

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

COMMITTEE ON ENERGY AND COMMERCE

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January 20, 2016

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Dear MACPAC Leadership,

On December 16, 2015, the Comptroller General announced the appointment of seven new members and a new chair to the Medicaid and CHIP Payment and Access Commission (MACPAC). After careful review of those appointments and of the existing commissioners, we write to you today out of concern that MACPAC does not currently have in place sufficient conflict of interest policies. While MACPAC was created nearly six years ago for the purpose of advising Congress on issues affecting Medicaid and CHIP, without a balance of commissioners and a robust conflict of interest policy, we believe MACPAC's recommendations will lack a needed level of independence and integrity.

To be clear, we believe Congress can certainly benefit from careful analytical work related to how to strengthen and sustain the Medicaid program. 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.

Given that Medicaid is projected to cover more than 98 million people and federal Medicaid outlays alone expected to reach \$576 billion in 2025, we think Congress will need to make targeted changes in the coming years to strengthen and sustain the program. Objective, thoughtful, and independent analysis will be crucial to help Congress make such deliberative improvements to the program.

While Congress receives analysis from a wide variety of parties and sources, given MACPAC's unique statutory mission, we believe corrective actions are needed for MACPAC to fulfil its goal of providing objective, independent analysis that is useful for Congress. Ultimately, both Congress and MACPAC work for the American people—to steward their tax dollars and see that government is properly accountable, transparent, and efficient. Unless corrective actions are taken, the objectivity of MACPAC's recommendations will remain in question.

We are unaware of MACPAC having any required disclosure or recusal process related to a commissioner's *advocacy or political activity*. Some congressional advisory entities have such a disclosure and recusal process. 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.¹

Given that substantial advocacy or political activities by commissioners may appear to compromise the independence and integrity of MACPAC recommendations, what requirements or procedures does MACPAC have in place for the disclosure of commissioners' advocacy and political activity and responsibility to recuse themselves when a conflict or appearance of a conflict exists? If no such requirements are currently in place, will MACPAC establish a process in a timely manner?

In addition to political advocacy, we are unaware of any disclosure or recusal process related to a commissioner's involvement, 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. Accordingly, we find it to be a significant conflict of interest that the newly-appointed Chair of MACPAC has joined an amicus brief in

¹ https://www.cbo.gov/about/objectivity/advisers_policy

support of the Administration against the U.S. House of Representatives. Unfortunately, we do not believe that the Chair's work on MACPAC can be viewed as reasonably independent, objective, or credible when she voluntarily chose to become party to a legal case against one of the branches of the federal government she is supposed to advise.

Given this and other similar activities appear to compromise the independence and integrity of MACPAC's process for recommendations, what policies and procedures does MACPAC have in place to avoid such conflicts among its commissioners regarding legal cases related to state or federal health care programs? In the interest of serving the broader good of MACPAC's work, will the Chair remove her name from the amicus brief in question?

We are unaware of any disclosure or recusal process MACPAC has in place which prevents its employees from having actual financial conflicts of interest and or avoiding potential or perceived conflict of interest related to employees' political activities. Some congressional advisory entities have such a disclosure and recusal process. For example, CBO enforces strict rules to prevent its employees from having financial conflicts of interest and to limit its employees' political activities.²

Given financial, advocacy, or political activities could appear in some cases to erode the independence and integrity of MACPAC work, what requirements and procedures does MACPAC have in place to avoid such conflicts among its employees?

In conclusion, we trust you share our goal seeking to ensure MACPAC provides Congress and others with independent, objective, meaningful, and actionable information to improve the program. We believe Congress benefits from objective, thoughtful, data-driven analysis to help make deliberative improvements to the Medicaid program. Accordingly, our concerns regarding the current oversight of MACPAC demands that appropriate steps are taken in a timely manner to resolve these issues.

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
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² https://www.cbo.gov/about/objectivity/employee_policy