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ONE HUNDRED TWELFTH 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

January 25, 2011

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
The Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

Pursuant to Rules X and XI of the United States House of Representatives, the Committee on Energy and Commerce is examining the operation of the temporary high risk health insurance program. Section 1101 of the Patient Protection and Affordable Care Act (PPACA) establishes a $5 billion temporary high risk health insurance program known as the Pre-Existing Condition Insurance Plan (PCIP) to provide insurance coverage to individuals who cannot obtain coverage due to a pre-existing condition. There is substantial public interest in making sure the PCIP operates with both a high level of transparency and efficiency.

We write to obtain information on the current state of the PCIP. There is reason for concern that early enrollment has proven sluggish despite early predictions that the PCIP would show that the public was willing to embrace the PPACA. Shortly after passage of the PPACA, the Chief Actuary for the Centers for Medicare and Medicaid Services estimated that the creation of the PCIP would result in roughly 375,000 people gaining coverage in 2010. *The Washington Post* reported on December 27, 2010, that as the end of year approached, only 8,000 people had enrolled.

We ask that you provide the following documents and information within two weeks of the date of this letter:

1. According to the Department of Health and Human Services (HHS) website, each state was able to choose one of five options[1] to provide coverage under the PPACA for individuals with pre-existing conditions. Please provide a list of the option chosen by each state. If HHS has allowed any deviations from the five options, please provide a detailed explanation.

2. Please provide the following information concerning the budget of the PCIP:

   a. How the total funding for the PCIP has been allocated. Explain if the $5 billion was divided among each state through the end of the program on January 1, 2014; will be allocated each fiscal or calendar year; will be used to pay each state's expenses as they arise; or whether another method will be utilized. Please provide the original allocation of funding among the states.

      i. Please provide all documents relating to the allocation of the $5 billion among the states.

      ii. Please provide all documents of communications from any HHS personnel relating to the allocation of the $5 billion among the states.

   b. The amount of money each state received in calendar year 2010. Include states opting to let HHS carry out their high risk pool programs and what portion of the $5 billion they represent individually.

   c. The amount of money each state can expect to receive in calendar years 2011, 2012, and 2013. Include states opting to let HHS carry out their high risk pool programs and what portion of the $5 billion they represent individually.

   d. According to the HHS website, "HHS intends to reallocate allotments after a period of not more than 2 years, based on an assessment of state actual enrollment and expenditure experiences."

      i. Please provide an explanation of how this assessment will take place and any information available if it has already begun.

      ii. *The Washington Post* reported on December 27, 2010, that "New Hampshire's plan has only about 80 members, but they already have spent nearly double the $650,000 the state was allotted...HHS agreed to give New Hampshire more money." Please explain the situation New Hampshire encountered, how the additional funds affect the funding available to other states, and whether this indicates that the cost of the PCIP will exceed $5 billion.

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[1] A state could: (1) operate a new pool alongside a current state one; (2) establish a new pool (for states that do not currently have one); (3) build upon existing coverage programs; (4) contract with a carrier of last resort; (5) do nothing and allow HHS to carry out a high risk pool program.

iii. Please provide details on any other states HHS has reason to believe will need more money than originally allocated along with an explanation of how this will affect that state, the other states, and the entire PCIP.

iv. Please provide details on any states HHS has reason to believe will need less money than originally allocated along with an explanation of how this will affect that state, the other states, and the entire PCIP.

3. Section 1101(g)(2) of the PPACA states that if the Secretary of HHS estimates that the funding available for payment of high risk pool expenses will be less than the actual amount of expenses, the Secretary "shall make such adjustments as are necessary to eliminate such deficit."

   a. Please provide a detailed explanation of expenses incurred thus far and future expected expenses.

   b. Plese provide an explanation of whether HHS believes the $5 billion available to the PCIP will be sufficient funding or whether additional funding will be needed.

   c. If the $5 billion will not cover incurred or expected expenses for the PCIP, what "adjustments" will HHS pursue? Please provide an explanation whether HHS will limit enrollment, limit benefits, use other funding in the HHS budget, or pursue any other alternatives.

   d. All documents relating to HHS's interpretation of Section 1101(g)(2) of the PPACA.

4. Please provide the following information on enrollment and the calculation of premiums in the PCIPs:

   a. A list of enrollment in the PCIP by state.

   b. Please provide all documents relating to enrollment in the PCIP.

   c. Please provide all documents of communications from any HHS personnel relating to enrollment in the PCIP.

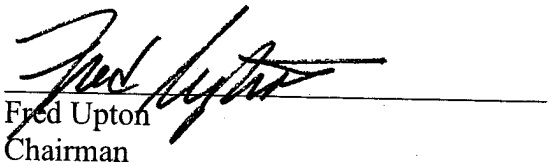
   d. Please provide all documents relating to the methodology for calculating premiums per member per month.

   e. Please provide all documents relating to the actual premiums per member per month.

5. Please provide all documents of communications from any HHS personnel relating to the implementation of the PCIP or the status of the PCIP.

Please provide the information within two weeks of the date of this letter. An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions regarding this request, please contact Sean Hayes with the Committee staff at (202) 225-2927.

Sincerely,



Fred Upton
Chairman

Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations

cc: The Honorable Henry A. Waxman
Ranking Member

The Honorable Diana DeGette
Ranking Member
Subcommittee on Oversight and Investigations

Attachment

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.

4. Each document should be produced in a form that may be copied by standard copying machines.

5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.

6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.

8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.

9. The Committee requests electronic documents in addition to paper productions when possible. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory.cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the

Committee, identified in a privilege log provided to the Committee, as described in (15) above, or identified as provided in (10) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States [name of department or agency of addressee] (the "[Entity]") and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the [Entity]; and includes any other person(s) defined in the document request letter.

For private recipients:

"You" or "your" means and refers to you as a natural person and the [non-governmental entity] ("[Entity]") and any of its subsidiaries, affiliates, divisions, departments, officers, directors, employees, attorneys, agents, advisors, consultants, or any other persons acting on behalf or under the control or direction of [Entity].]