

Opening Statement of the Honorable Tim Murphy
Chairman, Subcommittee on Oversight and Investigations
Hearing on “Unlawful Reinsurance Payments: CMS Diverting \$3.5 Billion from Taxpayers
to Pay Insurance Companies.”
April 15, 2016

(As Prepared for Delivery)

We are here today to examine the “transitional reinsurance program” established under the Patient Protection and Affordable Care Act. The Administration has inexplicably changed its position on a major component of this program—specifically, how reinsurance payments are allocated.

Despite issuing two final rules that allocated a portion of the reinsurance payments to the U.S. Treasury, CMS changed its position to prioritize payments to insurers. Essentially, CMS ruled that the Treasury doesn’t get any money until the insurers get paid.

CMS’ latest interpretation contradicts the plain language of the law. This is just the latest in a long line of examples of the Administration breaking its own signature law in an attempt to prop it up.

The reinsurance program was created to provide financial assistance to insurance companies who offered plans through ObamaCare. The program incentivizes insurance companies to continue selling plans through healthcare.gov and state exchanges, because it compensates them for enrolling high risk individuals. Final payments for this three year program will end in 2017.

For each enrollee, insurance companies contribute a set dollar amount to the program, and then the funds collected are distributed to insurers who enroll the highest risk individuals. Built into this program was a deficit reduction measure—a proportion of each individual contribution is allocated to the Treasury. The statute estimates that approximately \$5 billion would be designated to the Treasury through this program—with \$20 billion going to insurers.

On March 11, 2014, CMS issued a rule that spelled out how to divide the fund between Treasury, insurance companies and administrative costs. CMS wrote that Treasury would receive about 25% of the fund in 2015. But while insurers have received billions of dollars from the program, the Treasury has still received nothing.

This is because CMS changed its mind 10 days later after issuing its final March 11, 2014 rule. 10 days later, CMS published a proposed rule, completely reversing its policy position. In the new rule, CMS prioritized payments to insurers over payments to the Treasury. In short, Treasury gets nothing until insurers are paid in full. CMS finalized this rule in May 2014.

Why did CMS dramatically reverse its own policy to favor insurance companies? We look forward to getting a straight answer from CMS today. We do know there is a cozy relationship between insurance companies and this Administration. And the Administration has worked to incentivize insurers to stick with the exchanges. In fact, we know that insurers have even emailed top White House officials begging for more taxpayer money to lower premiums and keep insurers selling Obamacare plans.

I expect Mr. Slavitt will attempt to justify why CMS changed its interpretation of the law. He may argue that the statute is ambiguous or silent about what to do if the fund doesn’t collect the full amount. However, the statute clearly states that the portion of the contribution intended for the Treasury “shall be deposited into the general fund of the Treasury of the United States and may not be used for the [reinsurance] program.” This means that each contribution includes a portion intended just for the Treasury—and CMS cannot divert those funds to pay insurance companies instead.

The non-partisan Congressional Research Service agrees with us—the statute is not ambiguous or silent on this issue. CRS analyzed the statute, and CMS’ interpretations. CRS found that “the statute

unambiguously states that 'each issuer's contribution' contain an amount that reflect 'its proportionate share' of the U.S. Treasury contribution, and that these amounts should be deposited in the General Fund of the U.S. Treasury." Mr. Slavitt may also argue that neither the law nor CMS contemplated what to do if the reinsurance fund came up short of the target amounts. The law states, however, that a portion of what is collected must go to the Treasury.

Moreover, CMS did contemplate what would happen if the fund did not collect enough money. In its final rule issued March 11, 2014, CMS predicted there could be a variance between the statutory benchmark and the actual amount received through the program. When asked about the legal basis for diverting these funds at a February 24, 2016 hearing before our Subcommittee on Health, Secretary Burwell provided no legal justification. The Secretary emphasized that this program is temporary, implying the Committee's concerns are unimportant because the program will be over in 2017.

I disagree. I think this issue holds the utmost importance. CMS' actions exemplify a problem that goes beyond just this one ObamaCare program. When the executive branch decides to reprioritize the budget and divert money intended for the Treasury, it is a concern for Congress. When CMS officials decide to ignore a clear mandate from Congress, it is an affront to this legislative body. The Administration cannot re-write its own law to make it more convenient for special interests. This sets a dangerous precedent and is an affront to the separation of powers.

Moreover, this program funnels money to insurers—now with money intended for the Treasury—in an attempt to prop up ObamaCare. What will happen when this program runs out, and there is no mechanism to underwrite high risk individuals who sign up on the exchanges? Will more insurers drop out? Will premiums rise even higher? The Administration' actions appear to be trying to delay the inevitable—the collapse of ObamaCare.

I thank Mr. Slavitt for being here today and hope that he will pledge to return to CMS' first, lawful interpretation of the reinsurance program —and allocate funds to Treasury as required by the law. I now recognize the ranking member of the subcommittee, Ms. DeGette of Colorado for five minutes.

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