

**Opening Statement of the Honorable Fred Upton
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)

This hearing continues the subcommittee’s thoughtful and necessary oversight of the president’s health care law.

Today, the 3.5 billion dollar question is why CMS is now diverting taxpayer dollars to insurance companies without any legal authority to do so. The health law statute plainly states that a portion of the contributions to the reinsurance program must be given to the U.S. Treasury. Still, CMS has chosen to violate the law by prioritizing reinsurance contributions to health insurers rather than allocating the required portion to the U.S. Treasury.

Initially, CMS followed the letter of the law. According to its final rule issued March 11, 2014, and similar to its rule the prior year, CMS planned to allocate contributions to the reinsurance program between the health insurers, the U.S. Treasury, and administrative costs. Less than two weeks later, however, on March 21, 2014, CMS switched gears and issued a different proposed rule completely reversing CMS’ prior position. Rather than allocating a portion of the contributions to the Treasury as dictated by law, CMS instead prioritized reinsurance contributions to health insurers and finalized this rule two months later. Why the sudden reversal to redirect billions away from taxpayers?

A legal memorandum released earlier this year by the non-partisan Congressional Research Service found that the statute does not permit CMS to prioritize reinsurance payments to insurers. In fact, CRS found that CMS’ actions appear to contradict the plain language of the law.

We hope Centers for Medicare and Medicaid Services’ Acting Administrator Andy Slavitt has come with answers today as we look to understand the ‘who, what, when, where, and why’ of CMS’ decision. The American public deserves answers.

I would note that on this date 104 years ago, the Titanic sank after striking an iceberg. The president’s health law is taking on water, and the administration is doing everything in its power, including violating the law, to keep it afloat.

Regardless of one’s view of the president’s health law, the law and its implementation demand vigilant oversight. Congress cannot stand silent when its laws are not being faithfully executed. Further, as we continue to see today, billions of taxpayer dollars are at stake.

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