

ONE HUNDRED FOURTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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January 20, 2016

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Mr. Dodaro,

On December 16, 2015, your office announced the appointment of seven new members to the Medicaid and CHIP Payment and Access Commission (MACPAC). You also named the Commission's Chair. After carefully reviewing those appointments, we write to you today to better understand the Government Accountability Office's (GAO) process and methodology for evaluating candidates and making appointments to MACPAC.

As you know, MACPAC was created nearly six years ago for the purpose of reviewing Medicaid and CHIP access and payment policies and to advise Congress on issues affecting Medicaid and CHIP. Under the statute, MACPAC has 17 commissioners—including a chairman and vice chairman designated by GAO. Today MACPAC has about 30 full time staff with an annual budget of about \$8 million.

Medicaid serves as a vital safety net program serving our nation's most vulnerable populations, including children, the elderly and the disabled. Today, Medicaid is the nation's largest health insurance program, covering more than 71 million Americans, with up to 83 million who may be covered at any one point in a given year. During Fiscal Year 2016, the federal share of Medicaid outlays is expected to be approximately \$344.4 billion—which is more general tax revenue than is spent on the Medicare program.

Medicaid accounts for more than 15 percent of all health care spending in the United States and along with the Children's Health Insurance Program (CHIP), pays for roughly half of all births in the United States each year. Representing roughly one in every four dollars in a state's average budget, Medicaid is the largest payer for long-term care, and pays for about a quarter of all mental health and substance abuse treatment spending.

As a legislative branch organization, GAO's statutory mission is to work to support the needs of Congress. But in a larger sense, both Congress and GAO work for the American people to steward their tax dollars and see that government is properly accountable, transparent, and efficient. With federal Medicaid outlays alone projected to reach \$576 billion and cover more than 98 million people in 2025, Congress can certainly benefit from careful analytical work related to how to strengthen and sustain the Medicaid program. MACPAC is in a position in which, if more independent and effective, could provide such analysis and advice to Congress much as MedPAC, the Medicare Payment Advisory Commission, has done for Medicare. That is why I/we seek to better understand GAO's process and methodology for evaluating candidates and making appointments to MACPAC. Toward that end, we respectfully request a response in writing to several questions outlined below.

1. Section 1900 of the Social Security Act requires that the Comptroller General of the United States "establish a system for public disclosure by members of MACPAC of financial and other potential conflicts of interest relating to such members." Please describe what steps GAO has taken to comply with this requirement.
2. It is our understanding that GAO currently views it as not preferable for a MACPAC commissioner to be a current Medicaid director. However, Section 1900 of the Social Security Act explicitly notes that the membership of the MACPAC "shall also include... current or former representatives of State agencies responsible for administering Medicaid, and current or former representatives of State agencies responsible for administering CHIP." While it is entirely appropriate and desirable that MACPAC achieve balance in thinking about the program in total:
  - i. Given this clear statutory language, what is GAO's rationale for creating criteria that are narrower and in contradiction to the statute?
  - ii. In the interest of being transparent and accountable, how does GAO disseminate and explain any such considerations to Congress, commissioner candidates, and other stakeholders?
  - iii. If GAO's concern is related to a perceived or potential conflict of interest, could this concern simply be addressed through a recusal process?
3. Does GAO examine or evaluate the degree to which candidates have participated in *advocacy or political activity* that could result in a perceived or real conflict of interest and thus compromise the independence and integrity of MACPAC recommendations? If not, why not? For example, the Congressional Budget Office (CBO) considers whether members and potential members of its panels of advisers are engaged in substantial political activity or have significant financial interests that might influence, or that might reasonably appear to influence, their perspective on the issues about which CBO is seeking their advice.<sup>1</sup>

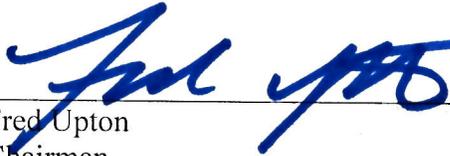
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<sup>1</sup> <https://www.cbo.gov/about/objectivity>

4. Does GAO examine or evaluate the degree to which candidates it may consider for appointment as a commissioner, chairman, or vice chairman may be involved formally or informally in legal cases or other legal work which is under adjudication before a court, administrative law judge, or other judicial entities related to state or federal health care programs? For example, it seems to be a notable potential or actual conflict of interest that the newly-appointed Chair of MACPAC has joined an amicus brief in support of the Administration against the U.S. House of Representatives. How can the Chair's MACPAC work be viewed as reasonably independent, objective, or credible by members when she has voluntarily chosen to become party to a legal case against one of the branches of the federal government she is supposed to advise in her role at MACPAC?
5. Given that the statute requires GAO to designate a chairman and vice chairman of the Commission but does not specify conditions for making these appointments, what guidelines or criteria does GAO use in determining which commissioners should serve in these roles?
6. Other than merely fulfilling the statutory requirements related to Commissioners' required expertise, how does GAO define success in making appointments to MACPAC? What other factors, expertise, protocols, or considerations might GAO consider with respect to making MACPAC appointments?

We appreciate the role GAO plays in providing Congress with nonpartisan, unbiased information through its studies and analysis related to Medicaid and other federal programs. Moving forward, it is our hope that MACPAC will similarly provide nonpartisan and objective information – which is critical to address the issues we have identified. Given the importance of this issue, we respectfully request you reply in writing within 30 days of the receipt of this letter. If you have any questions, please contact Josh Trent of our staff at 202-225-2927.

Sincerely,



Fred Upton  
Chairman  
Committee on Energy and Commerce



Joseph R. Pitts  
Chairman  
Health Subcommittee  
Committee on Energy and Commerce