

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

May 9, 2016

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Mr. Slavitt:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Friday, April 15, 2016, to testify at the hearing entitled "Unlawful Reinsurance Payments: CMS Diverting \$3.5 Billion from Taxpayers to Pay Insurance Companies."

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, May 16, 2016. Your responses should be mailed to Jay Gulshen, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Jay.Gulshen@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 Susan Brooks

In February 2016, the non-partisan Congressional Research Service (CRS) issued a memorandum, which addressed, in part, whether CMS has the authority to prioritize reinsurance payments to health insurers over the U.S. Treasury. CRS determined that the statute is not ambiguous and CMS' actions contradict the plain language of the law.

1. When was CMS made aware of the February 2016 CRS memorandum?
2. CRS found that “the statute unambiguously states” each reinsurance contribution must contain an amount that reflects its “proportionate share” of the Treasury contribution. CRS further found that CMS' interpretation appears to be “in conflict with a plain reading” of the statute. Do you agree? Why or why not?
 - a. What is CMS' position on CRS' memorandum?
3. Have there been internal discussions about the CRS memorandum?
 - a. Has CMS or HHS created a memo or document in response to the CRS memorandum? If so, please provide that to the committee.
4. Since the CRS memorandum was issued, have there been discussions about reversing CMS' position to prioritize payments to insurance companies?
 - a. Who has been involved in these discussions?
 - b. When did these conversations occur?
5. CMS has already changed its mind once on how to allocate reinsurance payments. In light of the CRS memo, will CMS change its mind again – and go back to the original interpretation? Why or why not?
 - a. Will CMS consider using the original methodology going forward, for the rest of the payments this year and in 2017?
 - b. CMS changed its policy position once before through the rulemaking process. In other words, the rule isn't always the rule. So why can't CMS change its position back and actually follow the letter of the law?

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. Before concluding the hearing, you committed that CMS would provide the documents pursuant to our March 23rd request in a timely manner. Please submit these documents to committee staff.

The Honorable Marsha Blackburn

1. During the hearing, you agreed to provide the Committee with the memo breaking down the legal justifications of this reinterpretation of the law. Please provide that memo, the full legal reasoning, and entire paper trail of behind that reasoning.
2. Which insurance company has received the most money from the reinsurance program?

The Honorable David McKinley

1. As discussed during the hearing, West Virginia's Health and Human Resources recently wrote a letter to CMS regarding rural hospitals and these reinsurance payments, and you agreed to take a good look at that letter. You further committed to continue working with my staff on this issue, and offered to have a rural health task force look into these concerns.
2. Additionally, you committed to working with the state of West Virginia to provide some technical assistance in drafting a Medicaid state plan amendment that would recognize the important role that these care services and consequently clarify their eligibility for continued Medicaid DSH payments.

The Honorable Michael C. Burgess, M.D.

1. Who specifically within CMS was responsible for interacting with HHS leadership and with the White House on reinsurance payments in 2014? Was there a single individual or office?
2. Outside of the formal rulemaking process did anyone outside the executive branch communicate with HHS leadership or CMS about prioritizing reinsurance payments?