

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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February 3, 2014

Mr. Gary Cohen
Deputy Administrator and Director
Center for Consumer Information and Insurance Oversight
Centers for Medicare and Medicaid Services
Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Mr. Cohen:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Thursday, January 16, 2014, to testify at the hearing entitled "2014: Seeking PPACA Answers."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Monday, February 17, 2014. Your responses should be mailed to Brittany Havens, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to brittany.havens@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Cory Gardner

1. According to a 2012 Report issued by HHS, “[Congressional Budget Office] did not score the impact of risk corridors and assumed collections would equal payments to plans and would therefore be budget neutral.” [Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans, Exchange Standards for Employers (CMS-9989-FWP) and Standards Related to Reinsurance, Risk Corridors and Risk Adjustment (CMS-9975-F), Regulatory Impact Analysis, March 2012]
 - a. Was the intention of the risk corridor program to be budget neutral?
 - b. What is the expected cost now?
2. On November 14, 2013, President Obama announced a new transitional relief policy for 2014 under which individuals and small businesses whose insurance coverage had been or would be cancelled under the Affordable Care Act would be able to keep their coverage for an additional year. This announcement was made after insurance companies set their rates for 2014. Did the administration assess the potential impact of this new policy on the risk corridor program? If so, what were your findings? If not, why not?
3. In a December 19, 2013 letter from HHS Secretary Kathleen Sebelius to Sen. Mark Warner, the Administration changed the rules again by allowing people whose policies had been cancelled because of the Affordable Care Act’s new requirements to purchase catastrophic plans, which were previously restricted to people under 30 or those who qualified for a hardship exemption. Did the administration assess the potential impact of this new policy on the risk corridor program? If so, what were your findings? If not, why not?
4. A November 14, 2013 letter from CMS to state insurance commissioners states: “Though this transitional policy was not anticipated by health insurance issuers when setting rates for 2014, the risk corridor program should help ameliorate unanticipated changes in premium revenue. We intend to explore ways to modify the risk corridor program final rules to provide additional assistance.”
 - a. What modifications to the risk corridor program are expected?
 - b. How much will these modifications cost?
 - c. Based upon the new situation, do you expect to seek a score from the CBO?
 - d. If there is a systemic failure of the health insurance industry, will the risk corridor program be used to bail out the industry?

The Honorable Bruce Braley

1. Section 2706(a) of the Affordable Care Act prohibits health insurance plans from discriminating against entire classes of licensed and certified health care professionals on the basis of the provider's licensure or certification. This provision helps to ensure that patients have access to the care they need when and where they need it.

Unfortunately, CCIIO released a flawed FAQ on the provision ahead of its 1/1/14 implementation date and some states are now being forced to improperly implement Section 2706 based on CCIIO's flawed FAQ. The underlying problem is that an FAQ is now dictating policy that is different than both the intent of the provision and the language that Congress passed and the President signed into law.

May I receive your assurance that action will be taken by CMS to rectify this situation and that you will direct the Center for Consumer Information and Insurance Oversight to immediately work with the Department of Labor and Department of Treasury to withdraw and rescind this flawed FAQ guidance? May I also receive your assurance that you will, after rescinding the guidance, alert health insurers and states to the fact that CCIIO has withdrawn the flawed FAQ?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Tim Murphy

1. Is there a set date for completion of the back end of the Federally Facilitated Marketplace (FFM)?
2. How much money has been budgeted for advertisements during the Olympics? Where is this funding coming from?

The Honorable Michael C. Burgess

1. Please provide us with any additional information you have regarding the build of the back end, as well as the provider payments portion of HealthCare.gov i.e. the percentage of payments that have been processed.
2. Please provide the Committee with any communications regarding ongoing discussions that are happening between you and OMB with regard to seeking appropriation for the risk corridor language in the law.
3. Please provide any legal memorandum that has been prepared for you or your department regarding the risk corridor adjustment and whether that money will be coming from taxpayer dollars or funds that have already been appropriated for the Affordable Care Act.
4. Please provide any legal memorandum that you have been advised of or briefed on that defines the authority under the Affordable Care Act to delay implementation or the authority to exercise enforcement discretion over enforcement provisions.

The Honorable Marsha Blackburn

1. You testified that you are receiving regular and detailed briefings. Can you please quantify those briefings and list what types of briefings you are having?

The Honorable Gregg Harper

1. Please provide us with a complete list of the staffers who perform any services connected to the risk corridor program.
2. Please provide the Committee with information regarding the total amount of money that you paid each insurer in this first group of payments that you mentioned during the hearing.

The Honorable Pete Olson

1. Please provide the Committee with a copy of the instructions you issued to Navigators telling them that they should not engage in door-to-door solicitation.

The Honorable Cory Gardner

1. Please provide the Committee with any legal opinions or memorandums that gave the President the authority to mandate insurance companies to allow their members to keep current plans through 2014.
2. How many small business insurance plans do you anticipate being canceled?
3. How many people who signed up in the exchanges were not previously insured? How many were previously insured but had their insurance canceled and are now signed up in the federal exchange?
4. How many individuals saw their insurance rates go up after signing up in the federal exchange?
5. Of the supposed 45 million people without insurance, how many people now have insurance?

The Honorable Bill Johnson

1. How many contractors are involved and dedicated to the security of HealthCare.gov?
2. How much money is being spent to provide security to HealthCare.gov?
3. During the hearing you stated that you are given reports on the security of HealthCare.gov. Please provide the Committee with examples of those reports so we can see what those reports include.

The Honorable Billy Long

1. Please provide the Committee with the data that breaks down the total number enrollees into the number of people who were previously uninsured versus the number of people who may have been insured before the Affordable Care Act implementation and have since switched to new coverage.

The Honorable Renne Ellmers

1. Of the 3.9 million who have enrolled in Medicaid, how many of them could have previously signed up for Medicaid but did not do so before the Affordable Care Act was implemented?