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# Congress of the United States

## House of Representatives

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### Opening Statement

#### Rep. Elijah E. Cummings, Ranking Member

### Hearing on "GAO Report: The Obama Administration's \$8 Billion Extralegal Healthcare Spending Project"

July 25, 2012

I would like to thank the witnesses for coming here today to testify before the Committee. This is an important topic, and I am grateful for the opportunity to hear your views.

I think we can all agree that we need to continue reforming our healthcare system so that we pay for value rather than volume, and encourage prevention as well as treatment.

The Affordable Care Act works towards these goals in a number of ways. For example, it provides seniors with free preventive care, including wellness visits and cholesterol checks. Last year, more than 32 million seniors used at least one preventive service under Medicare without paying deductibles or co-pays. This saves lives and lowers costs to the program.

The Affordable Care Act also makes reforms to the Medicare payment system to align payments with better performance and outcomes. One innovation is the quality bonus payment program that provides incentives for Medicare Advantage plans to improve the quality of care by establishing bonus payments to plans that achieve certain quality standards.

The Center for Medicare and Medicaid Services (CMS) initiated a demonstration program to test an alternative method for these bonus payments in order to examine ways to generate quicker and more significant quality improvements in the plans.

The Government Accountability Office (GAO) has raised a number of concerns about this demonstration program. GAO disagrees with how CMS structured the program, and it has methodological concerns about the way CMS will measure the results.

CMS responded that it believes the program will incentivize plans to improve the quality of care and increase efficiency. CMS also believes GAO's methodological concerns can be addressed.

As this back and forth demonstrates, there is no scandal here. This is a legitimate and substantive disagreement about how best to structure bonuses to incentivize quality care and how to design a demonstration program to achieve its intended results in an effective manner.

In our efforts to research this issue, we contacted a legal expert, Professor Jeffrey Lubbers, a Professor of Administrative Law at American University. I request unanimous consent to enter his statement into the record.

Professor Lubbers reviewed GAO's concerns, as well as the legislative history and case law relating to the Secretary's authority. He concluded that the disagreement between GAO and CMS "amounts to a methodological disagreement, not a legal one." He found that "the law gives HHS very broad authority to conduct demonstration programs in this area and, in my view, the Proposed MA Quality Bonus Payment Demonstration fits comfortably within that authority."

In my opinion, today's hearing title is misleading. It suggests that GAO has accused the Secretary of Health and Human Services of doing something illegal. In fact, GAO questioned the authority for HHS to conduct this program based on GAO's underlying policy and methodology concerns about the program's design.

This type of rhetoric affects the tone and tenor of this hearing and makes it more difficult to engage in a reasoned debate focused on the merits or flaws of the demonstration program.

We can do better than that. Let's focus on the substantive discussion. Let's discuss GAO's concerns with the program and CMS' responses to those concerns. This is the hearing I hope we will have today.

Thank you.

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