



THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

June 18, 2014

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Upton:

Thank you for your letter requesting information about the Department of Health and Human Services's (HHS) legal authority to make payments in connection with the risk corridors program. The temporary risk corridor provision in the Affordable Care Act is an important safety valve for consumers and insurers as millions of Americans transition to a new coverage in a brand new Marketplace. For consumers, the program will play an important role in mitigating premium increases in the early years as issuers gain more experience in setting their rates for this new program.

Section 1342 of the Affordable Care Act provides for a temporary risk corridors program from 2014 through 2016. The risk corridors program applies to qualified health plans (QHPs), both on and off the Marketplace, and certain substantially similar plans in the individual and small group markets. The temporary risk corridors program protects issuers of QHPs from uncertainty in rate setting from 2014 to 2016 by sharing in gains or losses resulting from inaccurate rate setting.

Modeled after a similar, permanent program established in the Medicare Modernization Act of 2003 for Medicare Part D, the temporary risk corridors program protects against uncertainty issuers face when estimating enrollment and costs resulting from the market reforms. The risk corridors program protects against uncertainty in rate-setting in the first three years of the Marketplace by creating a mechanism for sharing risk between the federal government and issuers of QHPs.

As established in statute, plans participating in the program with allowable costs that are at least three percent less than the plan's target amount will remit charges to HHS, while plans with allowable costs at least three percent higher than the plan's target amount will receive payments from HHS to offset a percentage of those losses. The risk corridors payment or charge amount will be calculated at the issuer level and then pro-rated based on the issuer's percentage of the market enrolled in QHPs, inside or outside the Marketplace, and plans that are substantially the same as a QHP.

In response to your questions regarding the legal analysis to make payments under the risk corridors program, enclosed please find HHS's response to the Government Accountability Office's request for information regarding budget authority available to operate the risk corridors program.

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We appreciate your interest in this issue and do not hesitate to contact me if you have any further thoughts or concerns. We are providing the same response to Senator Jeff Sessions, co-signer of your letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sylvia M. Burwell". The signature is written in a cursive style with a large initial "S".

Sylvia M. Burwell

Enclosure