi.nlm.nih.gov/articles/PMC9499831/>.

<sup>112</sup> Scientific American, “Kidney dialysis is a booming business — is it also a rigged one?,” Carrie Arnold and Larry C. Price, December 4, 2020, [https://www.scientificamerican.com/article/kidney-dialysis-is-a-booming-business-is-it-also-a-rigged-one-1/#:~:text=Dialysis%20centers%20are%20more%20plentiful%20in%20the,market%2C%20which%20is%20valued%20at%20\\$24.7%20billion.&text=As%20large%20chains%2C%20DaVita%20and%20Fresenius%20have,down%20for%20drugs%20and%20other%20needed%20supplies.](https://www.scientificamerican.com/article/kidney-dialysis-is-a-booming-business-is-it-also-a-rigged-one-1/#:~:text=Dialysis%20centers%20are%20more%20plentiful%20in%20the,market%2C%20which%20is%20valued%20at%20$24.7%20billion.&text=As%20large%20chains%2C%20DaVita%20and%20Fresenius%20have,down%20for%20drugs%20and%20other%20needed%20supplies.)

<sup>113</sup> Duke University Fuqua School of Business, “As Large Chains Grow to Dominate Dialysis, Patient Outcomes Decline,” October 23, 2019, <https://www.fuqua.duke.edu/duke-fuqua-insights/large-chains-grow-dominate-dialysis-patient-outcomes-decline>; National Bureau of Economic Research, Thomas G. Wollmann, “How to Get Away with Merger: Stealth Consolidation and its Effects on US Healthcare,” March 2024, [https://www.nber.org/system/files/working\\_papers/w27274/w27274.pdf](https://www.nber.org/system/files/working_papers/w27274/w27274.pdf).

<sup>114</sup> The American Medical Association, “CY 2024 Medicare Physician Payment Schedule and Quality Payment Program (QPP) Final Rule Summary,” 2023, <https://www.ama-assn.org/system/files/ama-summary-2024-mfs-proposed-rule.pdf>.

I have the following questions on the subject:

1. What is your opinion on the role the RUC plays in advising physician fee schedules? How, if at all, would you support reforming the RUC?
2. Do you support reforms to the Medicare physician fee schedule, including resolving disparities between primary and specialty care services?
3. Do you support replacing the American Medical Association's Relative Value Scale (RVU) Update Committee with an independent third party not dominated by specialists?
4. Do you support increasing Medicare investment in primary care residency slots and allocating them to underserved areas to meet patient demand?

### **Data Transparency**

CMS is responsible for collecting critical financial, ownership, and coverage data from health care entities regulated by CMS. Recently, researchers and watchdogs have uncovered gaps in CMS' data reporting and collection practices, leaving regulators and lawmakers ill-equipped to weed out fraud and abuse in CMS-funded programs. For example, I wrote to CMS in December 2023 regarding shortfalls in data collection and reporting practices in Medicare Advantage, including a lack of complete data on prior authorizations, payment denials, and out-of-pocket spending.<sup>115</sup> Over a year later, these data gaps remain, despite some action by CMS to improve transparency.<sup>116</sup> I am also concerned that CMS does not collect adequate data to track intercompany transfer prices between private insurers in MA and their vertically integrated provider subsidiaries.<sup>117</sup>

I have the following questions on this subject:

1. What mechanisms would you implement to ensure that MA plans comply with reporting requirements for encounter data, including denied claims and prior authorizations?
2. Given the increasing vertical consolidation in Medicare Advantage, where plan sponsors often own or are financially tied to provider entities, how do you plan to enhance transparency around ownership and control?<sup>118</sup> Would you require detailed reporting on ownership structures, related-party contracts, and incentive arrangements to ensure proper oversight and evaluate the impact of these relationships on cost, quality, and access for beneficiaries?
3. Medicare Advantage plans are increasingly owned by private equity firms and health systems, raising concerns about transparency and accountability in plan operations. Would

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<sup>115</sup> Office of U.S. Senator Elizabeth Warren, Senator Warren letter to CMS Administrator Brooks-LaSure, December 7, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.12.07%20Letter%20to%20Admin.%20Brooks-LaSure%20re%20MA%20Data.pdf>.

<sup>116</sup> Kaiser Family Foundation, "Gaps in Medicare Advantage Data Remain Despite CMS Actions to Increase Transparency," Jeannie Fuglesten Biniek, Meredith Freed, and Tricia Neuman, April 10, 2024, <https://www.kff.org/medicare/issue-brief/gaps-in-medicare-advantage-data-remain-despite-cms-actions-to-increase-transparency/>.

<sup>117</sup> Office of U.S. Senator Elizabeth Warren, Senator Warren letter to CMS Administrator Brooks-LaSure, May 29, 2024, <https://www.warren.senate.gov/imo/media/doc/final-warren-letter-to-cms-on-ma-data-rfi-on-intercompany-transfers.pdf>.

<sup>118</sup> *Id.*

you direct CMS to develop a publicly accessible database detailing ownership structures of MA plans, including Taxpayer Identification Numbers (TINs) and relationships to parent organizations, to enable better oversight and research into the implications of these ownership arrangements?

4. Researchers face a three-year lag in MA encounter data compared to traditional Medicare data.<sup>119</sup> Will you commit to reducing this lag to improve timely research and policymaking?
5. The new data access policies requiring the use of the Virtual Research Data Center (VRDC) may increase costs and limit access.<sup>120</sup> How would you ensure equitable and affordable access to MA data for researchers?
6. Current MA data lacks accurate race and ethnicity information, limiting transparency in health equity analysis. How would you improve demographic data collection to better assess equity in MA plan performance?
7. Would you require MA plans to report whether services were delivered in-network or out-of-network to better understand access and utilization patterns?
8. Brokers play a significant role in MA enrollment, but their activities and payments are not transparent. Would you direct CMS to require reporting on broker involvement and compensation to ensure accountability?
9. The Government Accountability Office recently noted that there has been a lack of hospitals complying with hospital price transparency rules and that CMS has lacked enforcement of the rules.<sup>121</sup> A recent report even found that more than one-third of 100 hospitals reviewed did not properly post machine-readable pricing data. How do you plan to have CMS improve enforcement of these rules?
10. Research shows hospitals continue to ignore or thwart price transparency requirements enacted during the first Trump administration to help consumers make informed choices about their care. How do you plan to increase CMS' enforcement of these requirements?
11. There have been ongoing concerns regarding the enforcement of post-2015 site-neutral payment requirements in Medicare. Reports suggest that compliance has been uneven, possibly due to resource constraints or gaps in enforcement authority. How would you address these challenges, and what steps would you take to ensure consistent enforcement of site-neutral payment policies moving forward?
12. Nonpartisan research has shown that Medicare beneficiaries have limited knowledge about important aspects of private Medicare plans before enrolling. This includes information on companies' tendencies to delay and deny care; the quality of supplemental benefits offered

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<sup>119</sup> Center for Advancing Health Policy Through Research letter to CMS Administrator Brooks La-Sure, March 24, 2024, [https://cahpr.sph.brown.edu/sites/default/files/documents/Brown\\_CAHPR\\_CMS\\_MA\\_Data\\_RFI.pdf](https://cahpr.sph.brown.edu/sites/default/files/documents/Brown_CAHPR_CMS_MA_Data_RFI.pdf).

<sup>120</sup> JAMA Network, "Proposed CMS Data Access Changes May Hamper Health Services Research," Josh Caplan, Aaron Carroll, Lisa Simpson, May 31, 2024, <https://jamanetwork.com/journals/jama-health-forum/fullarticle/2819325>.

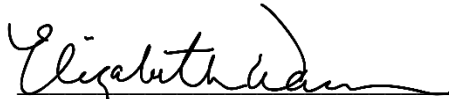
<sup>121</sup> Government Accountability Office, "Health Care Transparency: CMS Needs More Information on Hospital Pricing Data Completeness and Accuracy," October 2, 2024, <https://www.gao.gov/products/gao-25-106995>.

by private companies; and up-to-date information on which doctors and hospitals are included in insurance networks. What would you do to improve transparency for beneficiaries seeking to enroll in Medicare Advantage?

### **Conclusion**

CMS is responsible for overseeing Medicare, Medicaid, and Affordable Care Act coverage, setting the rules for and managing programs that provide health care coverage for 160 million Americans.<sup>122</sup> The agency deserves a leader that is willing to put the interests of patients, providers, and taxpayers first – not an individual that seeks to privatize those programs and has spent much of his career profiting from entities that are squeezing every last health care dollar out of patients and taxpayers. I ask that you provide answers to my questions so that the Senate and the American people can better understand how you plan to lead this agency.

Sincerely,



Elizabeth Warren  
United States Senator

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<sup>122</sup> Centers for Medicare & Medicaid, “About Us,” <https://www.cms.gov/about-cms>.