

ONE HUNDRED FOURTEENTH 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

May 16, 2016

The Honorable Sylvia Mathews Burwell  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Mr. Andy Slavitt  
Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Secretary Burwell and Acting Administrator Slavitt:

On March 23, 2016, the Committee on Energy and Commerce sent you a letter requesting all documents and communications referring or relating to the Administration's decision to prioritize payments to insurance companies under the Transitional Reinsurance Program, established under Section 1341 of the Patient Protection and Affordable Care Act.<sup>1</sup> To date the Department of Health and Human Services (HHS) and the Centers for Medicare and Medicaid Services (CMS) have only produced to the Committee publicly available documents and one additional document summarizing a final CMS rule. Further, HHS and CMS have refused to answer when the Committee will receive future productions.

The Administration's decision to divert payments intended for the U.S. Treasury to insurance companies contradicts past rules issued by the Administration and the clear intent of Congress. As part of the Committee's oversight into the Administration's decision, the Subcommittee on Oversight and Investigations held a hearing on April 15, 2016 entitled, "Unlawful Reinsurance Payments: CMS Diverting \$3.5 Billion from Taxpayers to Pay Insurance Companies."

---

<sup>1</sup> Letter from Fred Upton, Chairman, H. Comm. on Energy & Commerce, et al., to Sylvia Mathews Burwell, Sec'y, U.S. Dept. of Health & Human Serv. and Andy Slavitt, Acting Admin., Centers for Medicare & Medicaid Serv. (March 23, 2016).

At the hearing, Acting Administrator Slavitt testified that his agency is working to produce documents pursuant to the March 23 request to the Committee. In fact, when Mr. Slavitt was asked when the Committee can expect those documents, Mr. Slavitt said, “I think quite soon.”<sup>2</sup> When pressed further on the status of the document production, Mr. Slavitt committed to Chairman Murphy that CMS would provide these documents in a timely manner. Mr. Slavitt went on to say, “[w]e are working hard on it. We’ll follow up with your staff. As you know we have [sic] schedule on some other documents we’re working for you, so we can just put that right on the schedule and make sure we get you [sic] dates certain.”<sup>3</sup>

Since the hearing, HHS and CMS have only produced one document: a six-page memorandum summarizing a CMS final rule, which contains one short paragraph on the reinsurance program. Committee staff has contacted HHS and CMS staff several times requesting information about the status of the document production. HHS and CMS staff have been largely unresponsive, refusing to provide updates regarding the document production, including a schedule of when the Committee can expect to receive upcoming productions or search parameters. HHS’ and CMS’ lack of transparency about the status of the responses to the Committee’s document requests is unacceptable.

The Committee reiterates its March 23, 2016 request. Please produce the documents by May 30, 2016. If HHS and CMS fail to produce the documents, the Committee will have no choice but to consider the use of compulsory process to obtain them.

If you have any questions regarding this request, please contact Committee staff at (202) 225-2927. Thank you for your prompt attention to this request.

Sincerely,



---

Fred Upton  
Chairman



---

Joseph R. Pitts  
Chairman  
Subcommittee on Health



---

Tim Murphy  
Chairman  
Subcommittee on Oversight and Investigations

---

<sup>2</sup> H. Comm. on Energy & Commerce, Subcomm. on Oversight & Investigations, *Hearing on Unlawful Reinsurance Payments: CMS Diverting \$3.5 Billion from Taxpayers to Pay Insurance Companies*, 114th Cong. (April 15, 2016), available at: <http://docs.house.gov/meetings/IF/IF02/20160415/104790/HHRG-114-IF02-Transcript-20160415.pdf>.

<sup>3</sup> *Id.*

Letter to The Honorable Sylvia M. Burwell and Mr. Andy Slavitt  
Page 3

cc: The Honorable Frank Pallone, Ranking Member

The Honorable Gene Green, Ranking Member  
Subcommittee on Health

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

Attachment