To:
Seema Verma
CMS Administrator

August 1, 2018

RE: PROPOSAL TO REMOVE EXEMPTION TO THE DIRECT PAYMENT REQUIREMENTS IN SECTION 32 OF THE SOCIAL SECURITY ACT (CMS-2413-P)

On behalf of more than 3.2 million Americans for Prosperity activists across all fifty states, we support docket number CMS-2413-P, the Department of Health and Human Services' proposal to remove 42 CFR 447.10(g)(4), a 2014 regulatory exemption to the direct payment requirements in Section 32 of the Social Security Act, which has allowed state governments to deduct union dues and fees from Medicaid funds intended for home-healthcare workers.

We urge the administration to follow through on this proposal, and to clarify either in the final rule or through new regulation, that state governments cannot skim union dues or fees from Medicaid. Medicaid is a taxpayer-funded program intended to pay for health care for the neediest and most vulnerable people in our society. The program is already on a fiscally unsustainable trajectory, putting state and federal taxpayers at risk.

Medicaid dollars are a precious, limited resource that the government must ensure are being spent as originally intended. Diverting any amount of these funds from health care providers to labor unions is improper and unacceptable. But over the past two decades, the fifteen states involved in this scheme have sent more than $1.4 billion to labor unions instead of caregivers, according to an analysis by the Freedom Foundation in Washington State.

Moreover, the way this process has unfolded is an affront to representative democracy. In a nakedly self-interested and politically-motivated maneuver, politicians designated caregivers who receive Medicaid funds as public employees solely for the purpose of collective bargaining.

Under no reasonable assessment are these caregivers actually public employees. The flawed logic of deeming them as such simply because they receive public funds for their work could be widely applied

to other groups that are also clearly not employees of the state, including doctors who treat Medicare patients, or anyone who receives a federal grant for a project.
In addition, unions have subverted democracy in the organizing process itself. In no state did more than 42 percent of caregivers participate in the unionization election, yet when the unions won these low-turnout affairs, all caregivers were subjected to having funds sent to the union. In other states, no election was held at all and the unions used a "card check" process in which they can harass, intimidate, and coerce caregivers into signing a union authorization card.

Many caregivers have raised alarm about the involvement of labor unions in home health care, citing little value from the union. One such complaint made it all the way to the Supreme Court. In 2014 the Court ruled in Harris v. Quinn that home-health providers cannot be forced to pay union dues or fees against their will.

While this was a significant victory, the involvement of state governments in this process did not end and many caregivers remained subject to involuntarily being deprived of funds.

Though the dues and fees were made optional, it remained the case that caregivers had to actively pursue a lengthy, confusing, and cumbersome process – often in a limited window of time – to end dues deductions. Unions intentionally made it prohibitively costly to endure this process, and many caregivers were simply never made aware that this right existed or how to exercise it.

Because state governments are deducting dues, little power lies in the hands of caregivers, rather than if unions were required to collect dues themselves. Notably, states do not only deduct collective bargaining fees, but also PAC dues that fund the unions' preferred political candidates and parties.

Just this year, the Supreme Court rejected the existing arrangement in another case, Janus v. AFSCME. There, not only did the Court extend Harris' logic such that no public employee in America can be forced to pay union dues or fees, the justices went further and rightfully deemed the aforementioned "opt-out" requirements unconstitutional. Instead, they stated that workers must demonstrate affirmative consent to have union dues deducted; few home-health providers have ever done so.

Unions use both dues and fees deducted by state governments on political activity. In addition to the PAC dues used to fund candidates directly, the Supreme Court confirmed that government-union collective bargaining is itself a form of political speech because it impacts public policy issues. Moreover, unions use those fees to make contributions to politically-motivated nonprofit groups, fund events and publications that promote political speech, and even provide training for political activism.

Requiring workers to overcome lengthy and confusing hurdles to keep from having their free speech

rights violated flips the First Amendment on its head. State governments are complicit in the act by deducting PAC dues and collective bargaining fees for unions.
When considering that the money is being taken away from Medicaid dollars intended to help less fortunate friends, neighbors, and families, the numbers are staggering. In Minnesota, the state has taken more than $8.5 million from home-health care providers for labor unions. In Michigan and Ohio, more than $36 million each. And in Illinois, they have taken just shy of $100 million through the scheme.

The existing arrangement is an affront to many: caregivers, who deserve the full amount of Medicaid dollars allotted to them; taxpayers, who should not be forced to fund union dues collection; and the rule of law, which clearly states that Medicaid dollars must go directly to health care providers.

If providers wish to fund a labor union, they are free to do so without enlisting taxpayer-funded resources that would be better spent on core functions of government.

With this rule, the Department of Health and Human Services has an opportunity to stand up for the most vulnerable Americans, protect taxpayers, defend the First Amendment, and restore the proper role of government. Home-health care providers should never have been classified as government employees and should never have been subjected to union dues deduction from Medicaid. State taxpayers should not have to be complicit in misusing an important health care program to fund political speech.

On behalf of more than 3.2 million Americans for Prosperity activists across all fifty states, we applaud the Department of Health and Human Services' proposal to remove the 2014 exemption to the direct payment requirements of the Social Security Act, and strongly urge the Department to clarify that Section 32 of the Act prohibits the assignment of Medicaid payments to labor unions.

Brent Gardner
Chief Government Affairs Officer | *Americans for Prosperity*