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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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LAWRENCE J. BRADY
STAFF DIRECTOR

June 26, 2013

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Madam Secretary:

The Committee on Oversight and Government Reform is conducting oversight of the implementation of the Patient Protection and Affordable Care Act (PPACA or Obamacare).¹ The Secretary of the Department of Health and Human Services is responsible for establishing rules to implement Obamacare as well as ensuring that states and the District of Columbia follow such rules.² The State of Vermont and the District of Columbia has proposed a requirement that would force all individuals and small businesses to purchase coverage through its Exchange.³ We are concerned that these proposals will result in less consumer choice and higher costs for many businesses and individuals. We are also concerned that the mandatory small business requirement conflicts with the text of PPACA that requires participation in the Exchange to be voluntary.⁴ As part of the Committee's oversight of Obamacare implementation we write to request that you provide documents and information relating to HHS's oversight of the implementation of Obamacare in states and the District of Columbia.

Nearly a year after the D.C. Council gave final approval for a bill establishing the D.C. Health Benefit Exchange in December 2011,⁵ D.C. Mayor Vincent Gray swore in seven members of the D.C. Exchange Executive Authority Board to "guide implementation" of the Exchange.⁶ A proposal was introduced shortly thereafter to require all organizations with 50 or

¹ PATIENT PROTECTION AND AFFORDABLE CARE ACT, P. L. 111-148.

² *Id.*, § 1321(a) and 1311(k).

³ Better Prices, Better Quality, Better Choices for Health Coverage Amendment Act of 2013, Bill B20-0240, April 11, 2013, http://legiscan.com/DC/text/B20-0240/id/820134/Washington_D_C_-2013-B20-0240-Introduced.pdf.

⁴ P.L. 111-148, § 1312(d).

⁵ Press release, Office of the Mayor, *Mayor Gray Applauds DC Council Passage of Health Benefits Exchange Legislation* (Dec. 21, 2011), <http://mayor.dc.gov/release/mayor-gray-applauds-dc-council-passage-health-benefits-exchange-legislation-0>.

⁶ Health Benefit Exchange Authority Executive Board, <http://dc.gov/DC/Health+Reform/About+Health+Reform/Implementation/Health+Benefit+Exchange+Authority+Executive+Board>.

fewer members to purchase coverage through the Exchange (“small business mandate”).⁷ Council member David Catania, Chairman of the Committee on Health, argued that “[b]y merging the two markets [small business and individual], the Exchange will have sufficient volume and power of aggregation, which will decrease insurance costs for individuals....”⁸ In 2016, the small employer definition is set to increase to businesses with up to 100 employees.⁹ Vermont also plans to mandate small business participation in their Exchange.¹⁰

The small business mandate is opposed by many individuals and businesses in the District. On September 13, 2012, over 150 small businesses and organizations in D.C. wrote a letter to the Chair of the D.C. Exchange Executive Board outlining that they “do not want to be forced to buy the standardized, cookie-cutter coverage that would be offered through a government-run Exchange....”¹¹ The Center for Association Leadership also expressed concerns that small businesses will have little time to determine the extent of the higher costs, how these costs will affect their businesses, and whether health insurance plans will meet grandfathering criteria in order to be exempted from the District’s proposal.¹²

Despite these concerns, on October 3, 2012, the D.C. Exchange Executive Authority Board voted unanimously to move forward with a version of the small business mandate that requires individuals and small businesses not offering health insurance coverage as of December 31, 2013, to purchase such coverage exclusively through the Exchange. Small businesses currently offering health insurance coverage will also be required to use the Exchange beginning in 2015.¹³ This amended proposal was approved by the Board in March of 2013,¹⁴ and on June 4, 2013, the D.C. Council tentatively approved the board’s proposal.¹⁵

⁷ Liz Farmer, *D.C. mandates health insurance market for businesses*, WASHINGTON EXAMINER (Oct. 4, 2012), <http://washingtonexaminer.com/d.c.-mandates-health-insurance-market-for-businesses/article/2509850>.

⁸ Tom Howell Jr., *Plans for D.C. health insurance marketplace move forward*, WASHINGTON TIMES (Oct. 4, 2012), <http://www.washingtontimes.com/news/2012/oct/4/plans-for-dc-health-insurance-marketplace-move-for/>.

⁹ P.L. 111-148, § 1304(b).

¹⁰ *Unease about Vermont's coming health exchange*, BURLINGTON FREE PRESS (Dec. 30, 2012), <http://www.burlingtonfreepress.com/article/20121230/NEWS02/312300016/Unease-about-Vermont-s-coming-health-exchange>.

¹¹ Letter to Mohammad Akhter, Chair, DC Exchange Executive Board (Sept. 13, 2012), available at: <http://www.naifanet.com/100000/Small%20Employer%20Letter%20FINAL%20with%20addendum%2010-3-2012.pdf?CFID=1910208&CFTOKEN=68781248>.

¹² Letter from John Graham, President, American Society of Association Executives, to the DC Health Benefit Exchange Board (Aug. 27, 2012), available at: <http://www.asaecenter.org/applications/cmsIncludes/SearchResultClick.cfm?SearchID=4258999&ResultIndex=3&RecordsPerPage=10&Destination=http%3A%2F%2Fwww.asaecenter.org%2Fapplications%2FcmsIncludes%2FSearchResultClick.cfm%3FSearchID%3D4258999%26ResultIndex%3D3%26RecordsPerPage%3D10%26Destination%3Dhttp%253A%252F%252Fwww.asaecenter.org%252Ffiles%252FFileDownloads%252FPublicPolicy%252FASAE%252520Comments%252520on%252520DC%252520Exchange%25252008%25252E2012.doc>

¹³ Better Prices, Better Quality, Better Choices for Health Coverage Amendment Act of 2013, Bill B20-0240, April 11, 2013. [http://cgiscan.com/DC/text/B20-0240/id/820134/Washington D C -2013-B20-0240-Introduced.pdf](http://cgiscan.com/DC/text/B20-0240/id/820134/Washington%20D%20C%20-2013-B20-0240-Introduced.pdf).

¹⁴ Ben Fischer, *D.C. Council gives initial OK to small business mandate for insurance exchange*, WASHINGTON BUSINESS JOURNAL (June 4, 2013).

¹⁵ *D.C. Exchange Legislation Coming Next Month*, POLITICO PULSE (May 22, 2013) (reporting that Council member Yvette Alexander will likely introduce a bill on June 4, 2013).

There are several concerns with the District's proposal. First, the District's proposal to force individuals and small businesses onto its Exchange is inconsistent with principles of consumer choice and competition, which are vital to a well functioning health insurance market. Second, the District's proposal is also contrary to statute, which states:

Nothing in this title shall be construed to prohibit--
(A) a health insurance issuer from offering outside of an Exchange a health plan to a qualified individual or qualified employer; and
(B) a qualified individual from enrolling in, or a qualified employer from selecting for its employees, a health plan offered outside of an Exchange.¹⁶

Based upon a straightforward reading of the statute, plans by D.C. and Vermont to restrict access to the insurance market outside the Exchange violate the principle of voluntary participation in Exchanges that was codified in PPACA and reaffirmed in your guidance when you wrote that "participation in a SHOP [Exchange] is *strictly voluntary* for small employers."¹⁷

The Oversight and Government Reform Committee has expressed concerns on multiple occasions regarding your Department's implementation of Obamacare.¹⁸ As HHS Secretary, you are responsible for ensuring that states implement Obamacare in accordance with the provisions of the law.¹⁹ At a minimum, we request that you use your authority to ensure that all Exchanges comply with the provisions in PPACA that ensure that individuals and employers have the freedom to enter into contracts outside of a regulated government-created bureaucracy.

The Committee requests that you produce all documents and communications referring or relating to any state's (including the District of Columbia) plan or proposal to restrict or prohibit the purchase of health insurance coverage outside the state's Exchange. The Committee requests that you provide this information, in electronic format, for the time period of March 23, 2010, to the present, as soon as possible, but no later than 5:00 p.m. on July 12, 2013.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

¹⁶ P.L. 111-148, § 1312(d).

¹⁷ Establishment of Exchanges and Qualified Health Plans, proposed rule, 76 FED. REG. 41866, 41885 (July 15, 2011), emphasis added.

¹⁸ See, for example: Letter from Darrell Issa, James Lankford, and Jim Jordan, to Kathleen Sebelius, Secretary, Department of Health and Human Services, regarding Standards and funding for the Navigator and Assister programs (May 6, 2013); Letter from Darrell Issa, James Lankford, and Jim Jordan, to Kathleen Sebelius, regarding federal funding for the Navigator and Assister programs (Apr. 19, 2013); Letter from Darrell Issa, James Lankford, and Jim Jordan, to Kathleen Sebelius, regarding the Consumer Operated and Oriented Plan (CO-OP) Program (Mar. 25, 2013).


¹⁹ P.L. 111-148, § 1321(a) and 1311(k).

The Honorable Kathleen Sebelius
June 28, 2013
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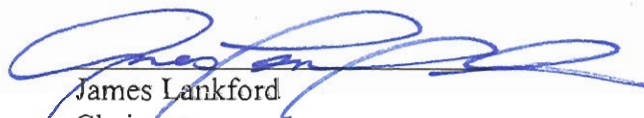
When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

If you have any questions about this request, please contact Brian Blase or Meinan Goto of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

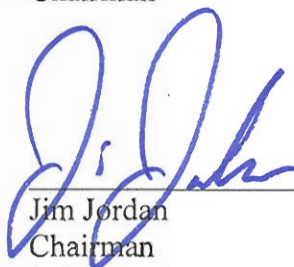
Sincerely,



Darrell Issa
Chairman



James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member
Subcommittee on Energy Policy, Health Care and Entitlements

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes; bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.