

Congress of the United States
Washington, DC 20515

April 29, 2016

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

Dear Mr. Slavitt:

Recent regulations finalized by the Centers for Medicare and Medicaid Services (CMS) have the potential to reduce consumers' choice of health plans. In particular, the Administration's proposals to promote standardized benefits could ultimately harm consumers through fewer choices and less innovation. We are concerned CMS's policies will continue a pattern of allowing Washington bureaucrats to pick winners and losers by propping up plans that meet arbitrary requirements, instead of preserving choice and encouraging consumers to select plans that best meet their unique needs.

The Patient Protection and Affordable Care Act (ACA) created numerous mandates regarding benefits and limited cost-sharing and out-of-pocket spending. In addition, the law restricted its new premium tax credits by making them only available for qualified health plans (QHPs) sold on health insurance exchanges. As a result, the government is playing a much bigger role in private health insurance than ever before, and CMS's policies towards plans being sold—and promoted—on the exchange could have a major impact on plans sold in the health insurance market.

On December 2, 2015, the Administration proposed new rules for overseeing plans sold on the exchange, which included the introduction of new standards on network adequacy and standardized plan design options.¹ CMS envisions that issuers using these standardized options would offer the same cost-sharing structure (i.e. deductibles, out-of-pocket limits, co-pays, etc.).² CMS also envisions that these standardized plans “could be displayed on HealthCare.gov in a manner that makes it easier for consumers to find and identify them.”³

While CMS has stated that its finalized policy would “not restrict issuers' ability to offer non-standardized options,” there is no guarantee that CMS will not limit these

¹ Department of Health and Human Services, Proposed Rule, Notice of Benefit and Payment Parameters for 2017, 80 Fed. Reg. (Dec. 2015).

² *Id.*

³ *Id.*

options in the future.⁴ Some proponents of the policy have argued that this standardization should be mandatory.⁵ Additionally, in the proposed rule, CMS wrote that it “may consider limiting the number of plan options in future years, to further simplify the health plan shopping experience for consumers.”⁶

CMS is already responsible for certifying all QHPs sold on the HealthCare.gov platform; adding a second layer of certification is redundant and likely to be confusing to consumers. At best, it implies an endorsement of standardized plans over other plans sold on the exchange. At worst, it could force all plans sold on the exchange to meet these arbitrary requirements. This policy would likely stifle innovations in plan designs, limiting patient choice. For example, there are concerns that the standardized plan designs proposed by CMS would likely not be qualified as Health Savings Account (HSA)-compliant high deductible plans as the cost-sharing requirements would be “outside the requirements for HSA-qualified plans.”⁷ This would make it more difficult for individuals to obtain HSA-compliant plans through the exchange. Additionally, standardized plans set nationwide may not best meet the needs of consumers based on their geographic location or their own unique health care needs.

When selling the law to the American people, President Obama famously asserted that the law would not limit an individual’s choice of health coverage, stating “If you like your health care plan, you’ll be able to keep your health care plan, period.”⁸ The Administration also said that the law “will expand your choices, not eliminate them.”⁹ Contrary to this pledge, these actions appear to be reducing choice, competition, and innovation in health plans, which is essential to controlling costs and ensuring individuals have access to coverage that meets their individual needs. What’s worse is this shift appears to affirm what we have said since the health care law was first debated – the ACA is a one-size-fits-all top-down approach from Washington.

To assist the Committees, please provide the following information no later than May 20, 2016:

1. Describe the process used in the development of the proposed standardization benchmarks.
 - a. Were agencies outside CMS involved in the development of these benchmarks? If so, which agencies?
 - b. Were organizations outside the federal government involved in the development of these benchmarks? If so, which organizations?

⁴ Department of Health and Human Services, Notice of Benefit and Payment Parameters for 2017, 81 Fed. Reg. (Mar. 8, 2016).

⁵ *Id.*

⁶ Department of Health and Human Services, Proposed Rule, Notice of Benefit and Payment Parameters for 2017, 80 Fed. Reg. (Dec. 2015).

⁷ Roy J. Ramthun, Why is Obamacare Regulating Health Savings Accounts Out of Existence?, National Review (Apr. 5, 2016).


⁸ Politifact, Obama: ‘If you like your health care plan, you’ll be able to keep your health care plan.’

⁹ *Id.*


2. Has CMS coordinated with the Department of Treasury to identify areas where standardized options may conflict with other requirements, such as the requirements for HSA-compliant high deductible health plans?
3. How will CMS certify QHPs that meet the standardization requirements?
4. How will CMS notate and display standardized plans on the exchange?
5. Will CMS, in the future, consider conditioning QHP certification on meeting these standardization requirements?
6. Please provide all documents and communications between CMS and any other administrative agency regarding the development and/or the implementation of this policy.

Additionally, please make available appropriate staff to brief Committee staff on this issue before May 13, 2016. If you have any questions about this matter, please contact the House Committee on Ways and Means at (202) 225-9263 or the House Committee on Energy and Commerce at (202) 225-2927.


Sincerely,




Fred Upton
Chairman
Committee on Energy and Commerce



Kevin Brady
Chairman
Committee on Ways and Means




Joseph R. Pitts
Chairman
Committee on Energy and Commerce
Subcommittee on Health



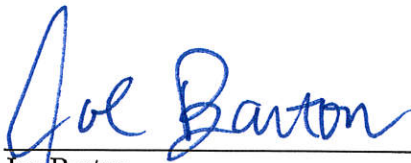
Pat Tiberi
Chairman
Committee on Ways and Means
Subcommittee on Health



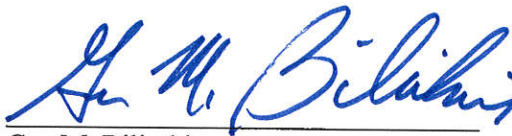
Tim Murphy
Chairman
Committee on Energy and Commerce
Subcommittee on Oversight
and Investigations



Peter Roskam
Chairman
Committee on Ways and Means
Subcommittee on Oversight



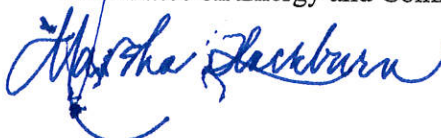
Joe Barton
Member
Committee on Energy and Commerce



Gus M. Bilirakis
Member
Committee on Energy and Commerce



Diane Black
Member
Committee on Ways and Means



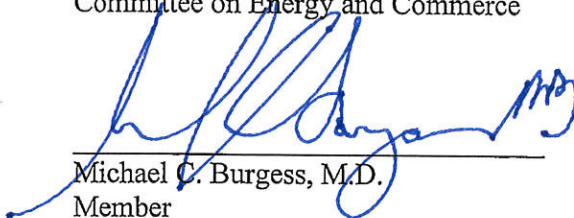
Marsha Blackburn
Member
Committee on Energy and Commerce



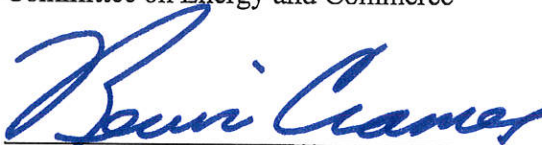
Susan Brooks
Member
Committee on Energy and Commerce



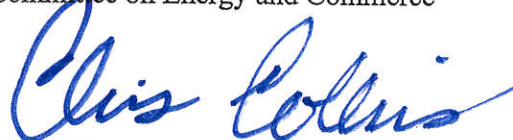
Larry Bucshon, M.D.
Member
Committee on Energy and Commerce



Michael C. Burgess, M.D.
Member
Committee on Energy and Commerce



Kevin Cramer
Member
Committee on Energy and Commerce



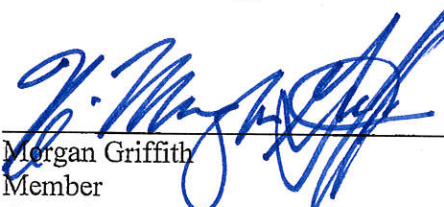
Chris Collins
Member
Committee on Energy and Commerce



Renee Ellmers
Member
Committee on Energy and Commerce



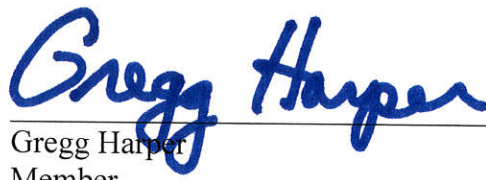
Bill Flores
Member
Committee on Energy and Commerce



Morgan Griffith
Member
Committee on Energy and Commerce



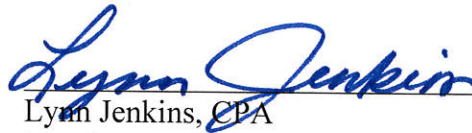
Brett Guthrie
Member
Committee on Energy and Commerce



Gregg Harper
Member
Committee on Energy and Commerce



Richard Hudson
Member
Committee on Energy and Commerce



Lynn Jenkins, CPA
Member
Committee on Ways and Means




Bill Johnson
Member
Committee on Energy and Commerce



Adam Kinzinger
Member
Committee on Energy and Commerce



Leonard Lance
Member
Committee on Energy and Commerce




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Member
Committee on Energy and Commerce



David McKinley
Member
Committee on Energy and Commerce



Markwayne Mullin
Member
Committee on Energy and Commerce



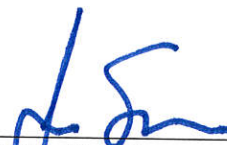
Devin Nunes
Member
Committee on Ways and Means



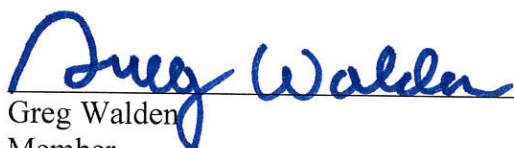
Pete Olson
Member
Committee on Energy and Commerce



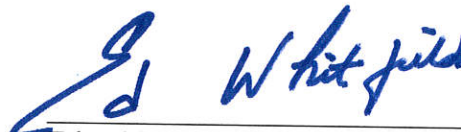
Erik Paulsen
Member
Committee on Ways and Means



John Shimkus
Member
Committee on Energy and Commerce



Greg Walden
Member
Committee on Energy and Commerce



Ed Whitfield
Member
Committee on Energy and Commerce