Attachments—Additional Questions for the Record

Subcommittee on Health
Hearing on
"Investing in America's Health Care"
June 4, 2019

<u>Thomas Barker, JD</u>

<u>The Honorable Gus M. Bilirakis (R-FL)</u>

1. Mr. Barker- As we look for ways to invest in America's health care, it's important to remember that Congress has yet to provide relief from ACA's taxes, including the health insurance tax. These taxes, which represent billions of dollars that could otherwise be reinvested into patient care, affect Medicare and Medicaid patients in addition to those with commercial plans, have a direct impact on the cost of healthcare for consumers and the ability of payers and providers to deliver the most comprehensive and innovative level of care to beneficiaries. How do you think the health insurance tax impacts healthcare costs and the ability to invest in America's health care?

2. RESPONSE FROM TOM BARKER: My understanding is that the health insurance tax is an issue that may be addressed by the Committee on Ways and Means. Although I do not have any particular expertise with the tax generally, I am aware that there is some question as to the applicability of the tax to Medicaid managed care plans that has prompted litigation in the United States District Court for the Northern District of Texas (*State of Texas v. United States*, Civil Action No. 7:15-cv-00151-O (N.D. Tex. 2018)). One of the arguments advanced by the states in that case is that Congress never intended for states to be subject to the tax, but to the extent that Medicaid managed care plans included the cost of the tax in their rates, Medicaid's actuarial soundness principles required the cost of the tax to be passed on by the states to the plans, in violation of Congress's stated intent. Late last year, the Court partially agreed with the state's arguments and ordered that the states be refunded the cost of the tax, but refused to enjoin it. To the extent that a health insurance payer lacks the market power to do so, the health insurance tax cannot be passed on to its customers, which may have the effect of raising healthcare costs.