



# THE COMMITTEE ON ENERGY AND COMMERCE

## MEMORANDUM

December 11, 2012

To: Members, Subcommittee on Health

From: Committee Majority Staff

Re: December 13, 2012, Hearing:  
“State of Uncertainty: Implementation of PPACA’s Exchanges and Medicaid Expansion”

On Thursday, December 13, 2012, at 10:00 a.m., the Subcommittee on Health will hold a hearing in 2322 Rayburn House Office Building to examine the “State of Uncertainty: Implementation of PPACA’s Exchanges and Medicaid Expansion.”

The focus of this hearing is a review of the status of Administration rules implementing PPACA’s entitlements. With less than 13 months remaining until full implementation, the Committee will hear from State representatives and key officials from the Administration regarding the critical questions that remain unanswered nearly 1,000 days since enactment of the health care law.

### I. Witnesses

Mr. Gary Cohen  
Director  
Center for Consumer Information and Insurance Oversight (CCIIO)  
Centers for Medicare and Medicaid Services (CMS)  
U.S. Department of Health and Human Services

Ms. Cindy Mann  
Deputy Administrator and Director  
Center for Medicaid and CHIP Services  
Centers for Medicare and Medicaid Services (CMS)  
U.S. Department of Health and Human Services

Mr. Bruce D. Greenstein  
Secretary  
Department of Health and Hospitals  
State of Louisiana

Mr. Dennis G. Smith  
Secretary  
Department of Health Services  
State of Wisconsin

Mr. Gary D. Alexander  
Secretary  
Department of Public Welfare  
Commonwealth of Pennsylvania

Joshua M. Sharfstein, M.D.  
Office of Secretary  
Department of Health and Mental Hygiene  
State of Maryland

Andrew Allison, Ph.D.  
Director  
Division of Medical Services  
Department of Human Services  
State of Arkansas

## II. Discussion

The Patient Protection and Affordable Care Act (PPACA) provides federally-financed health insurance coverage at a cost of nearly \$1.7 trillion (FY2013-FY2022)<sup>i</sup> through two major sources: a new subsidy program for the purchase of federally-approved coverage through heavily regulated exchanges and a dramatic expansion of the Medicaid program. While PPACA and its companion statute (the Health Care and Education Reconciliation Act) were signed into law in March 2010, the Administration has failed to answer significant questions from States related to the implementation and operation of the law.

On July 2, 2012, the National Governors Association (NGA) sent Health and Human Services (HHS) Secretary Kathleen Sebelius a detailed letter raising concerns and questions from the bipartisan group of governors in light of the Supreme Court ruling striking down the PPACA mandate on States to expand their respective Medicaid programs.<sup>ii</sup> In that letter, the governors wrote: “Our nation’s governors are now grappling with new questions related to the Medicaid expansion, and clear guidance from HHS would help to inform decisions around what is best for each state.” On July 3, the National Association of Medicaid Directors sent a similar letter to the Centers for Medicare and Medicaid Services (CMS).<sup>iii</sup> On July 10, the Republican Governors Association (RGA) sent a letter to President Obama outlining basic operational and implementation questions related to PPACA.<sup>iv</sup> A follow-up letter was sent to Secretary Sebelius on July 23 after CMS failed to provide a substantive response to the RGA’s 30 specific questions related to implementation.<sup>v</sup>

These letters raise just a fraction of the policy and process issues that remain open. Unanswered questions include:

- What benefits must be included in qualified health plans under rules dictating “essential” health benefits?

- When will HHS reveal the operational details of the federal exchange?
- Has HHS accounted for the subsidy cliff included in PPACA that dramatically increases an individual's and family's exposure to the law's premium increases?
- Has HHS considered the potential disruption to insurance markets due to the details of the law's government-run plan administered by the Office of Personnel Management?
- Will States have the ability to opt in or out of an exchange management on an ongoing basis given the lack of information related to the operation and cost of these exchanges?
- Will the Administration again change deadlines related to implementation of State exchanges given the lack of information provided by the Administration?
- Will States that expand Medicaid coverage up to a level below 133 percent of the Federal poverty limit (FPL), for example up to 100 percent FPL, still receive the enhanced Federal medical assistance percentage (FMAP) available for "newly covered" populations?
- Will States be allowed to phase in Medicaid coverage up to 133 percent of FPL in years after 2014 and still receive the enhanced FMAP?
- If a State opts not to pursue Medicaid expansion as written in the PPACA, what other Medicaid provisions of PPACA would apply to their State programs? Specifically, do financial penalties associated with the PPACA Maintenance of Effort provisions still stand?
- What options and Federal assistance are available for States that decide not to pursue Medicaid expansion as written in the PPACA?
- What additional flexibilities are available to States that may be considering an expansion but conclude the financial sustainability of such a policy requires greater State autonomy in managing their Medicaid programs?
- Regarding the two-year increase in Medicaid reimbursement for primary care codes, are States expected to maintain the additional billions in spending after 2014?

On August 20, 2012, Energy and Commerce Committee Chairman Fred Upton and Health Subcommittee Chairman Joe Pitts requested an update regarding the Administration's failure to respond to specific questions from States.<sup>vi</sup> On October 4, 2012, a similar letter was sent to Secretary Sebelius.<sup>vii</sup> While informal guidance in the form of "Frequently Asked Questions" has been released, most of the questions from states related to implementation remain unanswered or unresolved. With less than 13 months remaining until the full implementation of PPACA, States are left to seek guidance through the Administration's speeches and press reports.

### **III. Issues**

In addition to the operational questions raised in the letters, Committee members have continually raised concerns about health care premium spikes embedded in the law, disruptions and loss of employer-provided health coverage, and effects on the Federal and State budgets due to creation and expansion of entitlement programs. This hearing will provide an opportunity for the Administration to address these issues and hear perspective of State officials responsible for managing the consequences of PPACA.

### **IV. Staff Contacts**

For further information or regarding questions about this hearing, please contact Ryan Long, Paul Edattel or Monica Popp at (202) 225-2927.

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<sup>i</sup> [Estimates for the Insurance Coverage Provisions of the Affordable Care Act Updated for the Recent Supreme Court Decision](#). Congressional Budget Office (July 2012).

<sup>ii</sup> [Letter to HHS Secretary Kathleen Sebelius from Dan Crippen re the Affordable Care Act's Medicaid Expansion](#) (July 2, 2012).

<sup>iii</sup> [Letter to CMS from NAMD re Medicaid Expansion](#) (July 3, 2012).

<sup>iv</sup> [Letter to President Barack Obama from Governor Bob McDonnell re PPACA](#) (July 10, 2012).

<sup>v</sup> [Letter to HHS Secretary Kathleen Sebelius from Governor Bob McDonnell re PPACA](#) (July 23, 2012).

<sup>vi</sup> [Letter to CMS Administrator Marilyn Tavenner from Health Subcommittee Chairman Joe Pitts re PPACA](#) (August 20, 2012).

<sup>vii</sup> [Letter to the Honorable Kathleen Sebelius from Chairman Fred Upton and Health Subcommittee Chairman Joe Pitts](#) (October 4, 2012).