

Congress of the United States

Washington, DC 20510

January 23, 2023

Karen S. Lynch
President and Chief Executive Officer
CVS Health
1 CVS Drive
Woonsocket, RI 02895

Kim A. Keck
President and Chief Executive Officer
Blue Cross Blue Shield Association
1133 Southwest Topeka Boulevard
Topeka, KS 66629

Brian Thompson
Chief Executive Officer
United HealthCare
1100 Optum Circle
Eden Prairie, MN 55344

Dear Ms. Lynch, Ms. Keck, and Mr. Thompson:

As Members of Congress, we write to express our concern about the Provider/Quality Incentive Programs ("Incentive Programs")¹ that have been implemented by each of your companies. Under the Incentive Programs health care providers are asked to report pregnancy related health information in exchange for monetary compensation. These programs raise serious concerns about the potential for criminalization of both health care providers and patients seeking pregnancy-related care, particularly in this moment.

This is not a theoretical concern. For decades, pregnant people across the country have been arrested, subjected to prosecution, detained, sent to jail, separated from their children, and have had medical interventions forced upon them because of their pregnancy outcomes, including for self-managing their abortions or seeking care after experiencing a miscarriage. Our country has a long history of attempting to control the reproduction and building of families, especially in communities of color. The people most likely to be surveilled, targeted, and harmed by our nation's carceral system are people with low incomes and Black, Indigenous, and other people of color. Many of the documented cases where pregnant people were subjected to unjust criminalization occurred even before the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, which stripped away the constitutional right to abortion. As we have watched an already devastating abortion access crisis become far worse, and the threats of

¹2022 Quality Incentive Program, Healthy Blue Choice® HealthPlan of SC, Healthy Connections, [PowerPoint Presentation \(healthybluesc.com\)](#); Florida: Complete the Obstetrical Risk Assessment Form to earn an Incentive, United Health Care, May 19 2022, [Florida: Complete the Obstetrical Risk Assessment Form to earn an incentive | UHCprovider.com](#); Aetna Better Health® of Florida, Obstetrical Provider Incentive, October 25, 2022, [ABHFL OB Incentive Provider Communication 10.25.2022 \(aetnabetterhealth.com\)](#).

criminalization for both providers and patients increase as states move to ban abortion, it is more important than ever to protect people who seek essential health care and the providers that care for them from the threat of criminalization.

These Incentive Programs and pregnancy notification report forms² are seemingly innocuous, but have the potential to put patients and providers at great risk. Under each program a provider may submit a form to each of your respective health insurance companies revealing a patient's pregnancy and later be subjected to criminal investigation or prosecution because of suspicions around the outcomes of the person's pregnancy. An additional concern is there is no information or context for each program about how this information will be protected or what it will be used for. Moreover, there is no indication that your companies have considered the legal landscape and risk as it relates to providers who provide full spectrum reproductive health care. This is of particular concern as states where these Incentive Programs have been implemented move to pass extreme abortion restrictions.

The risk associated with these Incentive Programs for providers is great, but at even greater risk are patients whose pregnancy outcomes may be criminalized after they have sought pregnancy related care. Leading medical organizations like the American Medical Association (AMA) and American College of Obstetricians and Gynecologists (ACOG) have universally [opposed](#) the criminalization of pregnancy outcomes as evidence clearly shows such criminalization undermines the patient-provider relationship and further creates distrust in our medical systems. Provider reporting and documentation, as required by each Incentive Program, could become a primary pathway to pregnancy criminalization. Recent [data](#) collected and analyzed by If/When/How, shows us that almost half of people who were criminally investigated or prosecuted for suspicion of managing their abortion or miscarriage came to the attention of law enforcement as a result of interactions with health care providers. This is supported by [data](#) from the National Advocates for Pregnant Women, which notes the long history of healthcare providers wrongly reporting pregnant people to state authorities for actions they think may be illegal or outcomes they disapprove of, including substance use during pregnancy. An additional concern is the use of information requested in forms, such as Aetna's Incentive Program [Form](#), which specifically requests office visit notes to be included in the provider's submission. This information could be used by law enforcement to prosecute individuals for their pregnancy outcomes and it is not evident how insurance companies intend to use this information, how providers and patients will be protected, and in what circumstances this information would be disclosed.

Given these concerns we ask you to consider the broad implications of having Incentive Programs such as this given the current legal landscape and how you will protect the information collected. We specifically ask you to consider the following: the intended purpose of your Provider Incentive Programs and pregnancy notification forms; how you have or will use the data you receive from these forms; the systems that are in place to protect sensitive information you receive from these forms; why each of you, respectively, chose a provider incentive program

² Pregnancy Notification Report, Healthy Blue BlueChoice® HealthPlan of SC, [SCHB_MCS_PregnancyNotificationReport.pdf \(healthybluesc.com\)](#); Florida Medicaid Pregnancy Notification Form, Agency for Health Care Administration State of Florida, [Obstetrical Risk Assessment Form for Florida - UnitedHealthcare Community Plan of Florida \(uhcprovider.com\)](#); AETNA BETTER HEALTH® OF FLORIDA, Obstetrical Notification, [Obstetrical_Notification_04.2019 \(aetnabetterhealth.com\)](#).

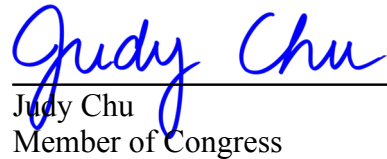
for pregnancy notification over other ways of providing policyholders with resources on prenatal and pregnancy care; how you intend to protect your providers who report this information in states where they are subject to highly restrictive abortion bans or where abortion is illegal; how you intend to support patients who are criminalized because of this disclosure; and how you have or will communicate the Incentive Program to each of your respective policyholders, and if so, how.

Thank you for your attention to this matter.

Sincerely,



Nikema Williams
Member of Congress



Judy Chu
Member of Congress



Veronica Escobar
Member of Congress



Lois Frankel
Member of Congress



Barbara Lee
Member of Congress



James P. McGovern
Member of Congress



Danny K. Davis
Member of Congress



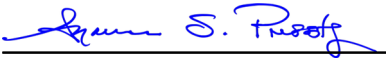
Robin L. Kelly
Member of Congress



Gwen S. Moore
Member of Congress



Suzan K. DelBene
Member of Congress



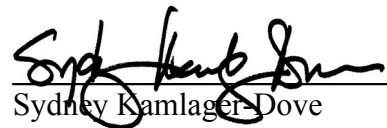
Ayanna Pressley
Member of Congress



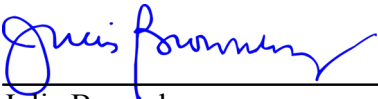
Raúl M. Grijalva
Member of Congress



Ted Lieu
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Sydney Kamlager-Dove
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Julia Brownley
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Lori Trahan
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