

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

August 9, 2012

Ms. Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Acting Administrator Tavenner:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is continuing its examination of the effects of the Patient Protection and Affordable Care Act (PPACA) on the Medicare Advantage (MA) program.

On March 29, 2012, the Committee sent a letter to the Centers for Medicare and Medicaid Services (CMS) seeking information on the Medicare Advantage Quality Bonus Payment (QBP) demonstration program. The Medicare Advantage program is an important option for seniors that allows for more covered benefits and lower out-of-pocket costs than traditional fee-for-service Medicare. We are therefore concerned about the short- and long-term implications of the QBP and the broader cuts to the program enacted through PPACA. The Committee continues to be concerned that this demonstration program is merely masking the looming Medicare Advantage cuts, and that the program is in serious jeopardy because of the magnitude of PPACA's cuts which the government's own actuary estimates will result in the loss of 50 percent of the enrollment in Medicare Advantage.

In response to the Committee's March 29, 2012, request letter, CMS produced documents on May 18, 2012, concerning the QBP demonstration program and the use of section 402 authority. The production lacked documentation of meetings and/or policy development related to the genesis and development of the QBP demonstration program. Additional information is needed for the Committee to have sufficient facts to do appropriate oversight on the Administration's actions and rationale related to the QBP demonstration program. For example, CMS produced a document dated November 2, 2010, for a meeting to be held on November 3, 2010, in which the Medicare Advantage Quality Bonus Payment Waiver demonstration was a listed subject. No notes of this meeting were produced to the Committee. Given the significance of this over \$8 billion "demonstration" program, it strains credulity that the small volume of e-mails produced by CMS, mostly ministerial in nature, would represent a fully responsive production. To ensure a comprehensive understanding of the facts, the Committee needs to

reiterate and broaden its request for certain records to determine the genesis of this program -- how and why this program was developed, the Administration's expectations surrounding the performance of the QBP demonstration program, and the Administration's expectations of the impact of the QBP demonstration program on Medicare Advantage enrollees and program operations after 2012.

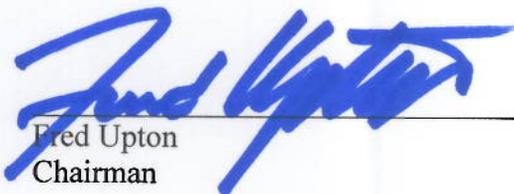
In addition, since the Committee's March 29, 2012, request letter to CMS, the Government Accountability Office (GAO) has issued a report raising serious concerns about the legality and implementation of the Medicare Advantage QBP demonstration program and the use of section 402 authority with respect to this program.

To ensure a full understanding of the facts and in light of concerns raised by GAO, please provide the following by August 23, 2012:

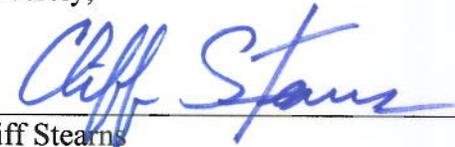
1. All documents created between January 1, 2010, and the date of this letter relating to any meeting in which the listed subject of the meeting included the Medicare Advantage QBP demonstration program or the QBP demonstration concept.
2. All documents, including, but not limited to e-mails (including e-mails to other Administration officials and agencies), created between January 1, 2010, and the date of this letter in the possession of the following CMS personnel relating to the QBP demonstration concept and/or QBP demonstration program: Don Berwick, Marilyn Tavenner, Jonathan Blum, Timothy Hill, Cynthia Tudor, Tracy McCutcheon, Jerry Mulcahy, Sean Creighton, Cheri Rice, and Jacquelyn Y. White.
3. All documents created between January 1, 2010, and the date of this letter containing or relating to any communications about the QBP demonstration program or the QBP demonstration concept between any person at CMS and any individuals or entities outside the Department of Health and Human Services (HHS), including trade associations such as AARP and America's Health Insurance Plans (AHIP) or individual Medicare Advantage plans and insurance companies.

Attached to this letter are instructions for complying with this document request. Please contact Alan Slobodin or Julie Goon with the Committee staff at (202) 225-2927 to arrange a discussion or a meeting as soon as possible responding to this request.

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