

ONE HUNDRED THIRTEENTH 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

April 3, 2014

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

Dear Administrator Tavenner:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is examining certain actions taken, and statements made, by the Centers for Medicare & Medicaid Services (CMS) related to the Part D provisions of the CMS rule published in the Federal Register on January 10, 2014 (hereinafter referred to as the “Part D rule”), which, if finalized, would have fundamentally altered the Medicare prescription drug program. Due to widespread concerns raised about several of the key changes proposed, on March 10, 2014, CMS announced that it would “not plan to finalize these proposals at this time,” and that the agency would “engage in further stakeholder input before advancing some or all of the changes in these areas in future years.”¹

As confirmed by nonpartisan analysis, the proposal threatened to eliminate seniors’ plan and treatment choices while raising costs for millions of Medicare beneficiaries and taxpayers.² Therefore, we applaud the agency’s decision to heed the concerns raised by dozens of lawmakers across the political spectrum, as well more than 350 groups representing patients, industry, and other stakeholders.

However, we remain deeply concerned with your statement about pursuing some or all of these changes in the future and the harmful impact on seniors who depend on the Part D prescription drug benefit. Given the agency’s failure to consider core concerns about the legal basis, policy rationale, and cost estimates CMS cited when proposing these policy changes, it would be unacceptable for the Administration to move forward with these changes, including directly or indirectly codifying such changes as part of the 2015 call letter.

¹ Letter to Chairman Upton from CMS Administrator Marilyn Tavenner re Part C and D rule (March 10, 2014)

² *Survey Analysis of January 2014 CMS Medicare Part D Rule*. Milliman (Feb. 2014); *7.4M Medicare Beneficiaries Could be Affected by Proposed Meaningful Differences Policy*. Avalere (Feb. 12, 2014); *Percentage of Medicare Beneficiaries at Risk of Losing Part D Plan*. American Action Forum (Feb. 18, 2014)

Statements and reassurances from the Administration related to the proposed rule highlight the need for further deliberation and appropriate scrutiny. We specifically note that on February 26, 2014, CMS Principal Deputy Administrator Jonathan Blum testified before the Committee that he was not aware that the Office of the Inspector General for the Department of Health and Human Services (OIG) and others had publicly stated that CMS does not have the legal authority to interfere in the negotiations between drug plans and pharmacies. As members who served in Congress when Part D was created, we can assure you it was the intent of Congress to ensure that your agency did not interfere in these negotiations.

Additionally, we are concerned that CMS published its Part D rule without a full and robust cost analysis of the rule's major provisions from the Office of the Actuary.

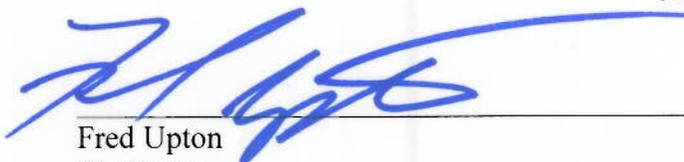
Since your March 10, 2014, letter to lawmakers suggests CMS may proceed with elements of the proposed changes to the Part D program at some future date, to assist the Committee in better understanding the agency's legal, policy, and cost analyses conducted to date, please provide the following information and documents no later than April 17, 2014:

1. A list of all provisions in the Part D rule that the agency plans to finalize through a final rule or the agency's 2015 call letter.
2. A list of all provisions in the Part D rule that the agency does not plan to finalize through a final rule or the agency's 2015 call letter.
3. All documents and communications, including, but not limited to, memoranda or analyses prepared for or by CMS staff, referring or relating to the estimated costs and/or benefits of the Part D rule.
4. A detailed breakdown of which sections and provisions of the Part D rule were thoroughly analyzed by the Office of the Actuary along with all documents and communications referring or relating to the Actuary's estimates of costs, savings, and/or benefits of the Part D rule.
5. All documents and communications prepared for or by CMS staff referring or relating to the legal basis for the Part D rule, including, but not limited to, changes in policy referring or relating to the non-interference clause.
6. All documents and communications that formed the basis for Mr. Blum's testimony that a significant number of seniors in the program are unhappy with their Part D plans and requested the changes CMS outlined in the Part D rule, including any data comparing the volume of such complaints to the Medicare Part A and Part B programs.
7. All comments to the agency's 2015 call letter related to proposals to directly or indirectly implement portions of the Part D rule.

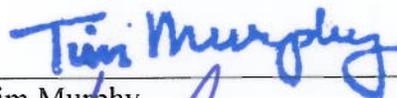
8. All documents and communications related to the agency's 2015 call letter as they relate directly or indirectly to the Part D rule.
9. All documents and communications with individuals outside the agency relating to the proposed changes to protected classes and preferred pharmacy networks contained in the Part D rule.

Instructions for responding to the Committee's document request are included as an attachment to this letter. Thank you for your prompt attention to this matter. If you have questions or wish to discuss your responses or production, please contact Sean Hayes, Robert Horne, or Paul Edattel with the Committee staff at (202) 225-2927.

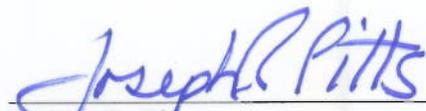
Sincerely,



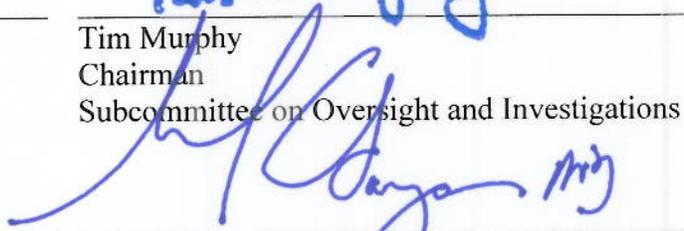
Fred Upton
Chairman



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations



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Subcommittee on Health



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Vice Chairman
Subcommittee on Oversight and investigations



Joe Barton
Chairman Emeritus



Marsha Blackburn
Vice Chairman

cc: The Honorable Henry Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

The Honorable Frank Pallone, Jr., Ranking Member
Subcommittee on Health