

ONE HUNDRED ELEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641  
July 22, 2009

Ms. Angela F. Braly  
President and Chief Executive Officer  
WellPoint, Inc.  
120 Monument Circle  
Indianapolis, IN 46204

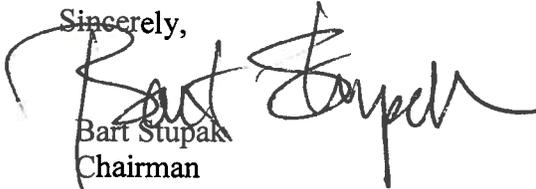
Dear Ms. Braly:

The Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating business practices in the health insurance market. On May 22, 2009, we sent a letter requesting case files of policyholders who were rescinded by your company. In response, you provided the case files, but you redacted information that would identify the individuals whose policies were rescinded. Your counsel suggested that, due to patient privacy concerns, you would not voluntarily produce these identities unless compelled by the Committee through a subpoena.

Rather than issue a subpoena, we request that you send the attached letter to the four policyholders identified by your company as code numbers 59717, 60586, 60720, and 60853. As you can see, the letter simply requests that the policyholders contact the Committee, if they choose, to discuss their specific cases. We believe this approach will allow the Committee to obtain the information it requires without resorting to compulsory measures.

We ask that you send the attached letter, which was provided to you previously on July 20, by e-mail, facsimile, or overnight mail no later than Wednesday July 22, 2009. Please contact Michael Gordon of the Committee staff at (202) 226-2424 with any questions and to notify the Committee upon completion of this request.

  
Henry A. Waxman  
Chairman

Sincerely,  
  
Bart Stupak  
Chairman  
Subcommittee on Oversight and Investigations

Enclosure

cc: Joe Barton  
Ranking Member

Greg Walden  
Ranking Member  
Subcommittee on Oversight and Investigations

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Majority (202) 225-2927  
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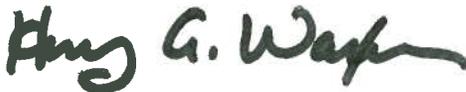
Dear current or former WellPoint policyholder:

The Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are investigating improper terminations of individual health insurance policies. On June 16, 2009, the Subcommittee held a hearing on this topic. Information regarding the hearing can be found at the Committee's web site, at [http://energycommerce.house.gov/index.php?option=com\\_content&view=category&layout=blog&id=133&Itemid=73](http://energycommerce.house.gov/index.php?option=com_content&view=category&layout=blog&id=133&Itemid=73).

We have asked WellPoint to provide this letter to you. In connection with our investigation, the Committee obtained documents from WellPoint relating to insurance policies the company sought to rescind, including yours. To protect privacy interests, the files were produced to the Committee without names, addresses, or other information that would identify the policyholder.

We are writing to request the opportunity for Committee staff to speak to you regarding WellPoint's prior efforts to terminate your health insurance policy. If you are willing to assist the Committee, please contact Michael Gordon of the Committee staff at (202) 226-2424.

Sincerely,



Henry A. Waxman  
Chairman



Bart Stupak  
Chairman  
Subcommittee on Oversight and  
Investigations

Enclosure

cc: The Honorable Joe Barton  
Ranking Member

The Honorable Greg Walden  
Ranking Minority Member  
Subcommittee on Oversight and  
Investigations



120 Monument Circle  
Indianapolis, IN 46204  
Tel (202) 628-7840  
Fax (202) 628-1096  
stephen.northrup@wellpoint.com

**Stephen J. Northrup**  
Vice President  
Federal Affairs

July 22, 2009

The Honorable Henry A. Waxman  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515-6115

The Honorable Bart Stupak  
Chairman  
Subcommittee on Oversight and Investigations  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515-6115

Dear Chairmen:

I have been asked to respond to your letter of today to Angela Braly, who is traveling on business and out of the office, requesting that WellPoint send letters on behalf of the Committee to certain current and former policyholders in Indiana. While we have made every effort to cooperate with your requests for information over the past several months, federal law prevents us from fulfilling the request you made today.

You asked that WellPoint send a letter to certain policyholders whose de-identified files WellPoint produced to the Committee earlier this year. The letter you have proposed would explain that there is an ongoing Committee inquiry and would invite the policyholders to call a Congressional staff member who works for the Committee. However, as WellPoint's outside counsel advised your staff by telephone yesterday, we are prohibited by the federal Health Insurance Portability and Accountability Act (HIPAA) from using our policyholders' protected health information (PHI) for this purpose.

The privacy regulations promulgated pursuant to HIPAA (HIPAA Privacy Rule) govern both the use and disclosure of PHI. The Committee is requesting a voluntary use of the policyholders' protected health information by WellPoint for a purpose that is not permitted by the HIPAA Privacy Rule. A policyholder's name, address and the fact that they are or were a WellPoint member are considered PHI because it is information created or received by the health plan; is related to the provision of health care to an individual or the past, present, or future payment for the provision of health care to an individual; and identifies an individual. *See* 45 C.F.R. s. 160.103. The use by WellPoint of the PHI for this mailing does not fall within any of the permitted uses under the HIPAA Privacy Rule. It cannot be considered a use for treatment, payment or health care operations of WellPoint and it does not fall within the health-oversight, public-health or required-by-law provisions as these terms are defined in the HIPAA Privacy Rule.

If you would like to discuss our response and the issues raised by this federal law, please have a member of your staff contact me at 202-628-7840.

Very sincerely yours,

A handwritten signature in black ink, appearing to read "S. Northrup".

Stephen J. Northrup  
Vice President, Federal Affairs



**MEMORANDUM**

July 23, 2009

**To:** House Energy and Commerce Committee  
Attention: [REDACTED]  
[REDACTED]

**From:** [REDACTED] Legislative Attorney

**Subject:** **The HIPAA Privacy Rule and the Use or Disclosure of Protected Health Information For a Mailing**

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You have asked "[i]s there any law, regulation, or other provision in HIPAA or anywhere else that prohibits an insurance company from contacting its own current or former policyholders in order to provide them information from Congress?" As per your request, we have confined our answer to that specific question, and therefore are not considering or analyzing any other relevant issues.

In particular, you inquired as to whether an insurance company could send a letter about a congressional committee investigation to its former plan participants without violating the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. You indicated that the Energy and Commerce Committee would not receive any identifying information about participants from the company. According to information that you subsequently provided to us, the insurance company claims the following provisions of HIPAA prevent the company from providing this letter to their policyholders: 45 CFR 164.502(a), 164.501, 164.104.

The company at issue clearly falls within the definition of a covered entity under 45 CFR 164.104(a)(1) because it is a health plan. Under 45 C.F.R. 164.502(a)(1)(i) of the HIPAA regulations, a covered entity is permitted to use or disclose an individual's protected health information (PHI) to the individual. Thus, the HIPAA Privacy Rule would seemingly permit the company to send the letter to its policyholders.<sup>1</sup>

In addition, it should be noted that section 164.512(d) of the HIPAA Privacy Rule permits a covered entity to disclose protected health information to a health oversight agency for oversight activities authorized by law, including other activities necessary for appropriate oversight of the health care system. Under 45 C.F.R. 164.501, a health oversight agency means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, ... that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant." This provision has been relied on in other instances to facilitate disclosures of PHI to congressional committees for oversight purposes. For more information on congressional oversight in this area, see CRS report RL30240, Congressional Oversight Manual.

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<sup>1</sup> We note that the HIPAA Privacy Rule does not require the company to send the letter.