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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

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November 29, 2013

Mr. Bernard Tyson
CEO
Kaiser Permanente
1 Kaiser Plaza 19th Floor
Oakland, CA 94612

Dear Mr. Tyson:

The Committee on Oversight and Government Reform is continuing its oversight of the implementation of the Affordable Care Act, also known as ObamaCare. The President sold his health care reform plan to the American people on two fundamental promises:

> "[N]o matter how we reform health care, we will keep this promise to the American people: If you like your doctor, you will be able to keep your doctor, period. If you like your health care plan, you'll be able to keep your health care plan, period."[1]

After millions of Americans received notices that their plans were being cancelled, the President was forced to acknowledge just how misleading his assurances were.[2] The President has since offered an "administrative fix" that may allow certain individuals to keep their current plans for up to one year.[3] Serious questions remain as to the proposal's feasibility and legality.

Now, there is mounting evidence that the President's *second* promise is similarly untrue. Even among the individuals fortunate enough to keep their plans, many Americans are finding that access to their preferred doctor(s) is being abruptly terminated. On November 16, 2013, the *Wall Street Journal* reported that UnitedHealth Group, the nation's largest provider of privately-managed Medicare Advantage plans, has dropped thousands of doctors from its network in recent weeks.[4] Termination letters sent to doctors in at least 10 states cited "significant changes and pressures in the health-care environment."[5] When pressed for an explanation, the president

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[1] President Barack Obama, Remarks by the President at the Annual Conference of the American Medical Association (June 15, 2009).
[2] Interview by Chuck Todd, NBC News, with President Barack Obama, in the White House (Nov. 7, 2013).
[3] Carol E. Lee and Louise Radnofsky, *White House to Allow Insurers to Continue Canceled Health Plans*, WALL ST. J., Nov. 14, 2013,
[4] Melinda Beck, *UnitedHealth Culls Doctors From Medicare Advantage Plans*, WALL ST. J., Nov. 16, 2013.
[5] *Id.*

of UnitedHealth's network explained "It's no secret we are under substantial funding pressure from the federal government."[6]

Some health insurers have acknowledged that they are slashing provider payment rates for plans offered on ObamaCare exchanges.[7] State medical associations are concerned this will create a "two-tiered system in which fewer doctors participate, potentially making it harder for consumers to get the care they need."[8] Dr. Richard E. Thorp, an internist and president of the California Medical Association, noted that one plan sold on that exchange "was going to pay us significantly less for doing that business. And we are already very busy."[9] This has prompted concern among experts: if providers are paid less, enrollees will confront significant difficulty even getting physicians to accept them as patients.[10] According to a comprehensive report of insurers offering coverage in the new health insurance exchanges, "the exchange market will essentially offer Medicaid managed care for the middle class."[11] Medicaid managed care plans often feature narrow networks of providers, which result in many Medicaid enrollees overusing emergency rooms for basic health care needs.[12]

It appears that this "access shock" was an entirely predictable consequence of the core operative mechanisms of the law.[13] In an op-ed in the *Concord Monitor*, the president and CEO of Concord Hospital explained why his hospital network would not be participating in the plans offered by the *sole* insurer in New Hampshire's ObamaCare exchange, Anthem New Hampshire:

> Our decision to not participate in this exchange at this time was not a political statement. We are not opposed to the tenets of the Affordable Care Act or exchanges. However, Anthem was unwilling to negotiate sustainable contract terms, and the reimbursement rates that they offered would ultimately result in us being paid less than what it costs us to provide care. **Anthem has indicated that it intends to convert all of its individual policies to the exchange product in 2014, which means that those patients may not be able to access care through Concord Hospital in the future.**[14] [emphasis added]

The predictability of these impacts raises serious questions as to the origin and nature of the President's assurances. When pressed for an explanation, officials in the

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[6] *Id.*
[7] Roni Caryn Rabin, *Doctors Complain They Will Be Paid Less By Exchange Plans*, KAISER HEALTH NEWS, Nov. 19, 2013.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] Edmund F. Haislmaier, *Health Insurers' Decisions on Exchange Participation: ObamaCare's Leading Indicators*, Heritage Foundation, Nov. 12, 2013, *available at* http://www.heritage.org/research/reports/2013/11/health-insurers-decisions-on-exchange-participation-obamacares-leading-indicators.
[12] Brian Blase, *Medicaid Provides Poor Quality Care: What the Research Shows*, Heritage Foundation, May 5, 2011, *available at* http://www.heritage.org/research/reports/2011/05/medicaid-provides-poor-quality-care-what-the-research-shows
[13] *See, e.g.*, Alex Altman, *'You Can Keep Your Doctor': Obamacare's Next Broken Promise?*, TIME, Nov. 19, 2013.
[14] Michael B. Green, *Here's why Concord Hospital opted out*, CONCORD MONITOR, Sept. 11, 2013.

White House offered tortured redefinitions and obfuscations. In a press briefing on November 19, 2013, the White House Press Secretary asserted that what the President *meant* by "if you like your doctor, you will be able to keep your doctor, period," was that "if you want coverage from your doctor, a doctor that you've seen in the past and want that, you can look and see if there's a plan in which that doctor participates."[15] Such a gloss must ring especially hollow to the patients of Concord Hospital, who stand to lose access to their long-time doctors.

Tellingly, in stark contrast to the White House Press Secretary's revision and qualification, the White House website continues to unequivocally affirm the President's original promise. A page answering "Frequently Asked Questions" on ObamaCare includes the following exchange:

> Q: Will I be able to keep my doctor?
>
> A: Yes, you will. Health insurance reform will not affect the choice of doctors you have today **and it won't affect your relationship with your doctor.**[16] [emphasis added]

The Annenberg Public Policy Center of the University of Pennsylvania has labeled the President's claim "misleading," noting that "the president simply can't make this promise to everyone."[17] The glaring inconsistencies in the Administration's narrative, coupled with the dispositive evidence that millions of Americans are unable to "keep their doctor, period," demand rigorous examination. To enable the Committee to better understand the nature of ObamaCare's impact on provider access, we respectfully request your assistance. Please provide responses to the following requests for information

1. Provide all documents that identify when employees or agents of Kaiser Permanente first learned that the Administration would publically advocate for its health care reform initiatives on the premise that individuals would be able to keep their current plans or current providers.

2. Provide all documents showing whether employees or agents of Kaiser Permanente informed Administration officials that the Administration's health care reform initiatives would cause Kaiser Permanente to reevaluate its provider networks or provider payment rates.

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[15] Press Release, Office of the Press Secretary, The White House, Briefing by Press Secretary Jay Carney (Nov. 19, 2013).

[16] *Putting Americans in Control of Their Health Care, Frequently Asked Questions*, the White House, *available at* http://www.whitehouse.gov/health-care-meeting/questions/medicare-2.

[17] *Obamacare Myths*, FactCheck.org, Annenberg Public Policy Center, the University of Pennsylvania, Sept. 16, 2013, *available at* http://www.factcheck.org/2013/09/obamacare-myths/.

3. Provide all documents showing any objection by employees or agents of Kaiser Permanente, whether internally or to external parties, to the Administration's characterization that if one "likes their doctor, they can keep their doctor."

4. Provide all documents identifying the number of plan cancellation notices sent by Kaiser Permanente, since January 1, 2013, in which the cancellation was attributable in any way to provisions of the Patient Protection and Affordable Care Act.

5. Provide all documents identifying the number of providers terminated from Kaiser Permanente provider networks since January 1, 2013, in which the termination was attributable in any way to provisions of the Patient Protection and Affordable Care Act.

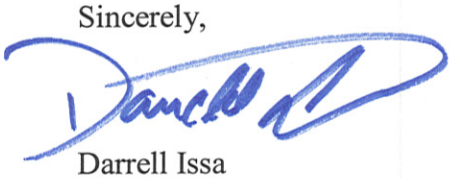
6. Provide all documents and communications, including meeting notes, since March 23, 2010, between employees or agents of Kaiser Permanente and any employee of the Executive Office of the President.

7. Provide all documents and communications since March 23, 2010, between employees or agents of Kaiser Permanente referring or relating to the accuracy of statements to the effect that if one "likes their doctor, they can keep their doctor."

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. An attachment to this letter provides additional information about responding to the Committee's request.

Please provide all such responses as soon as possible, but no later than 5:00 p.m. on December 13, 2013. 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. The Committee prefers to receive all documents **in electronic format**.

Sincerely,



Darrell Issa
Chairman

Enclosure

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

DARRELL E. ISSA, CALIFORNIA
CHAIRMAN

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

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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.