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FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

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

October 4, 2016

Marilyn Tavenner
President and CEO
America's Health Insurance Plans
601 Pennsylvania Avenue, N.W.
South Building, Suite 500
Washington, DC 20004

Dear Ms. Tavenner:

Pursuant to Rule X of the House of Representatives, the Committee on Energy and Commerce is examining the Risk Corridors program established under Section 1342 of the Patient Protection and Affordable Care Act (PPACA). As part of this oversight, the Committee is seeking information from your organization, America's Health Insurance Plans.

The Risk Corridors program is a temporary, three-year program that transfers payments to protect insurers suffering significant financial losses. Congress passed and the President signed legislation that restricted the availability of federal funds for payments to insurers through this program.[1] The Centers for Medicaid and Medicare Services (CMS) also publicly announced its intent to make the program budget neutral, so that the total amount of payments would not exceed the amount insurers paid into the program.[2] For the 2014 benefit year, the first year of the program, CMS collected 12.6 percent of the requested amounts from insurers, and CMS paid out roughly $2.5 billion less than insurers expected to receive.[3]

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[1] P.L. 113-235 at § 227; P.L. 114-113 at § 225.

[2] Dep't of Health and Human Serv., Centers for Medicare & Medicaid Serv., Center for Consumer Information & Insurance Oversight, *Risk Corridors and Budget Neutrality,* (April 11, 2014), available at: https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/faq-risk-corridors-04-11-2014.pdf; *see also* Louise Radnofsky and Jennifer Corbett Dooren, *Explaining 'Risk Corridors,' The Next Obamacare Issue,* WALL STREET J., January 22, 2014, *available at*: http://blogs.wsj.com/washwire/2014/01/22/explaining-risk-corridors-the-next-obamacare-issue/.

[3] Dep't of Health and Human Serv., Centers for Medicare & Medicaid Serv., The Three Rs: An Overview, Oct. 1, 2015, *available at* https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-10-01.html.

The shortfall in Risk Corridors payments has motivated several health insurance companies to bring lawsuits against the Federal Government. While the Department of Justice and CMS currently argue in some of the actions that insurers' claims are not ripe for consideration because the three-year program is still ongoing, that argument will cease to have any validity on December 31, 2016. On September 9, 2016, CMS published a memorandum announcing its intention to make up for the shortfall in payments with collections from the 2015 and 2016 benefit years. In the same memo, however, CMS also took the unusual step of inviting the insurance companies to settle their claims.[4]

The Committee is concerned that, in connection with CMS's solicitation of settlement offers, the Administration may be considering using the permanent appropriation for judgments ("Judgment Fund") to pay any settlement agreements, even though Congress has acted – twice – to expressly prohibit the expenditure of taxpayer dollars on this program.

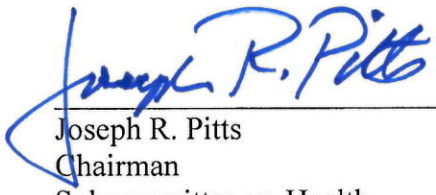
To assist the Committee in addressing these concerns, please provide a briefing to Committee staff no later than October 10, 2016. Please also provide (i) all documents and communications between employees of AHIP and employees of the Executive Branch, including the Executive Office of the President, referring or relating to the lawsuits or discussions of other actual or potential legal actions, claims, settlements, or resolution of shortfalls related to the Risk Corridors program, and (ii) all documents and communications among AHIP employees referencing any discussions with employees of the Executive Branch, including the Executive Office of the President, concerning potential settlement of claims or resolution of shortfalls under the Risk Corridors program, by October 17, 2016.

An attachment to this letter provides additional information on how to respond to the Committee's request. If you have any questions regarding this request, please contact Emily Felder or Adam Buckalew with the Committee staff at (202) 225-2927.

Sincerely,

Fred Upton
Chairman

Tim Murphy
Chairman
Subcommittee on Oversight and Investigations



Joseph R. Pitts
Chairman
Subcommittee on Health

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[4] Centers for Medicare and Medicaid Services (CMS). Risk Corridors Payments for 2015. September 9, 2016. Retrieved on September 14, 2016, from: https://www.cms.gov/CCIIO/Programs-and-Initiatives/Premium-Stabilization-Programs/Downloads/Risk-Corridors-for-2015-FINAL.PDF.

cc: The Honorable Frank Pallone, Jr., Ranking Member
Committee on Energy and Commerce

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

The Honorable Gene Green, Ranking Member
Subcommittee on Health