

**U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman**



**ObamaCare's Taxpayer Bailout of Health Insurers and the
White House's Involvement to Increase Bailout Size**

COMMITTEE STAFF REPORT

**U.S. HOUSE OF REPRESENTATIVES
113TH CONGRESS
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Executive Summary

In making the case for ObamaCare prior to its passage in Congress, President Obama often vilified insurance companies and decried their large profits. For example, in July 2009, President Obama remarked that “health insurance companies and their executives have reaped windfall profits from a broken system.”¹ One month later, he remarked that “nobody is holding these insurance companies accountable.”² The President’s public criticism of large health insurance companies was good politics for him and likely contributed to the law’s passage. The text of the law passed by Congress and the White House’s recent actions to protect insurance company profits, however, show the hypocritical nature of the President’s arguments in selling the law.

While the President’s rhetoric was largely critical of insurance companies, ObamaCare contained key provisions to increase insurance company profitability. Moreover, key White House personnel have directly intervened with key agency regulatory guidance to increase a bailout aimed at protecting insurance companies that participated in ObamaCare’s health insurance exchanges. As evidence of the collusive relationship between the White House and large insurers, key White House employees, including Tara McGuiness, the White House’s Communications Director, and Chris Jennings, Deputy Assistant to the President for Health Policy, and Coordinator for Health Reform from July 2013 through January 2014, traded talking points with health insurance companies about the concern that millions of Americans were losing their insurance coverage because of ObamaCare, and how to best message problems with HealthCare.gov.

ObamaCare benefited health insurance companies with its unprecedented mandate that individuals purchase government-approved health insurance coverage and with expensive subsidies to assist individuals in purchasing that coverage through ObamaCare exchanges. In addition to providing health insurance companies with a mandate for individuals to purchase their product as well as creating these subsidies, ObamaCare contains large backdoor bailouts of insurance companies offering ObamaCare-compliant coverage in the individual and small group health insurance market. Essentially, ObamaCare contains two types of bailouts for insurance companies offering ObamaCare-compliant coverage – one bailout transfers money from the vast majority of people with health insurance, and another bailout transfers money directly from taxpayers.

ObamaCare’s Reinsurance program, funded by a fee on nearly all people with health insurance, subsidizes expensive medical claims of individuals enrolled in ObamaCare-compliant plans. The amount of the Reinsurance program bailout was set by statute and equals \$10 billion in 2014, \$6 billion in 2015, and \$4 billion in 2016.

ObamaCare’s Risk Corridor program provides payments when insurers lose money on ObamaCare-compliant plans sold in the individual market. As currently structured, ObamaCare’s Risk Corridor program puts taxpayers at risk for a potentially unlimited taxpayer-

¹ Ricardo Alonso-Zaldivar & Darlene Superville, *President rips foes on health overhaul Obama denounces GOP for the politics of delay*, ASSOCIATED PRESS, July 21, 2009.

² Lisa Rosetta, *Obama takes case to critics*, SALT LAKE TRIB., Aug. 15, 2009.

funded bailout to cover insurance company losses. According to information obtained by the Committee, several insurers expected Risk Corridor payments prior to the start of open enrollment, and appear to have underpriced their ObamaCare-compliant plans as a result.

After the Administration received negative press attention about a possible taxpayer-funded bailout of health insurance companies, the Administration signaled in March 2014 that it would implement the Risk Corridor program in a budget neutral manner. Insurance companies were generally displeased with this announcement and started a powerful lobbying campaign. Part of the insurers' lobbying campaign was a direct appeal to the President's most senior advisors, including Valerie Jarrett. Insurance companies and their chief trade group warned that a budget neutral Risk Corridor program would lead to large premium increases for exchange plans in 2015. Essentially, insurance companies presented the Administration with a choice: face significantly higher premium increases in 2015 for exchange plans or make taxpayers bail out insurance companies.

Documents show that Ms. Jarrett took the warnings of the insurance companies very seriously and indicated that the Administration had given insurers 80 percent of what they sought. Insurers were not satisfied with the Administration's first change and lobbied for additional protection. In May 2014, the Administration delivered to insurers, modifying the risk corridor payment formula to increase the size of the bailout insurers could expect to receive.

In early February 2014, the Congressional Budget Office (CBO) estimated that the Risk Corridor program would actually decrease the federal budget deficit. CBO assumed that insurers would earn excess profits on ObamaCare-compliant plans, and as a result, would make net payments to the federal government through the program. Supporters of ObamaCare trumpeted CBO's projections as proof that American taxpayers should not be concerned about funding a backdoor bailout of insurance companies. Since there was significant skepticism among actuaries and health policy experts over the accuracy of CBO's estimates, the Committee on Oversight and Government Reform requested information to determine the insurance industries' internal expectations of payments through ObamaCare's Risk Corridor program. According to the projections of 15 health insurance companies and 23 health cooperatives (co-ops), CBO's estimates about the bailout are considerably different from the expectations of the health insurance industry and thus are almost certainly inaccurate.

The 15 health insurance companies and 23 co-ops that provided information to the Committee enrolled roughly 80 percent of all individuals with health insurance coverage purchased through an exchange. Currently, these companies expect Risk Corridor payments of about \$725 million directly from taxpayers in 2014. Extrapolating these estimates for the entire population enrolled in ObamaCare-compliant exchange plans means that taxpayers may be on the hook for upwards of \$1 billion in 2014 alone.

As of May 2014, twelve of the 15 traditional health insurers expect to receive payments from the Risk Corridor program, one of the insurers expects to make payments into the Risk Corridor program, and two insurers expect no net payments. These 15 insurers project they will receive approximately \$640 million in net payments through the Risk Corridor program for the 2014 plan year.

As of May 2014, of the 23 co-ops, seven expect to receive payments from the Risk Corridor program, two expect to make payments into the Risk Corridor program, and 14 expect no net payments. These 23 co-ops expect to receive approximately \$86 million in net payments through the Risk Corridor program for the 2014 plan year.

In addition to ObamaCare's Risk Corridor program and Reinsurance program, the law also contains a Risk Adjustment program (together these programs are dubbed "the 3Rs"). ObamaCare's Risk Adjustment program transfers money from plans with individuals with less expensive health conditions to plans with individuals with more expensive health conditions. Although the Risk Adjustment program is required to be budget neutral, many more insurers expect to receive payments than make payments. As of May 2014, the companies surveyed by the Committee expect net payments through the Risk Adjustment program of about \$346 million. Moreover, insurers expect to receive nearly twice as much in net Risk Adjustment payments than they did on October 1, 2013. This provides additional evidence that insurers expect enrollees in ObamaCare-compliant plans to be less healthy than originally anticipated. In fact, enrollment information provided by insurers show that insurers enrolled a much older risk pool, on average, in their ObamaCare-compliant plans than they anticipated.

While the exchange plans were always susceptible to adverse selection because of how expensive the law made insurance for younger and healthier individuals, several delays and modifications to the law by the Obama Administration worsened the adverse selection problem. Insurance companies were unhappy with many of the Administration's ad hoc changes to the law and how these changes affected the risk pools of exchange and other ObamaCare-compliant plans. Insurers directly lobbied the White House for the Administration to make the 3R programs more generous to insurers, and the Administration obliged. Insurers and co-ops now expect a third more from the Risk Corridor taxpayer bailout than they did on October 1, 2013. It is impossible to know how much of the increase in the industries' expectation for the size of the bailouts is the result of a less healthy exchange population than originally anticipated and how much of the increase is from the Administration's rule changes to make the bailouts more generous; however, both factors are likely significant.

Findings

- The Committee obtained information from 15 health insurance companies and 23 ObamaCare co-ops, which represent about 80 percent of individuals enrolled in ObamaCare's health insurance exchanges. The Committee primarily sought information related to enrollment in exchange plans and company expectations of payments through ObamaCare's Reinsurance, Risk Corridor, and Risk Adjustment programs.
- The Administration has indicated that it plans to use taxpayer funds to compensate insurers through the Risk Corridor program if insurers systematically lose enough money on these plans. In total, the insurers and co-ops surveyed by the Committee expect net payments through the Risk Corridor program of about \$725 million in the 2014 plan year. Since these companies represent about 80 percent of individuals enrolled in exchange plans, the total taxpayer bailout expected by insurance companies likely approaches \$1 billion this year alone.
- Twelve of the 15 traditional health insurers expect to receive payments from the Risk Corridor program, one of the insurers expects to make payments into the Risk Corridor program, and two of the insurers expect no net payments.
- Several companies that significantly exceeded their initial enrollment projections for exchange plans now expect large taxpayer bailouts, an indication that they mispriced their 2014 exchange plan premiums.
- Insurers' expectations for the amount of net payments through the Risk Corridor program have increased by more than a third since October 1, 2013.
- ObamaCare's Risk Adjustment program transfers money from plans with individuals with less expensive health conditions to plans with individuals with more expensive health conditions. Although the Risk Adjustment program is required to be budget neutral, significantly more insurers expect to receive payments than make payments. In total, the companies surveyed by the Committee expect net payments through the Risk Adjustment program of about \$346 million. The fact that many insurers believe that they have a less healthy risk pool compared to other insurers indicates that exchange plan enrollees are likely to have higher claims than insurers originally projected.
- Insurers' expectations for the amount of net payments through the Risk Adjustment program have nearly doubled since October 1, 2013.
- The Committee found that every traditional insurance company enrolled fewer children (under 18 years old) and more near-retirees and seniors than they anticipated prior to the start of open enrollment. Overall, insurance companies enrolled only about a third as many children as they anticipated. This indicates that very few families with children have found coverage in ObamaCare's exchanges to be worth the cost.

- At least one insurance company appealed directly to Valerie Jarrett, Senior Advisor to President Obama and Assistant to the President for Public Engagement and Intergovernmental Affairs, after the Administration signaled its intent in March 2014 to implement the Risk Corridor program in a budget neutral manner. Chet Burrell, the President and CEO of Care First Blue Cross Blue Shield, wrote to Ms. Jarrett that insurers would likely require Risk Corridor payments on net and that budget neutrality would lead insurers “to increase rates substantially (i.e., as much as 20% or more...)”
- Ms. Jarrett intervened and wrote to Mr. Burrell that “the policy team is aggressively pursuing options.” After the Administration explained how it would implement the Risk Corridor program in April 11, 2014 guidance, Ms. Jarrett wrote to Mr. Burrell that the Administration had given insurance companies 80 percent of what they sought.
- It appears that several companies, including Care First Blue Cross Blue Shield, underpriced their exchange plans in 2014 due to their expectation of a taxpayer bailout through the Risk Corridor program.
- Key White House employees, including Tara McGuinness, the White House’s Communications Director, and Chris Jennings, Deputy Assistant to the President for Health Policy, and Coordinator for Health Reform from July 2013 through January 2014, traded talking points with health insurance companies on how to best message problems with HealthCare.gov and also the fact that millions of people were losing their insurance coverage because of ObamaCare. For example, Mr. Jennings and Ms. McGuinness provided talking points to Florida Blue Cross and Blue Shield CEO Patrick Geraghty in preparation for an October 27, 2013, appearance on *Meet the Press*.

I. Data Shows Previous Estimates of ObamaCare’s Taxpayer Bailout Were Wrong

On February 5, 2014, the Committee held a hearing entitled “ObamaCare: Why the Need for an Insurance Company Bailout?”³ The hearing examined provisions in the Affordable Care Act (ACA), or ObamaCare, that subsidized the losses of insurance companies’ qualified health plans (QHPs). QHPs are ObamaCare-compliant plans, certified to be sold on ObamaCare’s exchanges. The day before the Committee’s hearing, the Congressional Budget Office (CBO) released its analysis that the Risk Corridor program, the provision of ObamaCare that provides for a taxpayer-funded bailout, would raise money for the federal government.⁴ Ranking Democratic Member Elijah Cummings trumpeted the CBO analysis at the hearing, stating:

[T]he nonpartisan Congressional Budget Office issued a new report that completely obliterates [the bailout] argument. CBO projects that the ACA risk corridor program will result in net gains to taxpayers of \$8 billion over the next 10 years. So where is the bailout? There isn’t one.⁵

Other Democratic Committee members also cited CBO’s estimates at the hearing as a positive attribute of ObamaCare’s Risk Corridor provisions.⁶ Moreover, less than one month ago, the Obama Administration reiterated its expectation that insurance companies will not receive money, on net, through the Risk Corridor program.⁷ In a final rule published on May 21, 2014, the Department of Health and Human Services (HHS) stated that “[i]n the unlikely event of a shortfall for the 2015 program year, HHS recognizes that the Affordable Care Act requires the secretary to make full payments to issuers. In that event, HHS will use other sources of funding for the risk corridor payments, subject to the availability of appropriations.”⁸ [emphasis added] Although the issue is not addressed in this report, there is strong disagreement about whether HHS has the authority to make risk corridor payments to insurers absent an appropriation from Congress.⁹

³ *ObamaCare: Why the Need for an Insurance Company Bailout: Hearing Before the H. Comm. On Oversight & Gov’t Reform*, 113th Cong. (2014) [hereinafter *Hearing*], available at <http://oversight.house.gov/hearing/obamacare-need-insurance-company-bailout/>.

⁴ CONG. BUDGET OFFICE, *THE BUDGET AND ECONOMIC OUTLOOK: 2014 TO 2024* (2014) [hereinafter *Budget*], available at http://www.cbo.gov/sites/default/files/cbofiles/attachments/45010-Outlook2014_Feb.pdf.

⁵ *Hearing*, *supra* note 3 (statement of Rep. Cummings, Ranking Member, H.Comm. on Oversight & Gov’t Reform).

⁶ *See Hearing*, *supra* note 3.

⁷ CTRS. FOR MEDICARE AND MEDICAID SERVS., RIN 0938-AS02: PATIENT PROTECTION AND AFFORDABLE CARE ACT; EXCHANGE AND INSURANCE MARKET STANDARDS FOR 2015 AND BEYOND, at 80-81, (2014) [hereinafter *Market Standards*], available at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/CMS-9949-P.pdf>.

⁸ *Id.*

⁹ In his testimony before the Subcommittee on Economic Growth, Job Creation and Regulatory Affairs, Senator Jeff Sessions argued that HHS must receive an appropriation from Congress before it can make payments in the Risk Corridor Program. Since the healthcare law does not specify a “direction to pay and a specified source of the funds”, “it seems clear that the healthcare law left any funding of the Risk Corridor program to a future Congress by not appropriating such money as part of the original law.” Senator Sessions further argued that “[w]ithout an explicit appropriation, any money spent on this program would be an illegal transfer of funds. It is bedrock constitutional law.” U.S. CONST. art. I, § 9, cl. 2.; *Poised to Profit: How ObamaCare Helps Insurance Companies Even If It Fails Patients: Hearing Before the Subcomm. on Econ. Growth, Job Creation and Regulatory Affairs of*

Since the CBO estimates were inconsistent with widespread sentiment among actuaries and health policy experts, the Committee conducted detailed oversight of health insurance industries' expectations for ObamaCare's 3R programs: Reinsurance, Risk Corridor, and Risk Adjustment. On April 23, 2014, Committee Chairman Issa sent letters to ten health insurance companies requesting information on exchange enrollment as well as information about the insurers' expectation for payments through the 3Rs.¹⁰ The Committee sent similar requests for information to five additional insurance companies as well as to all 23 health cooperatives (co-ops) established with loans authorized by ObamaCare.¹¹ All 15 insurance companies and 23 co-ops provided information to the Committee, and their responses form the basis of this report.

Essentially, ObamaCare contains two types of bailouts for insurance companies offering ObamaCare-compliant coverage in the individual health insurance markets throughout the country. The first bailout, ObamaCare's Reinsurance program, transfers money from the vast majority of people with health insurance to individuals who have purchased ObamaCare-compliant coverage in the individual market. The amount of this bailout was set by statute and will equal \$10 billion in 2014, \$6 billion in 2015, and \$4 billion in 2016.¹²

The second bailout, ObamaCare's Risk Corridor program, transfers money directly from taxpayers to insurance companies. There is no statutory limit on the amount of taxpayer exposure for this bailout. According to the information obtained by the Committee, health insurance companies and the co-ops expect a taxpayer bailout of the magnitude of about \$1

*the H. Comm. on Oversight and Gov't Reform, 113th Cong. (2014) [hereinafter *Poised to Profit Hearing*]* (statement of Sen. Jeff Sessions, Ranking Member, S. Comm. on Budget).

¹⁰ See Letters from the Hon. Darrell Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Mr. Mark Bertolini, Chairman and CEO, Aetna; Mr. Bruce Broussard, President & CEO, Humana; Mr. Chet Burrell, President & CEO, CareFirst BlueCross BlueShield; Mr. David Cordani, President & CEO, Cigna; Mr. Patrick Geraghty, Chairman & CEO, Blue Cross and Blue Shield of Florida, Ms. Patricia Hemingway Hall, President & CEO, Health Care Services Corporation; Mr. Stephen Hemsley, President & CEO, UnitedHealth Group; Mr. Paul Markovich, President & CEO, Blue Shield of California; Mr. Joseph Swedish, CEO, WellPoint; Mr. Bernard Tyson, CEO, Kaiser Permanente; Mr. J. Bradley Wilson, President & CEO, BlueCross BlueShield of North Carolina (Apr. 23, 2014).

¹¹ See Letters from the Hon. Darrell Issa, James Lankford and Jim Jordan, H. Comm. on Oversight & Gov't Reform, and Sen. Tom Coburn, Ranking Member, S. Comm. on Homeland Sec. & Gov't Affairs, to Mr. Linn Baker, CEO, Arches Health Plan; Mr. Peter Beilenson, CEO, Evergreen Health; Ms. Dawn Bonder, CEO, Health Republic Insurance of Oregon; Mr. Jerry Burgess, President & CEO, Consumers Choice Health Plan & President CEO, Community Health Alliance; Mr. Greg Cromer, CEO, Louisiana Health Cooperative; Mr. Robert de Vita, Common Ground Healthcare Cooperative; Mr. Jerry Dworak, CEO, Montana Health Cooperative; Ms. Debra Friedman, President & CEO, Health Republic Insurance of New York; Mr. Martin Hickey, CEO, New Mexico Health Connections; Ms. Julia Hutchins, CEO, Colorado Health Insurance Cooperative; Mr. Ken Lalime, CEO, HealthyCT; Mr. Kevin Lewis, CEO, Maine Community Health Options; Mr. Dennis Litos, CEO, Consumers Mutual Insurance of Michigan; Mr. David Lyons, CEO, CoOpportunity Health; Mr. Jim Martin, Executive Director & CEO, Health Republic Insurance of New Jersey; Ms. Janie Miller, CEO, Kentucky Health Cooperative; Ms. Kathleen Oestreich, CEO, Compass Cooperative Health Network; Mr. Thomas Policelli CEO, Minuteman Health; Mr. Ralph Prows, President & CEO, Oregon's Health CO-OP; Mr. Jesse Thomas, CEO, InHealth Mutual; Mr. Daniel Yunker, CEO, Land of Lincoln Health; and Mr. Thomas Zumtobel, CEO, Nevada Health CO-OP (Jan. 15, 2014) (on file with author).

¹² U.S. Dep't of Health & Human Servs, Patient Protection and Affordable Care Act; Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment; Proposed Rule, 76 Fed. Reg. 136, (July 15, 2011).

billion this year alone. Moreover, the information provided by insurers shows that the expected size of the taxpayer bailout has increased by more than 33 percent since October 1, 2013, partly because the Administration ceded to industry demands and unilaterally altered numerous bailout provisions, making them more generous to insurers.

II. Background: ObamaCare’s Bailouts for Insurance Companies Participating in Exchanges

ObamaCare’s mix of taxes, subsidies, regulations, and mandates significantly increased the cost of insurance in the individual market. For example, in its rate filings for the 2014 plan year, one of the insurers that provided information to the Committee planned to increase average premiums by 55 percent for its ObamaCare eligible individual members, with a much larger increase for younger individuals.¹³ The insurer referred to these increases as “dramatic ‘shocks’ on premium rates, out of pocket expenses and reduction in plan choice.”¹⁴ The insurer further stated that “only a relatively small percentage (approximately 7 percent) of our members may be eligible for meaningful subsidies to help offset the higher premiums or obtain lower out of pocket expenses. This means that most will feel the full brunt of the increases.”¹⁵

Although ObamaCare significantly increases the price of health insurance, particularly for younger individuals, this Administration needed young and relatively healthy people to enroll in ObamaCare-compliant plans to essentially subsidize the premiums of older and sicker individuals. To accomplish this, ObamaCare contains several provisions intended to induce younger and healthier people to purchase coverage. First, ObamaCare’s individual mandate requires nearly all Americans obtain federally-approved health insurance coverage or face a tax penalty.¹⁶ Second, ObamaCare spends more than a trillion dollars over the next decade subsidizing the cost of exchange coverage.¹⁷ According to Doug Badger, a health policy expert and Special Assistant to President George W. Bush for Economic Policy, both the individual mandate and the subsidies are beneficial to insurers *participating in the exchanges*:

The law extends numerous competitive advantages to insurers that sell through the exchanges. It creates carrots and sticks. The biggest carrot: the government will subsidize premiums only for those who enroll in qualified health plans sold through the exchanges. The biggest stick: the IRS will impose a tax penalty on people who refuse to buy insurance.¹⁸

¹³ Documents produced to the Committee in response to an April 23, 2014, letter from Chairman Issa.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ I.R.C § 5000A (2012).

¹⁷ CONG. BUDGET OFFICE, *Insurance Coverage Provisions of the Affordable Care Act—CBO’s April 2014 Baseline* (2014), available at <http://www.cbo.gov/sites/default/files/cbofiles/attachments/43900-2014-04-ACAtables2.pdf>.

¹⁸ *ObamaCare: Why the Need for an Insurance Company Bailout: Hearing Before the H. Comm. On Oversight & Gov’t Reform*, 113th Cong. (2014)(statement of Doug Badger, Retired Health Policy Analyst) [hereinafter *Badger testimony*] at 2, available at <http://oversight.house.gov/wp-content/uploads/2014/02/Badger-Statement-ObamaCare-Insurance-COMLETE.pdf>.

In addition to the individual mandate and exchange subsidies, ObamaCare contains other provisions, such as the 3Rs, that benefit health insurance companies offering ObamaCare-compliant coverage. Since the 3Rs substantially mitigate the risk that insurers face from pricing premiums too low, they incentivized insurance companies to set low initial premiums for their ObamaCare-compliant plans in order to gain market share. This incentive was coupled with considerable pressure from the Administration to set initial rates low.¹⁹

ObamaCare's Reinsurance Program

Section 1341 of the ACA established a transitional Reinsurance program to compensate insurers for enrollees that incur especially high claims.²⁰ ObamaCare's Reinsurance program is scheduled to run from 2014 through 2016, and is funded by a fee on nearly all Americans with health insurance.²¹ Under the Reinsurance program, ObamaCare-compliant plans in the individual market will receive payments of 80 percent of the cost of health care claims between \$45,000 and \$250,000 for each enrollee who experiences claims that high.²² The statute directs HHS to collect \$25 billion through this reinsurance fee between 2014 through 2016.²³ HHS will pay \$20 billion to insurance companies through the Reinsurance program (\$10 billion in 2014, \$6 billion in 2015, and \$4 billion in 2016).²⁴ HHS will spend the remaining \$5 billion to finance the cost of ObamaCare's Early Retiree Reinsurance program.²⁵

ObamaCare's Reinsurance program is essentially a transfer program from all health insurance plans, including individual, small group, large group, and self-insured plans to ObamaCare-compliant individual market plans.²⁶ In 2014, HHS expects that approximately 191

¹⁹ Ricardo Alonso-Zaldivar, *Health boss cautions insurers on rising rates*, ASSOCIATED PRESS, Sept. 10, 2010, http://www.boston.com/news/nation/washington/articles/2010/09/10/health_boss_cautions_insurers_on_rising_rates

²⁰ 42 U.S.C. § 18061 (2012).

²¹ All issuers and third party administrators on behalf of group health plans contribute funding. [See U.S. DEP'T OF HEALTH & HUMAN SERVS., CTRS. FOR MEDICARE & MEDICAID SERVS., CTR. FOR CONSUMER INFO. AND INS. OVERSIGHT, REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT FINAL RULE (2012), available at <http://www.cms.gov/ccio/resources/files/downloads/3rs-final-rule.pdf>.

²² Reinsurance program provides payments to non-grandfathered plans sold on the individual market. A December 2, 2013 proposed rule reduced the attachment point (the threshold in which reinsurance payments are triggered) for 2014 from \$60,000 to \$45,000. This is another example of a change which benefited insurance companies. See Prop. Health & Human Servs. Reg., 78 Fed. Reg. 231 (Dec. 2, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-12-02/pdf/2013-28610.pdf>.

²³ 42 U.S.C. § 18061 (2012). HHS was directed in statute to collect \$25 billion through the reinsurance fee (the actual number is slightly higher as it would also include the administrative costs to run the program) between 2014 and 2016. Of that \$25 billion, \$20 billion will be used for reinsurance payments. \$5 billion will go to the U.S. Treasury to offset the cost of the law's Early Retiree Reinsurance Program.

²⁴ U.S. Dep't of Health & Human Servs, Patient Protection and Affordable Care Act; Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment; Proposed Rule, 76 Fed. Reg. 136, (July 15, 2011).

²⁵ See Prop. Health & Human Servs. Reg., 77 Fed. Reg. 236 (Dec. 7, 2012) at 73154, available at <http://www.gpo.gov/fdsys/pkg/FR-2012-12-07/pdf/2012-29184.pdf>.

²⁶ Brian M. Pinheiro, *HHS Issues Final Rule on Transitional Reinsurance Fees*, SOC'Y FOR HUMAN RES. MGMT., (Mar. 28, 2013), available at <http://www.shrm.org/hrdisciplines/benefits/Articles/Pages/Rule-Transitional-Reinsurance-Fees.aspx#sthash.arYb3Utc.dpuf>.

million Americans will be assessed a \$63 fee to finance the program.²⁷ These fees will then be used to subsidize the premiums of ObamaCare-compliant plans.

According to the American Academy of Actuaries, “[reinsurance] will reduce the risk to insurers, allowing them to offer premiums lower than they otherwise would be.”²⁸ According to an analysis by Professor Seth Chandler, Co-Director of the Health Law and Policy Institute at the University of Houston Law Center, “the reinsurance [program] should lower the price of a Bronze policy by about \$450 (11%), a Silver policy by \$531 (11%), a Gold policy by \$545 (11%) and a Platinum policy by \$616 (10%).”²⁹ Mr. Badger testified that ObamaCare’s Reinsurance program is “pure corporate welfare” because of the arbitrary benefit to companies that offer ObamaCare-compliant plans.³⁰

ObamaCare’s Risk Corridor Program

Section 1342 of the ACA established the Risk Corridor program to mitigate the risk that insurers with exchange plans in both the individual and small group market improperly priced their plans.³¹ Like the Reinsurance program, the Risk Corridor program is scheduled to expire after 2016.³² Under the Risk Corridor program, if actual plan spending exceeds expected spending (premiums collected minus taxes, profits, and administrative costs)³³ by more than three percent, the federal government will make payments to insurers to cover a large portion of the difference.³⁴ Conversely, if actual spending is less than expected spending by more than three percent, insurers are required to return a portion of the excess profits to the federal government.³⁵ The Risk Corridor formula is detailed by the following chart, produced by the American Academy of Actuaries:³⁶

²⁷ According to HHS: “Each year, the national per capita contribution rate will be calculated by dividing the sum of the three amounts (the national reinsurance pool, the U.S. Treasury contribution, and administrative costs) by the estimated number of enrollees in plans that must make reinsurance contributions.” The total amount collected in 2014 will be \$12.02 billion and the reinsurance fee is \$63. Dividing \$12.02 billion by \$63 yields about 191 million people.

²⁸ American Academy of Actuaries, Fact Sheet: ACA Risk-Sharing Mechanisms- The 3Rs (Risk Adjustment, Risk Corridors, and Reinsurance) Explained (Dec. 4, 2013), *available at*: http://www.actuary.org/files/ACA_Risk_Share_Fact_Sheet_FINAL120413.pdf.

²⁹ Seth Chandler, *Reinsurance reduction will add 7% to gross premiums for 2015*, ACA DEATH SPIRAL, (Mar. 31, 2014), <http://acadeathspiral.org/2014/03/31/reinsurance-reduction-will-add-7-to-gross-premiums-for-2015/>.

³⁰ See *Badger Testimony*, at 3.

³¹ 42 U.S.C. § 18062 (2012).

³² See Alonso-Zaldivar, *supra* note 19.

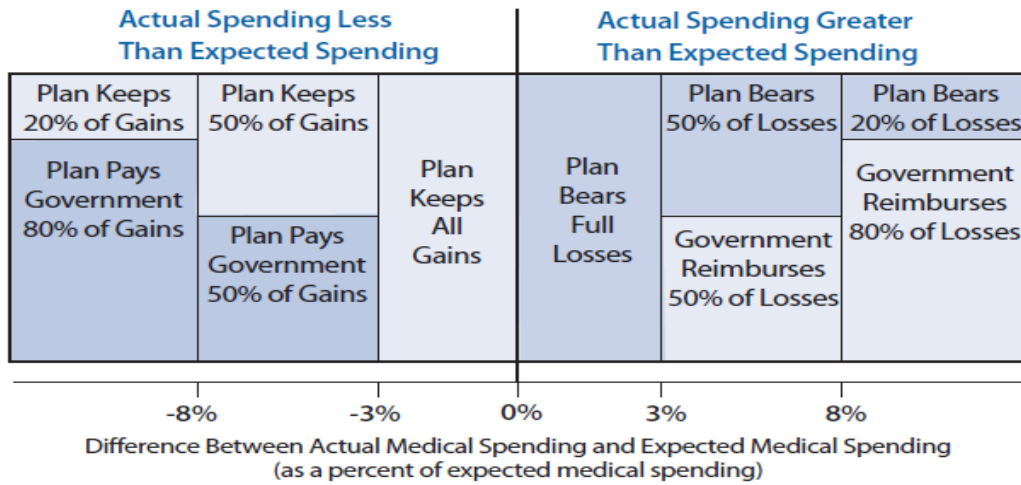
³³ *Id.* (Expected spending is also referred to in statute as the Target Amount).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

Illustration of ACA Risk Corridors



If payments to insurance companies exceed the government’s collections from companies, taxpayers will likely be forced to pay the difference. In effect, ObamaCare’s Risk Corridor program protects insurance company profits by having taxpayers largely subsidize insurer revenues for their ObamaCare-compliant plans.

ObamaCare’s Risk Adjustment Program

Section 1343 of the ACA established a permanent Risk Adjustment program.³⁷ According to the American Academy of Actuaries, the Risk Adjustment program “aims to reduce the incentives for health insurance plans to avoid enrolling people with higher-than-average costs by shifting money among insurers based on the risks of the people they enroll.”³⁸ The Risk Adjustment program transfers money from plans with individuals with relatively less expensive health conditions to plans with individuals with relatively more expensive health conditions.³⁹

III. Previous Estimates of the Size of ObamaCare’s Taxpayer Bailout

In March 2012, HHS noted that “[CBO] did not score the [budget] impact of the risk corridors and assumed collections would equal payments to plans and would therefore be budget neutral.”⁴⁰ However, there is no requirement in the ACA for the Risk Corridor program to be budget neutral. According to the Society of Actuaries:

³⁷ 42 U.S.C. § 18063 (2012).

³⁸ See Alonso-Zaldivar, *supra* note 19.

³⁹ Risk Adjustment applies to plans sold on the individual and small group market. Note: Self-insured group health plans subject to the Employee Retirement Income Security Act of 1973 (29 U.S.C. § 1001 et seq.) are not covered by the permanent Risk Adjustment program.

⁴⁰ U.S. DEP’T OF HEALTH & HUMAN SERVS., CTRS. FOR MEDICARE & MEDICAID SERVS., CTR. FOR CONSUMER INFO. AND INS. OVERSIGHT, PATIENT PROTECTION AND AFFORDABLE CARE ACT; ESTABLISHMENT OF EXCHANGES AND QUALIFIED HEALTH PLANS, EXCHANGES STANDARDS FOR EMPLOYERS (CMS-9989-FWP) AND STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS, AND RISK ADJUSTMENT (2012) at 10, available at <http://www.cms.gov/CCIIO/Resources/Files/Downloads/hie3r-ria-032012.pdf>.

The risk corridor program appears to be symmetric, with some plans paying into the program and some plans receiving funds from the program. But is it really? In the final rule HHS states that “[CBO] did not separately estimate the program costs of risk corridors, but assumed aggregate collections from some issuers would offset payments made to other issuers.” However, if all of the plans in a market (or even just the most popular ones) end up pricing their products too low and so suffer losses, the government will end up needing to fund this program, and the required funds could be substantial.⁴¹ [emphasis added]

In its original guidance on the program, HHS acknowledged that “[t]he risk corridors program is not statutorily required to be budget neutral. Regardless of the balance of payments and receipts, HHS will remit payments as required under Section 1342 of the Affordable Care Act.”⁴² In a final rule issued on May 21, 2014, HHS confirmed its intention to distribute money to insurers regardless of the balance of payments.⁴³

On February 4, 2014, CBO changed its estimate of the Risk Corridor program. Rather than assuming the Risk Corridor program would be budget neutral as it originally assumed, CBO estimated that ObamaCare’s Risk Corridors would raise \$8 billion in net revenue for the federal government because insurers would pay in more than they would receive over the three years the program is in operation.⁴⁴ CBO stated that this new estimate was based on the experience of Risk Corridors in the Medicare Part D program.⁴⁵

CBO’s estimate was quickly challenged by experts, including Professor Chandler. Professor Chandler, who developed a sophisticated mathematical model of ObamaCare’s Risk Corridor program, warned that “people should not yet make policy decisions based on the CBO estimate.”⁴⁶ According to Professor Chandler, the CBO analysis was flawed because it relied on “extremely dubious and factually unsupported assumptions about the profitability of insurers selling on the Exchanges.”⁴⁷

CBO’s estimate was also contradicted by publicly available information from the private sector. For instance, in an earnings call on January 9, 2014, Humana reported that their expected enrollment mix was “more adverse than previously expected.”⁴⁸ Humana estimated it would experience between \$250 million to \$450 million in losses in 2014 from its participation in the

⁴¹ Doug Norris, Mary van der Heide and Hans Leida, *Risk Corridors under the Affordable Care Act – A Bridge over Troubled Waters, but the Devil’s in the Details*, HEALTH WATCH, Issue 73, (Oct. 2013).

⁴² U.S. Dep’t of Health & Human Servs., Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014, 78 Fed. Reg. 47 (Mar. 11, 2013).

⁴³ *See Market Standards*, *supra* note 7.

⁴⁴ *See Budget*, *supra* note 4.

⁴⁵ *Id.*

⁴⁶ Seth Chandler, *CBO projection of \$8 billion from Risk Corridors is baffling*, ACA DEATH SPIRAL, (Feb. 7, 2014), <http://acadeathspiral.org/2014/02/07/cbo-projection-of-8-billion-from-risk-corridors-is-baffling/>.

⁴⁷ Seth Chandler, *CBO implies Obama regulation shoveled \$8 billion to insurers*, ACA DEATH SPIRAL, (Apr. 17, 2014), <http://acadeathspiral.org/2014/04/17/cbo-implies-obama-regulation-shoveled-8-billion-to-insurers/>.

⁴⁸ Lewis Krauskopf, *Humana says ObamaCare enrollment mix worse than expected*, REUTERS, Jan. 9, 2014.

ObamaCare exchanges.⁴⁹ Additionally, the credit ratings firm Moody's, citing "[u]ncertainty over the demographics of those enrolling in individual products through the exchanges," downgraded the credit outlook for health insurance companies from "stable" to "negative."⁵⁰ In April 2014, CBO revised their estimate again, changing their projection of the Risk Corridor program to once again be budget neutral.⁵¹

IV. Insurers Expect About a \$1 Billion Taxpayer Bailout in 2014

According to data released by HHS, approximately eight million people selected plans for coverage in the exchanges prior to the end of open enrollment.⁵² However, this figure is inaccurate as it includes individuals who failed to pay their first month's premium and thus never effectuated coverage. Based on the information provided by insurance companies and HHS's eight million figure, the Committee estimates that approximately seven million people were enrolled in the exchanges as of May 2014.⁵³ This number, which includes about two million people for whom the federal government failed to properly check eligibility,⁵⁴ will likely decrease throughout the year as people stop paying their share of the premium and the Administration finally removes people ineligible for exchange coverage or ObamaCare's premium subsidies. However, using the seven million person estimate, the 15 health insurance companies and 23 co-ops that provided enrollment and 3R information to the Committee represent about 80 percent of individuals enrolled in exchange plans.

Table 1 shows the total payments that the 15 insurance companies, as well as 23 co-ops, expect to receive from the Risk Corridor program and the Risk Adjustment program for ObamaCare-compliant plans they are offering in the individual market this year.⁵⁵ Twelve of the

⁴⁹ Scott Gottlieb, *Obamacare 'Bailout' For One Insurer Will Cost Up To \$450 Million in 2014*, FORBES, Feb. 6, 2014.

⁵⁰ *Announcement: Moody's Investors Service, Uncertain healthcare landscape leads to negative outlook for US health insurers*, GLOBAL CREDIT RESEARCH (Jan 23, 2014), available at: https://www.moody.com/research/Moodys-Uncertain-healthcare-landscape-leads-to-negative-outlook-for-US--PR_291141.

⁵¹ See *supra* note 13.

⁵² HHS defines enrolled as "unique individuals who have been determined eligible to enroll in a Marketplace plan through the SBMs and FFM, and have selected a plan (with or without the first premium payment having been received by the issuer)." See Dep't of Health & Human Servs, *Health Insurance Marketplace Summary Enrollment Report For The Initial Annual Open Enrollment Period* (May 1, 2014).

⁵³ Enrollment information provided to the Committee in the beginning of May was separated into three categories; plans that were in-force (enrollees selected a plan and paid the first month's premium), plans that were pending the payment of the first month's premium, and plans that were cancelled due to non-payment of the first month's premium. Insurers reported: 4,773,009 enrollments in-force, 849,165 enrollments pending, and 574,876 enrollments cancelled. The Committee assumed that 80 percent of pending enrollments would ultimately effectuate coverage. This amounts to a total of 5,452,341 enrollments. This number, when applied to the 8,019,763 enrollments reported by CMS, totals 7,056,016. This estimate also does not account for any who paid the first month's premium, but were cancelled due to non-payment of the premium for subsequent months. Also, 23 Co-Ops provided enrollment information. These Co-Ops reported 416,617 effectuated enrollments.

⁵⁴ Robert Pear, *Eligibility for Health Insurance Was Not Properly Checked, Audit Finds*, NEW YORK TIMES, Jul. 1, 2014.

⁵⁵ In order to estimate actual enrollment, the Committee assumed 80 percent of individuals who had selected a plan but who had not yet paid their first month's premium would ultimately effectuate their coverage. HHS counts individuals as having enrolled if they had selected a qualified health plan in the exchange. To date, the

15 health insurers expect to receive payments from the Risk Corridor program, one of the insurers expects to make payments into the Risk Corridor program, and two of the insurers expect no net payments. These 15 insurers project they will receive approximately \$640 million in net payments through the Risk Corridor program for the 2014 plan year.

Of the 23 co-ops, seven expect to receive payments through the Risk Corridor program, two expect to pay money into the Risk Corridor program, and 14 expect no net payments. The 23 co-ops expect to receive approximately \$86 million in net payments through the Risk Corridor program for the 2014 plan year. In total, the insurers and co-ops surveyed by the Committee expect net payments through the Risk Corridor program of about \$725 million. Since these companies cover about 80 percent of individuals enrolled in exchange plans, the total taxpayer bailout currently expected by insurance companies likely approaches \$1 billion for the 2014 plan year.

Table 1: Expected Risk Corridor and Risk Adjustment Payments in 2014

	Insurers	Co-ops	Total
Risk Corridor Program	\$639,575,703	\$85,631,978	\$725,207,681
Risk Adjustment Program	\$343,024,345	\$2,950,562	\$345,974,907
Individuals Covered	5,452,341	416,617	5,868,958

Note: Data in this table was provided by Aetna, Blue Cross Blue Shield North Carolina, Blue Shield California, CareFirst, Cigna, Florida Blue, HCSC, HealthNet, Highmark, Humana, Independence Blue Cross, Kaiser, Molina, United, and Wellpoint as well as the 23 co-ops. The data in this table shows the aggregate payments these insurers and co-ops expect to receive through the Risk Corridor and Risk Adjustment programs as of May 2014 as well as the total number of individuals covered by these companies. Please see footnote 52 for additional explanation on how the Committee obtained the number of individuals covered.

Evidence that Several Companies Underpriced Plans and Now Expect Large Bailouts

The 3R programs, which insulate companies from significant losses, provided insurers with a strong incentive to price aggressively to gain market share. As described by *Health Watch*, risk corridors “could provide an incentive for an issuer to price its plan competitively ... and if this price ends up being too low to cover costs, it will share that burden with HHS, while at the same time gaining market share.”⁵⁶ Both the Reinsurance program and the Risk Adjustment program provide insurers with similar incentives.

According to Professor Chandler’s estimates, ObamaCare’s Reinsurance program, funded by higher premiums on the vast majority of Americans, provides about a \$500 subsidy per

Administration has not reported the number of individuals in exchange with policies in force. Plans are not in effect until the first month’s premium is paid. The insurers have reported that approximately 15-20 percent of have not paid their first month’s premium. See Sam Baker, *15-20 Percent Aren't Paying Obamacare Premiums, Insurer Says*, NAT’L J. (Apr. 2, 2014), available at <http://www.nationaljournal.com/health-care/15-20-percent-aren-t-paying-obamacare-premiums-insurer-says-20140402>. The 15-20 percent estimate is consistent with enrollment data provided to the Committee by insurers].

⁵⁶ Norris, *supra* note 41.

covered life for ObamaCare-compliant plans in the individual market.⁵⁷ With respect to the Risk Corridor program, Professor Chandler testified “that by backstopping the losses, there is somewhat of an incentive for insurers to underprice, get the business, if things go badly, Risk Corridors bails them out and if things go okay, well, great.”⁵⁸

According to Ed Haislmaier, an expert in health insurance markets, smaller companies would be the ones more likely to “use a strategy of discounting to gain market share.”⁵⁹ According to Professor Chandler’s testimony, the fact that consumers have generally chosen the lowest price policies in the exchanges “exacerbates the possibility that it will be those insurers who are under-pricing who get the business and that will necessitate the sort of Risk Corridors payments in the end.”⁶⁰ Speaking to investors on an April 17, 2014, conference call, UnitedHealth Group’s CEO Stephen Hemsley indicated that several new entrants had very low prices for their exchange plans, stating, “We believe several carriers there, including new entrants, are pricing well below cost and what we would view as unsustainable pricing levels.”⁶¹

The Committee has conducted oversight of ObamaCare’s co-op program. Co-ops were created by a provision in the ACA that provided six billion dollars in loans to health insurance company startups.⁶² CMS ultimately disbursed approximately \$2 billion to 23 companies through the program,⁶³ a program that the Office of Management and Budget (OMB) projected would result in taxpayers losing over 40 percent of the value of the loans given to co-ops.⁶⁴ As it turns out, most co-ops were wildly off target with their projections for enrollment. As Figure 1 shows, six co-ops enrolled fewer than 25 percent of their projected enrollment, while five co-ops enrolled more than twice what they projected. Only two of the 23 co-ops had an actual number of enrollees within 25 percent of their projection.

The co-op’s wildly inaccurate enrollment projections are evidence that co-ops mispriced their plans – some setting prices too high with others setting prices too low. Co-ops that had the largest enrollment relative to their initial projections, an indication that they set their initial premiums too low, expect large payments through ObamaCare’s Risk Corridor program. The 10 co-ops that enrolled more than 125% of their projected initial enrollment expect aggregate Risk Corridor receipts of about \$81.6 million in 2014. As a comparison, the 11 co-ops that enrolled

⁵⁷ See *Poised to Profit Hearing*, *supra* note 9 (statement of Seth J. Chandler, Foundation Professor of Law, Univ. of Houston Law Ctr.) [hereinafter *Chandler testimony*].

⁵⁸ *Id.*

⁵⁹ See *Poised to Profit Hearing*, *supra* note 9 (statement of Edmund F. Haislmaier, Senior Research Fellow, Ctr. for Health Policy Studies, the Heritage Foundation).

⁶⁰ *Chandler testimony*, *supra* note 57.

⁶¹ Patrick Connole, *N.Y. Small-Group Market Isn’t Suiting United’s State of Mind (with Table: Top 10 Health Plans in New York’s Commercial Risk Market)*, 24 HEALTH PLAN WEEK 14 (Apr. 28, 2014), available at <http://aishealth.com/archive/nhpw042814-04>.

⁶² Patient Protection & Affordable Care Act, H.R. 3590, 111th Cong., § 1332 (2010).

⁶³ CTR. FOR CONSUMER INFO. & INS. OVERSIGHT, NEW LOAN PROGRAM HELPS CREATE CUSTOMER-DRIVE NON-PROFIT HEALTH INSURERS, (, 2014), available at <http://www.cms.gov/CCIIO/Resources/Grants/new-loan-program.html>.

⁶⁴ OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, FEDERAL CREDIT SUPPLEMENT, BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2013, available at http://www.whitehouse.gov/sites/default/files/omb/budget/fy2013/assets/cr_supp.pdf.

fewer than 75 percent of their projected initial enrollment expect aggregate Risk Corridor receipts of only \$1.3 million in 2014.

In addition to OMB’s projection of a large loss to taxpayers from co-ops’ inability to fully repay the loans that they received, taxpayers appear to be on the hook for bailing out co-ops that significantly underpriced their plans in 2014. Moreover, policyholders with coverage through these co-ops should expect large premium increases in future years when the co-ops can no longer rely on taxpayers to heavily subsidize their revenues.

In addition to the co-ops, many other insurers also appear to have underpriced exchange plans for the 2014 plan year, likely due to their expectation of receiving a taxpayer bailout. The Committee has learned that, as of October 1, 2013, many large insurers expected to receive payments through the Risk Corridor program. Of the 15 insurers, six expected payments through the Risk Corridor program prior to the start of open enrollment while none expected to make payments into the Risk Corridor program. Insurance companies’ expectations of payments through the Risk Corridor program have increased significantly since October 1, 2013.

Size of the Expected Bailout Has Significantly Increased

Table 2 shows the total expected Risk Corridor and Risk Adjustment payments for the 15 insurers and 23 co-ops as of both October 1, 2013, and May 2014. Table 2 demonstrates that insurers’ expected payments through each program have grown in size over time. Overall, the insurance industry’s expectation for payments through the Risk Corridor program have increased by about 34.7 percent since October 1, 2013. In addition, insurers and co-ops currently expect payments through the Risk Adjustment program of nearly twice the amount they expected on October 1, 2013.

Table 2: Change in Expected Bailout Between October 1, 2013 and May 2014

	October 1, 2013	May 2014	Increase	% Increase
Risk Corridor Program	\$539,612,398	\$725,207,681	\$186,995,283	34.7%
Risk Adjustment Program	\$194,168,087	\$345,974,907	\$182,006,820	93.7%

Note: Data in this table was provided by Aetna, Blue Cross Blue Shield North Carolina, Blue Shield California, CareFirst, Cigna, Florida Blue, HCSC, HealthNet, Highmark, Humana, Independence Blue Cross, Kaiser, Molina, United, and Wellpoint as well as the 23 co-ops. The data in this table shows the aggregate payments these insurers and co-ops expect to receive through the 3R programs as of both October 1, 2013, and May 2014. The fourth column shows the raw increase between October 1, 2013, and May 2014, and the final column shows the percent increase.

V. Administration Actions Created Older and Sicker Exchange Risk Pools than Insurers Anticipated

While exchange plans were always susceptible to adverse selection due to how expensive the law made insurance for younger and healthier adults, several of the Administration’s unilateral delays and modifications resulted in fewer healthier people enrolling in insurers’ ObamaCare-compliant plans than insurers’ anticipated. For example, on November 14, 2013, facing political pressure because of the large number of individuals notified that their insurance

would be cancelled because of ObamaCare,⁶⁵ President Obama issued a so-called “transitional policy.”⁶⁶ Under the transitional policy, states could elect to allow non-ObamaCare-compliant plans to continue for an additional year.⁶⁷

The President’s transitional policy raised a plethora of concerns. America’s Health Insurance Plans’ (AHIP) President and CEO Karen Ignagni stated that the policy could “destabilize the market and result in higher premiums for consumers.”⁶⁸ According to Professor Chandler, the Administration’s transitional policy not only raised major questions about separation of powers, but it also increased the likelihood and cost of a taxpayer bailout of insurance companies:

[T]he Obama Administration’s sabotage of its own delicate mechanisms for adverse selection containment by what it calls a transitional policy ... violat[es] the law [Congress] passed and permit[s] insurers in many States to sell policies that fail to provide essential health benefits and that otherwise violate the ACA. That action increased the cost of risk corridors substantially, even as it challenged separation of powers.⁶⁹

On March 5, 2014, the Administration extended the period that insurers could renew policies that failed to comply with ObamaCare’s mandates until October 2016.⁷⁰ The National Association of Insurance Commissioners (NAIC) criticized this policy change, stating that the President’s decision “allows different rules for different policies which threaten to undermine the new marketplace. Creating two tiers of plans — the compliant and non-compliant — could result in higher premiums overall and market disruptions in 2015 and beyond.”⁷¹ One insurer told the Committee that it expects greater Risk Corridor program receipts because of a sicker risk pool than it anticipated on October 1, 2013 due, in part, to the President’s transitional policy.⁷²

The large increase in insurers’ expectations for Risk Corridor payments and Risk Adjustment payments between October 1, 2013, and the present are consistent with recent media reports about a high degree of adverse selection in exchange plans. An April report from Express Scripts, a pharmacy benefits manager, showed that early exchange plan enrollees were

⁶⁵ Carol E. Lee and Louise Radnofsky, *White House to Allow Insurers to Continue Canceled Health Plans*, WALL ST. J., Nov. 14, 2013, available at <http://online.wsj.com/news/articles/SB10001424052702303789604579197733759439274>.

⁶⁶ Timothy W. Martin, et al., *Health Insurers Express Worries Over Obama Shift on Policy Cancellations*, WALL ST. J., Nov. 14, 2013, available at <http://online.wsj.com/news/articles/SB10001424052702303289904579198053626111152>.

⁶⁷ *Id.*

⁶⁸ Press Release: America’s Health Insurance Plans (AHIP), (Nov. 14, 2013), available at <https://www.ahip.org/News/Press-Room/2013/AHIP-Statement-on-Consumers-Keeping-Their-Current-Coverage.aspx>.

⁶⁹ See Chandler testimony, *supra* note 57.

⁷⁰ Noam N. Levey, *Consumers allowed to keep substandard health plans into 2017*, L.A. TIMES, Mar. 5, 2014, available at <http://www.latimes.com/nation/la-na-obamacare-delay-20140306.0,5625678.story#axzz2vZwb39jQ>

⁷¹ NAIC Statement on Non-Compliant Plan Extensions (Mar. 5, 2014), available at

http://www.naic.org/newsroom_statement_140305_hamm_non-compliant_plan_extensions.htm.

⁷² Documents produced to the Committee in response to an April 23, 2014, letter from Chairman Issa.

spending much more money on drugs than individuals in group plans.⁷³ On June 24, 2014, the *Wall Street Journal* reported that exchange enrollees are about 70 percent more likely to have significant health issues than people enrolled in the individual market in 2013.⁷⁴ According to an analysis of the early claims data, healthy individuals largely chose to keep their existing non-ObamaCare-compliant plans while those with greater health concerns have opted for exchange coverage.⁷⁵ Patrick Getzen, chief actuary for Blue Cross Blue Shield North Carolina, told the *Wall Street Journal*, “[i]t’s even worse than what we thought. ... We’re seeing more chronic conditions than we would have expected.”⁷⁶

The Committee has obtained two pieces of information that further demonstrate that people enrolled in exchange plans are significantly older and less healthy than initially expected by insurers. The first is that insurers anticipate much larger payments through ObamaCare’s Risk Adjustment program than they did on October 1, 2013. The second is that insurers have reported to the Committee that they have enrolled a substantially older population in their exchange plans than they projected prior to October 1, 2013.

Insurers Expect Positive Risk Adjustment Payments

If a company generally expects that they have enrolled a more healthy population in their ObamaCare-compliant coverage plans compared to the average enrollee in such plans, the company will expect to pay money through the Risk Adjustment program. If a company generally expects that they have enrolled a less healthy population in their ObamaCare-compliant coverage plans compared to the average enrollee in such plans, the company will expect to receive money through the Risk Adjustment program. Since ObamaCare’s Risk Adjustment program is required to be budget neutral, total risk adjustment payments should net to zero. If the total insurer expectations for risk adjustment payments do not net to zero, it means that that insurers generally believe that their ObamaCare-compliant plans in 2014 were mispriced.

Table 1 shows that health insurance companies and co-ops surveyed by the Committee expect to receive about \$346 million through ObamaCare’s Risk Adjustment program for the 2014 plan year. Seven insurers expect to receive payments from the Risk Adjustment program, one of the insurers expects to make payments into the Risk Adjustment program, and seven insurers expect no net payments. Overall, the traditional insurance companies project that they will receive, on net, approximately \$343 million through Risk Adjustment payments in 2014. The fact that insurers systematically expect to receive payments through the Risk Adjustment program shows that insurers generally expect that the average health of the people that they enrolled in ObamaCare-compliant plans is worse than the average health of all the people who have enrolled in ObamaCare-compliant plans throughout the country.

⁷³ Kate Rogers, *Report: Early ACA Enrollees Were Sicker Than Average*, FOX BUS. (Apr. 9, 2014), available at <http://www.foxbusiness.com/personal-finance/2014/04/09/report-early-aca-enrollees-were-sicker-than-average/>.

⁷⁴ Anna Wilde Mathews and Christopher Weaver, *Sick Drawn to New Coverage in Health-Law Plans*, WALL ST.J., June 24, 2014.

⁷⁵ *Id.*

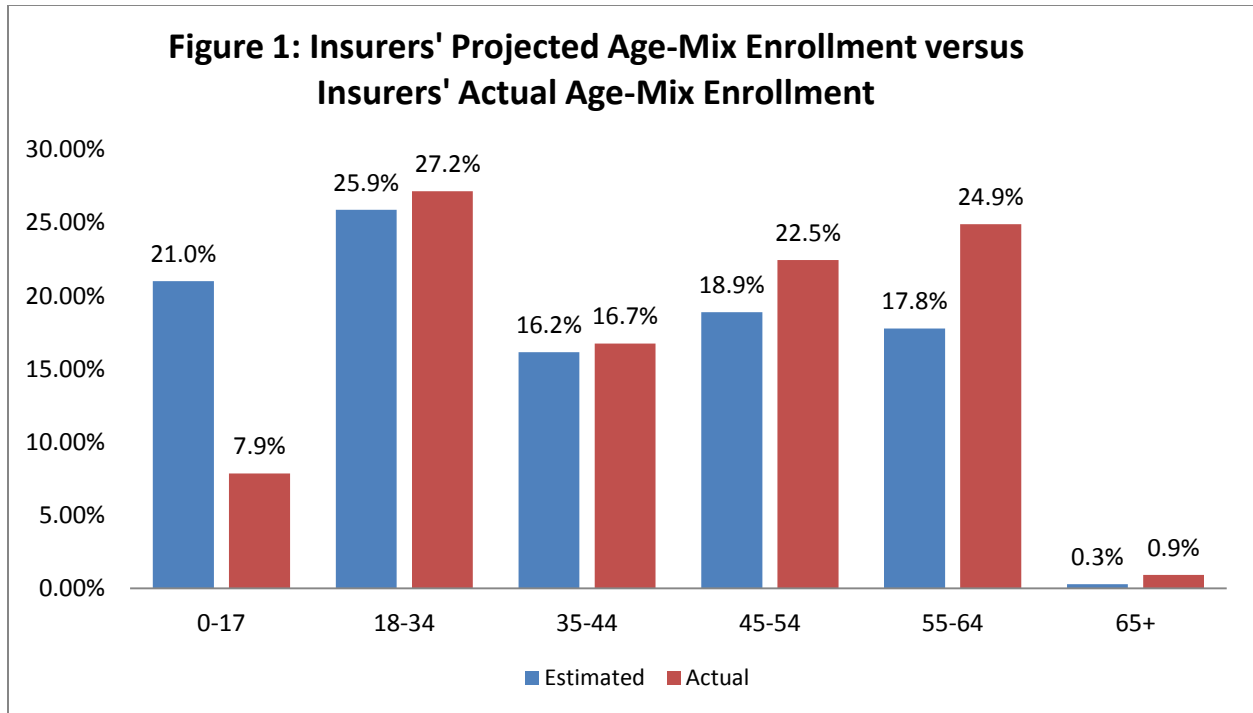
⁷⁶ *Id.*

Insurance companies expect nearly twice as much in net payments through the Risk Adjustment program as they did prior to the start of open enrollment. This increase indicates that many, if not most, insurance companies believe that they have enrolled a less healthy exchange population overall than originally anticipated. Moreover, insurers' positive and growing Risk Adjustment payment expectations is further evidence that insurers are banking on a taxpayer bailout to minimize their losses.

Exchange Plans Have Much Older Risk Pools Than Insurers Anticipated

The Committee asked the 15 insurance companies to provide their pre-October 1, 2013, forecast of the age-mix of enrollees in their exchange plans as well as the actual age-mix of people who enrolled in their exchange plans. Ten of the fifteen companies provided enrollment projections by age, while five companies indicated that they did not make age-mix projections. The Committee found that every insurance company enrolled significantly fewer children (under 18 years old) and significantly more near-retirees and seniors than they anticipated prior to the start of open enrollment.

Figure 1 shows the weighted enrollment average of insurers' age-mix projections for the ten insurance companies prior to the start of open enrollment, as well as the weighted average of insurers' actual age-mix enrollment. Figure 1 demonstrates that insurance companies enrolled only about a third as many children as they anticipated. This indicates that very few families with children have found coverage in ObamaCare's exchanges to be worth the cost. Insurers enrolled roughly as many 18 to 44 year olds as they anticipated at the start of open enrollment, but they enrolled substantially more people over the age of 45 than they anticipated. Prior to the start of open enrollment, insurers anticipated that enrollees aged 45-54, 55-64, and over 65 would comprise 18.9 percent, 17.8 percent, and 0.3 percent of their total enrollees, respectively. On average, insurers ended up with 22.5 percent, 24.9 percent, and 0.9 percent of total enrollees in these respective age groups, however.



Note: Both projected age-mix enrollment and actual age-mix enrollment are weighted by enrollment. Five companies provided enrollment projections that included the expected number of enrollees. Five other companies provided projected enrollment percentages as well as total expected total enrollment. The Committee calculated the expected number of enrollees by multiplying the percentages with their total number of enrollees expected. As a valid point of comparison, the Committee only included the ten companies that had corresponding enrollment projections for the actual enrollment age-mix calculations. The Committee included all the enrollees that paid the first month’s premium. The Committee also assumed that 80 percent of enrollees listed as pending would effectuate coverage.

VI. After Transitional Policy, Administration Ceded to Insurer Demands and Delivered a More Generous Bailout to Insurers

Insurance companies were displeased with the Administration’s transitional policy because the policy would result in a less healthy exchange plan risk pool. After the transitional policy, insurers lobbied for the Administration to make the 3R programs more generous. For example, on November 15, 2013, one day after the President announced his transitional policy, health insurers met with White House and HHS officials.⁷⁷

After that meeting, Peter Rubin, a lobbyist for Aetna, emailed Ari Matusiak, Special Assistant to the President and the Director of Private Sector Engagement, that “it remains essential that the Administration take steps to hold plans harmless that are actively participating in the exchanges given the exceptionally challenging environment...”⁷⁸ In the email, Mr. Rubin asked the White House to “[d]ecreas[e] the reinsurance benchmark levels from \$60,000 to \$20,000” and “[i]ncrease[e] the risk corridor payment levels to 100%.”⁷⁹

⁷⁷ E-mail from Peter Rubin to Ari Matusiak (Nov. 15, 2013) [Aetna #511].

⁷⁸ *Id.*

⁷⁹ *Id.*

From: Rubin, Peter
To: Matusiak, Ari [REDACTED]@who.eop.gov
Sent: 11/15/2013 11:39:04 PM
Subject: Good seeing you today.

Understand meeting was constructive, but was not clear on commitments.

Per our conversation, below is what we asked for with CCIO while our bosses were meeting. We continue to share the same end result and obviously offered operational assistance etc. as well to help implement the policy change.

However, it remains essential that the Administration take steps to hold plans harmless that are actively participating in the exchanges given the exceptionally challenging environment (severely damaged risk pools due to exchange rollout, policy change, exchange fees, fixed insurance tax, and fixed reinsurance fees), to mitigate the impact on the 2015 exchange strategies. These strategies will first become apparent in early Q2 2014 and come to a head with consumer notifications over the summer and fall, including the October open enrollment period.

Policy request: it is imperative that the Administration use its authority to protect the exchange plan risk pools as soon as possible by:

- (1) Decreasing the reinsurance benchmark levels from \$60,000 to \$20,000; and
- (2) Increasing the risk corridor payment levels to 100%.

Can provide additional details / info as needed. Thanks again, peter

Two weeks after Mr. Rubin's email to the White House, HHS proposed changes to the Reinsurance program, which made it more generous to health insurance companies.⁸⁰ HHS proposed to lower the threshold for reinsurance payments in 2014 from \$60,000 to \$45,000.⁸¹ By itself, this change could result in an additional \$2 to \$3 billion in payments to insurers in 2014.⁸² One insurer's expectation for reinsurance payments tripled because of the Administration's transitional policy as well as additional regulatory changes that made the program more generous for insurers.⁸³

⁸⁰ U.S. Dep't of Health & Human Servs, Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2015, 78 Fed. Reg. 231, (proposed Dec. 2, 2013) [hereinafter *proposed rule*], available at: <http://www.gpo.gov/fdsys/pkg/FR-2013-12-02/pdf/2013-28610.pdf>.

⁸¹ *Id.*

⁸² Dan Mangan, *Insurers' Obamacare boon: More reinsurance payouts proposed*, CNBC (Nov. 26, 2013, 4:54 PM), <http://www.cnbc.com/id/101229289>.

⁸³ Documents produced to the Committee in response to an April 23, 2014, letter from Chairman Issa.

VII. After Lobbying from Insurers, the Administration Made the Taxpayer Bailout Bigger

During the past few months, the Administration has made ObamaCare’s Risk Corridor program more favorable to health insurers in several ways.⁸⁴ First, on December 2, 2013, HHS proposed a rule that adjusted the risk corridor formula to increase payouts to insurers.⁸⁵ This change affected exchange plans in states that allowed insurers to continue offering non-ObamaCare-compliant plans for another year. On March 11, 2014, HHS finalized the proposed rule.

However, in the March 2014 final rule, the Administration also announced that it would seek to impose a budget-neutrality requirement on the Risk Corridor program. HHS wrote “We intend to implement this program in a budget neutral manner, and may make future adjustments, either upward or downward to this program ... to the extent necessary to achieve this goal.”⁸⁶ Insurance companies, which as this report shows generally expect to receive funds through the Risk Corridor program, were troubled by the Administration’s signal to implement the program in a budget neutral fashion and lobbied the Administration to reverse the change.

For example, on April 4, 2014, Chet Burrell, the President and CEO of CareFirst Blue Cross Blue Shield, emailed Valerie Jarrett, Senior Advisor to President Obama and Assistant to the President for Public Engagement and Intergovernmental Affairs, “I want to bring to your attention a brewing issue that will negatively impact upcoming ACA premium rates – any chance for a brief conversation?”⁸⁷ Later that day, Mr. Burrell and Ms. Jarrett spoke on the phone, and the following day, Mr. Burrell emailed Ms. Jarrett, “[h]ere’s a short summary of the issue I described to you yesterday, as you requested. Thank you for understanding that I am only trying to give a ‘heads-up’ notice on an issue that could produce an unwelcome surprise. ...”⁸⁸ Mr. Burrell attached a document entitled ‘Premium Rate Increase Concern.docx’; which discussed the “Concern That [the] Recent HHS Rule will cause Sharp Premium Rate Increases.”⁸⁹ According to Mr. Burrell’s memo:

Because the Risk Corridor provision reduces the effects of uncertainty that carriers must include in premiums, it enables them to keep premiums lower than they would otherwise be during the 2014-2016 transition period. ...

Until very recently, the position of the Administration had been that the law requires the Federal government to fully fund the Risk Corridor payments if amounts paid in by the “winners” turn out to be inadequate – as they likely will.

⁸⁴ See *proposed rule*.

⁸⁵ The proposed rule allowed insurers, operating in states affected by the president’s transitional policy, to include a greater amount of “profits” in their “allowable administrative costs” calculation. Originally, insurers could only include three percent of after-tax premiums as “profits” when determining allowable administrative costs. The proposed rule change allowed insurers to exceed this cap. These adjustments would lower the plan’s “target amount,” the threshold in which payments are triggered. This will result in greater Risk Corridor payments than would have been made without the change. See <http://www.gpo.gov/fdsys/pkg/FR-2013-12-02/pdf/2013-28610.pdf>

⁸⁶ <http://www.gpo.gov/fdsys/pkg/FR-2014-03-11/pdf/2014-05052.pdf>.

⁸⁷ E-mail from Chet Burrell to Valerie Jarrett (Apr. 4, 2014) see *Appendix 000001*.

⁸⁸ E-mail from Chet Burrell to Valerie Jarrett (Apr. 5, 2014) see *Appendix 000002-000003*.

⁸⁹ See *id.*

Very recently, this position appears to have been reversed under a rule issued by HHS that requires “budget neutrality” – possibly meaning that if the amounts paid in by “winning carriers” turn out to be insufficient to cover the cost of the “losing” carriers, the Federal government would not step in.

If this is indeed the policy, then carriers will have to price premiums as if the Risk Corridor features is not fully available. While this is a highly technical matter that few understand, the impacts are real and immediate. That is, if the transitional protection is not there, carriers will have to increase rates substantially (i.e., as much as 20% or more beyond what they would otherwise file) to make sure that premiums adequately reflect expected costs – because there would be little protection if they do not.

Here is the urgency: Premium rate filings for January 1, 2015, are due on May 1, 2014, and all carriers are not making rate-filing decisions. There is great concern among carriers about the intent behind the recent change in rule. Uncertainty or confusion will equate to higher rates. This could confront the Administration with a sea of far larger premiums increases than expected. Once the filings are made, they will likely quickly become public.

Immediate action to clarify the administration’s position is needed to avert this. The most effective action would be assurance that the original HHS interpretation of the ACA (which conforms best to a plain language reading of the ACA) still stands and that carriers could count on federal funding for risk corridors during the transition years (2014-2016).⁹⁰ [emphasis in original]

Mr. Burrell’s memo is further evidence that insurers generally expect to receive payments through the Risk Corridor program. It also shows that this expectation of receiving payments allowed insurers to keep exchange plan premiums significantly cheaper than they would have been without taxpayers being on the hook for a bailout. Mr. Burrell’s memo essentially presents the Administration with a choice: face significantly higher premium increases in 2015 for exchange plans or make taxpayers bail out insurance companies.

Ms. Jarrett thanked Mr. Burrell for providing her the memorandum,⁹¹ and indicated that “the policy team is aggressively pursuing options.”⁹² On April 11, 2014, the Administration released a memorandum entitled Risk Corridors and Budget Neutrality.⁹³ In the memorandum, the Administration indicated that in the event of a Risk Corridor shortfall (insurance companies paid in less money through the program than they were due to receive), the Administration would reduce payments proportionally for the plan year.⁹⁴ The Administration indicated it would repay the remaining amount owed the companies out of payments received the following

⁹⁰ *Id.*

⁹¹ See e-mail from Valerie Jarrett to Chet Burrell (Apr. 5, 2014) *see Appendix 000004-000005*.

⁹² *See id.*

⁹³ Memorandum from The Dep’t of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Ctr. for Consumer Information and Insurance Oversight (Apr. 11, 2014), *available at* <https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/faq-risk-corridors-04-11-2014.pdf>.

⁹⁴ *See id.*

year.⁹⁵ In the event that incoming payments over the period did not allow the government to fully compensate insurance companies, the Administration committed to address the issue in future guidance or rulemaking.”⁹⁶ After the memorandum was released, Mr. Burrell emailed Ms. Jarrett:

This confirms the very policy we were concerned about and that I wrote you about. I think the WH has to be prepared for large premium rate increases in many parts of the country because a key stabilizer (risk corridors) can now not be counted on.

AHIP and BCBSA are analyzing the impact and will issue their joint assessment soon so I certainly do not speak for the industry. I offer only my opinion here.

Until last month, all in the industry assumed there would be no budget neutrality given the way ACA is written, so this is seen as a key change very late in the implementation process. It will adversely impact premium rates in 2015, I am sorry to say.⁹⁷

Ms. Jarrett expressed surprise at Mr. Burrell’s email, responding, “Jeanne [Lambrew] really thought this would help. We will regroup next week.”⁹⁸ [emphasis added] Ms. Jarrett had involved Jeanne Lambrew, the Deputy Director of the White House Office of Health Reform, directly in responding to Mr. Burrell’s concern. Ms. Lambrew, in turn, asked Julian Harris, Associate Director of Health Programs at OMB, and Al Bingham, senior actuary at the Center for Consumer Information and Insurance Oversight, to get involved with the matter.⁹⁹ After Ms. Jarrett discussed the matter with Ms. Lambrew and other relevant staff, she emailed Mr. Burrell, “After speaking at length today with Jeanne and our other policy folks, I do not think I have any more to add. They seem to have given you 80 percent of what you requested and I am not in a position to second guess there [sic] analysis.”¹⁰⁰ [emphasis added] Mr. Burrell responded:

Thanks, Valerie for all your efforts and follow through. I am appreciative of the discussion I had with Jeanne, Al and Julian and all you did to arrange it. My view remains the same – substantial rate increases are coming but it seems it can’t be helped.¹⁰¹

In comments submitted to HHS on the issue, AHIP reiterated Mr. Burrell’s concern, warning that “[c]hanging the rules of the risk corridors program after premiums for 2014 have been set will increase the potential for market disruption and may result in higher premiums for 2015 – as plans will have no guarantee that sufficient funding is available to lower their pricing

⁹⁵ *See id.*

⁹⁶ *Id.*

⁹⁷ E-mail from Chet Burrell to Valerie Jarrett (Apr. 11, 2014) *see Appendix 000006.*

⁹⁸ E-mail from Valerie Jarrett to Chet Burrell (Apr. 13, 2014) *see Appendix 000007.*

⁹⁹ E-mail from Jeanne Lambrew to Chet Burrell (Apr. 12, 2014) *see Appendix 000010.*

¹⁰⁰ E-mail from Valerie Jarrett to Chet Burrell (Apr. 15, 2014) *see Appendix 000008.*

¹⁰¹ E-mail from Chet Burrell to Valerie Jarrett (Apr. 15, 2014) *see Appendix 000008.*

risk...”¹⁰² AHIP concluded that “**Risk Corridors should be operated without the constraint of budget neutrality.**”¹⁰³ [emphasis in original] In addition to AHIP’s strong criticism of the Administration’s budget neutrality position, AHIP also lobbied for “additional mitigation relief” citing the Administration’s transitional policy which “heightened [the] risk of adverse selection [and] may cause higher premiums in the Exchanges.”¹⁰⁴

After receiving warnings of substantially higher premiums if the Administration implemented the Risk Corridor program in a budget neutral manner, the Administration reversed course and indicated that it would not implement the program in a budget neutral manner. On May 16, 2014, CMS finalized a rule that addressed changes to the Risk Corridor program for plans in 2015.¹⁰⁵ In this rule, HHS wrote “In the unlikely event of a shortfall for the 2015 program year, HHS recognizes that the Affordable Care Act requires the Secretary to make full payments to issuers. In that event, HHS will use other sources of funding for the risk corridors payments, subject to the availability of appropriations.”¹⁰⁶

To appease insurance companies, the May 16, 2014, final rule also included changes that made risk corridor payments for plans in 2015 more generous to insurers by increasing the risk corridor’s three percent profit floor to five percent (up to the administrative cost cap of 22 percent).¹⁰⁷ This change affects insurers in all states. The effect of this change made it more likely that insurers would receive money through the Risk Corridor program and also increased the payments insurers would receive.

Professor Chandler testified that Congress should be concerned with this change, which he views as a give-away to insurance companies. According to Professor Chandler, “[the] decision to fiddle with the risk corridors formula it had earlier written not in a way that has anything to do with a reappraisal of real costs ... [was] just about taking care of everybody’s friend, big insurers.”¹⁰⁸ [emphasis added] Table 3 illustrates how HHS’s rule change benefits health insurers using a hypothetical insurer that collects \$1,000 in premiums and incurs \$760 in claims.

¹⁰² Letter from Dan Durhman, Exec. VP, Policy and Regulatory Affairs, America’s Health Insurance Plans (AHIP), to Ms. Mandy Cohen, M.D., Deputy Admin. & Dir., U.S. Dep’t of Health & Human Servs., Ctrs. for Medicare & Medicaid Servs., Ctr. for Consumer Information and Insurance Oversight, (Apr. 21, 2014).

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ U.S. Dep’t of Health & Human Servs., Patient Protection and Affordable Care Act; HHS Exchange and Insurance Market Standards for 2015 and Beyond, Fed. Reg. Vol. 79 No. 101 (May 27, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf>.

¹⁰⁶ 45 C.F.R. §§ 144-148, 153-156, 158 (2014), available at <http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/508-CMS-9949-F-OFR-Version-5-16-14.pdf>.

¹⁰⁷ U.S. Dep’t of Health & Human Servs., Patient Protection and Affordable Care Act; HHS Exchange and Insurance Market Standards for 2015 and Beyond, Fed. Reg. Vol. 79 No. 101 (May 27, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-05-27/pdf/2014-11657.pdf>.

¹⁰⁸ Chandler testimony, *supra* note 57.

Table 3: Impact of Administration’s Profit Floor Increase to Risk Corridor Program¹⁰⁹

Impact of Obama Administration's Profit Floor Increase			
3 percent floor		5 percent floor	
Total Premiums	\$1,000.00	Total Premiums	\$1,000.00
Taxes	\$75.00	Taxes	\$75.00
Administrative Costs	\$157.25	Administrative Costs	\$157.25
3 Percent Profits	\$27.75	5 Percent Profits	\$46.25
Target Amount	\$740.00	Target Amount	\$721.50
Claims	\$760.00	Claims	\$760.00
Ratio of Target Amount	102.7%	Ratio of Target Amount	105.3%
Total costs	\$992.25	Total costs	\$992.25
Net w/out risk corridor	\$7.75	Net w/out risk corridor	\$7.75
Risk corridor payment	\$0.00	Risk corridor payment	\$8.30
Net after risk corridor payment	\$7.75	Net after risk corridor payment	\$16.05
		Increase in Profits	107.06%

As the example above shows, under the formula in the original HHS rule, this hypothetical insurer would not receive any risk corridor payments. However, the revised HHS rule results in this hypothetical insurer receiving a risk corridor payment. This payment translates to a 107.6 percent increase in the insurers’ profit. It is important to note that the *Washington Examiner* reported that the Administration was weighing whether to extend the Risk Corridor program beyond the three-year time frame set in statute.¹¹⁰

Although not directly related to the 3R provisions, on March 13, 2014, the Administration produced another windfall for insurers by moving ObamaCare’s cost-sharing subsidies from a sequestered account to a non-sequestered account.¹¹¹ Cost-sharing subsidies are payments to insurers on behalf of enrollees whose incomes are between 100 and 250 percent of the federal poverty level. These subsidies are used to cover out-of-pocket costs such as deductibles, coinsurance, and copayments. The removal of the cost-sharing subsidies from sequestration is projected to result in the federal government transferring an additional \$560 million to insurance companies this year and more in subsequent years.¹¹²

¹⁰⁹ This hypothetical health plan in collects \$1,000 in premiums while spending \$760 in claims. Taxes amount to 7.5 percent of premiums; this is comparable to the example used in a rule issued by CMS in March 2013. This example also assumes that the plan’s administrative costs equal 17 percent of after tax premiums. Total “allowable administrative costs” (administrative costs plus profits) are equal to the maximum amount allowed by HHS (20 percent and 22 percent of after tax premiums respectively). The target amount is derived by subtracting taxes and “allowable administrative costs” from total premiums. The ratio for determining risk corridor payments can be determined by dividing “claims” by the “target amount.” When the ratio is within the 97 percent and 103 percent of the “target amount,” no risk corridor payments are triggered. This is the case for the scenario with a three percent profit floor. The scenario with the 5 percent profit floor, however, has a ratio that equals 105.3 percent of the target amount. This scenario triggers a risk corridor payment. This payment is calculated as 50 percent of the difference between the risk corridor ratio and 103 percent, multiplied by the target amount (0.5*(1.053-1.03) = 0.0115*721.50 which equals approximately \$8.30).

¹¹⁰ Susan Ferrechio, *Obamacare Changes May Include Extension of Risk Corridors*, WASH. EXAM’R. (Feb. 17, 2014), available at <http://washingtonexaminer.com/obamacare-changes-may-include-extension-of-risk-corridors/article/2544116>.

¹¹¹ Sam Baker, *White House: Sequester No Longer Applies to Part of Obamacare*, NAT’L J. (Mar. 13, 2014), available at <http://www.nationaljournal.com/health-care/white-house-sequester-no-longer-applies-to-part-of-obamacare-20140313>.

¹¹² *Id.*

VIII. President's Rhetoric Does Not Match His Administration's Collusion with Insurers

In making the case for ObamaCare prior to its passage in Congress, President Obama often vilified insurance companies and decried their large profits. For example, in July 2009, President Obama remarked that “health insurance companies and their executives have reaped windfall profits from a broken system.”¹¹³ One month later, he remarked that “nobody is holding these insurance companies accountable.”¹¹⁴ The President’s public criticism of large health insurance companies was good politics for him and likely contributed to the law’s passage. Behind closed doors, however, the White House has worked collaboratively with insurance company executives in implementing ObamaCare.

The President and his team have had numerous meetings with insurance company executives at the White House to discuss implementation. In October 2013, Tara McGuinness, the White House’s Communications Director, and Chris Jennings, Deputy Assistant to President Obama for Health Policy and Coordinator for Health Reform from July 2013 through January 2014, traded talking points with numerous insurance company CEOs. For example, Ms. McGuinness and Mr. Jennings collaborated closely with Florida Blue Cross and Blue Shield CEO Patrick Geraghty.¹¹⁵ After a *CBS Evenings News* appearance on October 11, 2013, Ms. McGuinness emailed Mr. Geraghty, “You were great! I watched. Thanks for the help.”¹¹⁶

On October 23, 2013, Mr. Geraghty was invited to the White House for a meeting with Ms. Jarrett and White House Chief of Staff Denis McDonough. Ten other insurance company executives attended the meeting. They were:

- Mark Bertolini, President & CEO, Aetna
- Bruce Broussard, CEO, Humana
- Patricia Hemingway Hall, President & CEO, Health Care Services Corporation
- Michael Neidorff, Chairman & CEO Centene Corp.
- Joseph Swedish, CEO, Wellpoint
- Bernard Tyson, President & CEO, Kaiser Permanente
- John Molina, CFO, Molina Healthcare
- James Roosevelt, Jr., President & CEO, Tufts Health
- Chet Burrell, CEO, CareFirst
- Jay M. Gellert, President & CEO, Health Net, Inc.¹¹⁷

Karen Ignagni, the President & CEO of AHIP, and Scott Serota, the President & CEO of the Blue Cross Blue Shield Association, also attended the meeting. Two days after the meeting, Mr. Jennings emailed Mr. Geraghty about the Administration’s “close working and productive

¹¹³ Ricardo Alonso-Zaldivar & Darlene Superville, *President rips foes on health overhaul Obama denounces GOP for the politics of delay*, ASSOCIATED PRESS, July 21, 2009.

¹¹⁴ Lisa Rosetta, *Obama takes case to critics*, SALT LAKE TRIB., Aug. 15, 2009.

¹¹⁵ See e-mail from Christopher Jennings to Patrick Geraghty (Oct. 5, 2013) see Appendix 000011; see also e-mail from Tara McGuinness to Patrick Geraghty, et al. (Oct. 11, 2013) see Appendix 000012.

¹¹⁶ E-mail from Tara McGuinness to Patrick Geraghty, et al. (Oct. 11, 2013) see Appendix 000013.

¹¹⁷ E-mail from the White House Business Council, Office of Public Engagement to Frances O’Steen (Oct. 23, 2013) see Appendix 000014-000015.

relationship with Karen Ignagni and Scott Serota.”¹¹⁸ Mr. Jennings noted that Ms. Ignagni and Mr. Serota “represent you incredibly well.”¹¹⁹

The Administration aggressively worked with insurance companies on how to best message the problems that millions of Americans experienced with HealthCare.gov and also the fact that millions of people were losing their insurance coverage because of ObamaCare. For example, on Saturday, October 26, 2013, Mr. Jennings emailed Mr. Geraghty, “Pat: Tara McGuinness will probably reach out to you directly today to give you latest info and suggestions for press prep. Please advise if you need anything from me. I may call you later to make sure all is ok. Thanks so much for all.”¹²⁰ Later that day, Ms. McGuinness emailed Mr. Geraghty:

Hope you are well. I wanted to touch base and see what you might need ahead of your Sunday appearance. That is great you are doing it.

I wanted to share some of the points from the [Jeff] Zients review (see below).

We have lots of materials or I am happy to touch base via phone ...

Let me know what you need.¹²¹

Ms. McGuinness was referring to Mr. Geraghty’s forthcoming appearance on *Meet the Press* on October 27, 2013. After learning that Mr. Geraghty and Ms. McGuinness spoke on the phone during the afternoon of October 26, 2013, Mr. Jennings emailed Mr. Geraghty with an additional request:

I just have one thing to go over – which is an agreed upon conversation about conversion products. In general, my instinct is for you to say that difficult to do apples/oranges comparisons, but there is no doubt that all of these folks will benefit over time because products will be in a far more stable pool with added consumer protections. Moreover, the vast majority of these policies will cost no more and, in many cases, less than current policies because of tax credit premium offset. Sound about right.¹²²

After his *Meet the Press* appearance, Mr. Jennings emailed Mr. Geraghty, “Pat: You were extraordinary. ... We were all impressed. Thank you so much! Would like to talk soon ...”¹²³

¹¹⁸ E-mail from Christopher Jennings to Patrick Geraghty (Oct. 25, 2013) *see* Appendix 000016.

¹¹⁹ *Id.*

¹²⁰ E-mail from Christopher Jennings to Patrick Geraghty (Oct. 26, 2013) *see* Appendix 000017-000018.

¹²¹ E-mail from Tara McGuinness to Patrick Geraghty (Oct. 26, 2013) *see* Appendix 000019-000021.

¹²² E-mail from Christopher Jennings to Patrick Geraghty (Oct. 26, 2013) *see* Appendix 000017-000018.

¹²³ E-mail from Christopher Jennings to Patrick Geraghty (Oct. 28, 2013) *see* Appendix 000022.

IX. Conclusion

While the President's rhetoric during the debate leading up to ObamaCare's passage was largely critical of insurance companies and inconsistent with his Administration's closed door relationships with health insurers, ObamaCare contained key provisions to increase insurance company profitability. In addition to providing health insurance companies with a mandate that individuals purchase their product as well as providing expensive subsidies for people to purchase coverage in exchanges, ObamaCare provided several other competitive advantages for insurance companies offering ObamaCare-compliant coverage in health insurance markets. This report discussed two of these provisions: ObamaCare's Reinsurance program and ObamaCare's Risk Corridor program.

In 2014, through ObamaCare's Reinsurance program, nearly 191 million Americans are forced to pay \$63 each to subsidize lower premiums for ObamaCare-compliant policies. In addition to the large payments insurers are scheduled to receive through ObamaCare's Reinsurance program, most insurance companies currently expect to receive an additional bailout, funded by taxpayers, for their ObamaCare-compliant plans. Based upon the information obtained by the Committee, it would not be surprising if taxpayers end up bailing out companies that offered ObamaCare-compliant plans on the exchanges about \$1 billion in 2014 alone. Additionally, Professor Chandler testified that his models show that taxpayer liability through the Risk Corridor program is "most likely in the billions of dollars,"¹²⁴ meaning taxpayer exposure could be even greater.

Due to political pressure from the plethora of news stories about individuals losing their health insurance coverage last fall, the Administration issued their so-called transitional policy, which allowed non-ObamaCare compliant plans to be renewed for an additional year. In order to ensure that insurers that offered ObamaCare-compliant coverage were not harmed by the Administration's unilateral action, the Administration increased the generosity of the Risk Corridor program.

In March 2014, after the Administration suggested that it would implement the Risk Corridor program in a budget neutral manner, insurers and their lobbyists threatened that forcing budget neutrality on the program would mean much higher premiums in exchange plans in 2015. In early April 2014, the Administration attempted to clarify the Risk Corridor budget neutrality with Valerie Jarrett communicating to an insurance company CEO that the Administration had delivered 80 percent of what the insurers sought. However, the Administration was not finished making the Risk Corridor program more generous to insurers and more dangerous to taxpayers. In May 2014, the Administration adjusted the risk corridor formula to increase the chances that insurers would receive money through the program and to increase the amount of money that insurers would receive.

While the Administration's changes to the Risk Corridor provision protected the profits of insurance companies' ObamaCare-compliant plans, it was extremely detrimental to taxpayers.

¹²⁴ *Chandler testimony, supra* note 57.

According to the information obtained by the Committee, the industries' expectation for the size of the taxpayer bailout has increased by more than a third since October 1, 2013.

Taxpayers should not be forced to bail out insurance companies that made poor strategic decisions pricing their ObamaCare-compliant products in the individual market. When government picks winners and losers in the market, it reduces competition and harms consumers. Congress should protect taxpayers and bring greater transparency to the premiums in the individual market by repealing ObamaCare's Risk Corridor program.

Burrell, Chet

From: Branch, Katherine Y. [REDACTED]@who.eop.gov>
Sent: Friday, April 04, 2014 10:44 AM
To: Burrell, Chet
Subject: FW: ACA feedback

Hi are you available to talk to Valerie at 2:30p.m. today. Let me know. 2:30p.m. EST.

----- Original Message -----

From: Burrell, Chet [REDACTED]
Sent: Friday, April 04, 2014 10:20 AM
To: Jarrett, Valerie
Subject: ACA feedback

Hi Valerie,

I want to bring to your attention a brewing issue that will negatively impact upcoming ACA premium rates - any chance for a brief conversation? I can be reached on my cell at [REDACTED]

Chet Burrell
Sent from my iPhone

Unauthorized interception of this communication could be a violation of Federal and State Law. This communication and any files transmitted with it are confidential and may contain protected health information. This communication is solely for the use of the person or entity to whom it was addressed. If you are not the intended recipient, any use, distribution, printing or acting in reliance on the contents of this message is strictly prohibited. If you have received this message in error, please notify the sender and destroy any and all copies.

Thank you..

Burrell, Chet

From: Burrell, Chet
Sent: Saturday, April 05, 2014 9:34 AM
To: Valerie Jarrett [REDACTED]@who.eop.gov
Subject: heads up - follow up to our call yesterday
Attachments: Premium Rate Increase Concern.docx

Valerie,

Here's a short summary of the Issue I described to you yesterday, as you requested. Thank you for understanding that I am only trying to give a "heads-up" notice on an issue that could produce an unwelcome surprise. I am available at any time if you would like to discuss further or need anything else.

Chet

Concern That Recent HHS Rule will cause Sharp Premium Rate Increases

The Affordable Care Act contains certain provisions designed to stabilize premiums during the transition years 2014 - 2016. Roughly speaking, one of these provisions allows carriers to keep up to 3% of the excess of premiums over costs and requires them to pay into the Federal government portions of amounts above that. On the flip side, if premiums fall short of costs by more than 3%, a progressive portion of the shortfall is absorbed by funds paid in by the "winning" carriers and by the Federal government if the funds from "winners" are not enough. This mechanism is referred to as a "Risk Corridor".

Because the Risk Corridor provision reduces the effects of uncertainty that carriers must include in premiums, it enables them to keep premiums lower than they would otherwise be during the 2014 - 2016 transition period. This was exactly the intent of the ACA - to help deal with the fact that it is difficult for carriers to know what the risks are in the population that enrolls through exchanges under the ACA.

Until very recently, the position of the Administration had been that the law requires the Federal government to fully fund the Risk Corridor payments if amounts paid in by the "winners" turn out to be inadequate - as they likely will. Very recently, this position appears to have been reversed under a rule issued by HHS that requires "budget neutrality" - possibly meaning that if the amounts paid in by "winning carriers" turn out to be insufficient to cover the cost of the "losing" carriers, the Federal government would not step in.

If this is indeed the policy, then carriers will have to price premiums as if the Risk Corridor feature is not fully available. While this is a highly technical matter that few understand, the impacts are real and immediate. That is, if this transitional protection is not there, carriers will have to increase rates substantially (i.e., as much as 20% or more beyond what they would otherwise file) to make sure that premiums adequately reflect expected costs - because there would be little protection if they do not.

Here is the urgency: Premium rate filings for January 1, 2015, are due on May 1, 2014, and all carriers are now making rate-filing decisions. There is great concern among carriers about the intent behind the recent change in rule. Uncertainty or confusion will equate to higher rates. This could confront the Administration with a sea of far larger premium increases than expected. Once the filings are made, they will likely quickly become public.

Immediate action to clarify the administration's position is needed to avert this. The most effective action would be assurance that the original HHS interpretation of the ACA (which conforms best to a plain language reading of the ACA) still stands and that carriers could count on federal funding for risk corridors during the transition years (2014-16).

Burrell, Chet

From: Jarrett, Valerie [REDACTED]@who.eop.gov>
Sent: Saturday, April 05, 2014 9:37 AM
To: Burrell, Chet
Subject: Re: heads up - follow up to our call yesterday

Thanks, Chet. We will review and circle back.
VJ

From: Burrell, Chet [REDACTED]
Sent: Saturday, April 05, 2014 09:33 AM
To: Jarrett, Valerie
Subject: heads up - follow up to our call yesterday

Valerie,

Here's a short summary of the issue I described to you yesterday, as you requested. Thank you for understanding that I am only trying to give a "heads-up" notice on an issue that could produce an unwelcome surprise. I am available at any time if you would like to discuss further or need anything else.

Chet

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Burrell, Chet

From: Jarrett, Valerie [REDACTED]@who.eop.gov>
Sent: Saturday, April 05, 2014 1:14 PM
To: Burrell, Chet
Subject: RE: heads up - follow up to our call yesterday

Thanks, Chet.

I checked and the policy team is aggressively exploring options. We will be back to you as soon as the work is complete. I really appreciate you bringing this to my attention.

All of the best,
Valerie

-----Original Message-----

From: Burrell, Chet [REDACTED]
Sent: Saturday, April 05, 2014 09:33 AM Eastern Standard Time
To: Jarrett, Valerie
Subject: heads up - follow up to our call yesterday

Valerie,

Here's a short summary of the issue I described to you yesterday, as you requested. Thank you for understanding that I am only trying to give a "heads-up" notice on an issue that could produce an unwelcome surprise. I am available at any time if you would like to discuss further or need anything else.

Chet

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Burrell, Chet

From: Burrell, Chet
Sent: Friday, April 11, 2014 3:54 PM
To: Jarrett, Valerie
Subject: Re: Checking in

Valerie,

This confirms the very policy we were concerned about and that I wrote to you about. I think the WH has to be prepared for large premium rate increases in many parts of the country because a key stabilizer (risk corridors) can now not be counted on.

AHIP and BCBSA are analyzing the impact and will issue their joint assessment soon so I certainly do not speak for the industry. I offer only my own opinion here.

Until last month, all in the industry assumed there would be no budget neutrality given the way ACA is written, so this is seen as a key change very late in the implementation process. It will adversely impact premium rates in 2015, I am sorry to say.

Best,

Chet
Sent from my iPhone

On Apr 11, 2014, at 12:18 PM, "Jarrett, Valerie" [redacted]@who.eop.gov> wrote:

> We just issued a bulletin. Please let me know what you think.

>

> -----Original Message-----

> From: Burrell, Chet [redacted]

> Sent: Friday, April 11, 2014 11:56 AM

> To: Jarrett, Valerie

> Subject: RE: Checking in

>

> Valerie,

>

> I am circling back as you suggested. Is there any word? I appreciate your help.

>

> Chet

>

> -----Original Message-----

> From: Jarrett, Valerie [mailto:[redacted]@who.eop.gov]

> Sent: Tuesday, April 08, 2014 12:39 PM

> To: Burrell, Chet

> Subject: RE: Checking in

>

> We estimate late Thursday or early Friday. Please feel free to circle back then.

>

> -----Original Message-----

Burrell, Chet

From: Burrell, Chet
Sent: Monday, April 14, 2014 5:54 PM
To: Jarrett, Valerie
Subject: Re: Checking in

May we talk briefly so I can describe it to you? I am available whenever it is good for you. [REDACTED]

Sent from my iPhone

On Apr 14, 2014, at 5:43 PM, "Jarrett, Valerie" <[REDACTED]@who.eop.gov> wrote:

How did your conversation with Julian and Jeanne go?

-----Original Message-----

From: Burrell, Chet [REDACTED]
Sent: Sunday, April 13, 2014 06:55 AM Eastern Standard Time
To: Jarrett, Valerie
Subject: Re: Checking in

Thanks so much, Valerie. I have received an email from Jeanne and will follow up with her today. Will keep you in the loop. Chet

From: <Jarrett>, Valerie Jarrett [REDACTED]@who.eop.gov>
Date: Saturday, April 12, 2014 4:08 PM
To: Chet Burrell [REDACTED]
Subject: RE: Checking in

Jeanne really thought this would help. We will regroup next week.

-----Original Message-----

From: Burrell, Chet [REDACTED]
Sent: Friday, April 11, 2014 03:55 PM Eastern Standard Time
To: Jarrett, Valerie
Subject: Re: Checking in

Valerie,

This confirms the very policy we were concerned about and that I wrote to you about. I think the WH has to be prepared for large premium rate increases in many parts of the country because a key stabilizer (risk corridors) can now not be counted on.

From: Burrell, Chet
Sent: Tuesday, April 15, 2014 9:33 PM
To: Jarrett, Valerie
Subject: Re: Checking in

Thanks, Valerie for all your efforts and follow through. I am appreciative of the discussion I had with Jeanne, Al and Julian and all you did to arrange it. My view remains the same - substantial rate increases are coming but it seems it can't be helped. This will not be uniformly true around the country. I brought it to your attention in case something could be done. I am always here if you ever need a sounding board. Thanks again.

Best,

Chet

Sent from my iPhone

On Apr 15, 2014, at 9:08 PM, "Jarrett, Valerie" [REDACTED]@who.eop.gov> wrote:

Hi Chet-

After speaking at length today with Jeanne and our other policy folks, I do not think I have any more to add. They seem to have given you 80 percent of what you requested and I am not in a position to second guess there analysis.

Sincerely,
Valerie

From: Burrell, Chet [REDACTED]
Sent: Tuesday, April 15, 2014 05:45 PM
To: Jarrett, Valerie
Subject: Fwd: Checking in

Valerie,

Not sure if you would still like to talk, but if you do, I am available through the evening on my cell....

Chet

Sent from my iPhone

Begin forwarded message:

From: "Burrell, Chet" [REDACTED]
Date: April 15, 2014, 8:44:00 AM EDT
To: "Jarrett, Valerie" [REDACTED]@who.eop.gov>
Subject: Re: Checking in

Valerie - I understand. Any time after 10 am. I will step out of any meeting I am in. Cell is best [REDACTED]

Sent from my iPhone

On Apr 15, 2014, at 8:35 AM, "Jarrett, Valerie" [REDACTED]@who.eop.gov> wrote:

Sorry Chet. I finished up much too late to call. Are you free today?

From: Burrell, Chet [REDACTED]
Sent: Monday, April 14, 2014 06:02 PM
To: Jarrett, Valerie
Subject: Re: Checking in

Ok - I'll watch for your call

Sent from my iPhone

On Apr 14, 2014, at 5:57 PM, "Jarrett, Valerie" [REDACTED]@who.eop.gov> wrote:

In a meeting for a while. Will try later this evening.

-----Original Message-----

From: Burrell, Chet [REDACTED]
Sent: Monday, April 14, 2014 05:53 PM Eastern Standard Time
To: Jarrett, Valerie
Subject: Re: Checking in

May we talk briefly so I can describe it to you? I am available whenever it is good for you. [REDACTED]
[REDACTED]

Sent from my iPhone

On Apr 14, 2014, at 5:43 PM, "Jarrett, Valerie" [REDACTED]@who.eop.gov> wrote:

How did your conversation with Julian and Jeanne go?

-----Original Message-----

From: Burrell, Chet [REDACTED]
Sent: Sunday, April 13, 2014 06:55 AM Eastern Standard Time
To: Jarrett, Valerie
Subject: Re: Checking in

Burrell, Chet

From: Lambrew, Jeanne [REDACTED]@who.eop.gov>
Sent: Saturday, April 12, 2014 6:06 PM
To: Burrell, Chet
Cc: Harris, Julian; Bingham, Al A. (CMS/CCIO) [REDACTED]@cms.hhs.gov)
Subject: Follow up

Hi Chet,

I hope you are well and sorry to bother you on the weekend. Valerie asked that we reach out to you to address your concerns and questions about the risk corridor bulletin. I have cc'd two people more expert than myself: Julian from OMB who can explain the budget rules and Al, the CCCIO chief actuary who can discuss how this can be helpful in planning for 2015 rates.

We are happy to find a time to talk on Monday if you are interested? If you would like to talk to one or all of us sooner as well, let us know.

Thanks, Jeanne

From: Jennings, Christopher [REDACTED]@who.eop.gov>
Sent: Saturday, October 05, 2013 8:46 PM
To: Geraghty, Patrick
Subject: RE: Thanks

Thanks my friend.

From: Geraghty, Patrick [mailto: [REDACTED]@who.eop.gov] REDACTED
Sent: Saturday, October 05, 2013 4:24 PM
To: Jennings, Christopher
Subject: RE: Thanks

Ready if needed-

Pat

Sent with Good (www.good.com)

-----Original Message-----

From: Jennings, Christopher [REDACTED]@who.eop.gov]
Sent: Saturday, October 05, 2013 04:22 PM Eastern Standard Time
To: Geraghty, Patrick
Subject: Thanks

Thanks again Pat. This is the reporter you talked with yesterday -- Dan Mangan. The messaging about no one could have precise numbers now and comforting message about roll out along the lines we discussed would be great. Not sure how to operationalize your offer to be helpful here, but I have handed that over to Tara MacGuinness of WH Comms to decide what may be best. I just wanted you to be on heads up if we needed you. Thanks as always.

Stew @StewSays34s

#JustAGlitch // @CNBC: 99% of #Obamacare applications hit a wall .cnb.cx/1bJ6YP9

<http://www.cnbc.com/id/101087965>

99% of Obamacare applications hit a wall

Text Size_

Published: Friday, 4 Oct 2013 | 5:08 PM ET

It's a batting average that won't land the federal marketplace for Obamacare into the Healthcare Hall of Fame.

From: Geraghty, Patrick
Sent: Friday, October 11, 2013 5:22 PM
To: 'McGuinness, Tara'
Subject: RE: assistance - CBS news

Tara,

Nice to connect.

Left you a Voice Mail. I would like to discuss this request. Available at REDACTED

Pat

From: McGuinness, Tara [REDACTED]@who.eop.gov]
Sent: Friday, October 11, 2013 12:50 PM
To: Geraghty, Patrick
Cc: Jennings, Christopher
Subject: assistance - CBS news

Patrick—

I hope you are well. I work on the White House communications team.

I would love to connect you with CBS to affirm that you are making progress and seeing energy and enrollment in FL. They are doing a piece tonight and looking to get someone on camera.

If you are comfortable, I would love to give them info on how to connect with you. There are some rumors undermining that the system is working.

CBS is obsessed with numbers, but I would suggest you don't get into that.

My number is [REDACTED] Happy to connect.

--Tara

From: McGuinness, Tara [REDACTED]@who.eop.gov>
Sent: Friday, October 11, 2013 11:00 PM
To: Geraghty, Patrick; Jennings, Christopher
Subject: RE: CBS

You were great!
I watched. Thanks for the help.

--Tara

-----Original Message-----

From: Geraghty, Patrick [mailto: [REDACTED]
Sent: Friday, October 11, 2013 6:59 PM
To: Jennings, Christopher; McGuinness, Tara
Subject: CBS

Came out OK... At least mitigated the story.

Pat

Sent with Good (www.good.com)

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From: FN-WHO-Business <[REDACTED]@who.eop.gov>
Sent: Wednesday, October 23, 2013 2:04 PM
To: O'Steen, Frances
Subject: Confirming ACA Meeting Participation

Hi there –

I want to make certain that Mr. Geraghty received the following email about the meeting taking place today here at the White House. Please confirm receipt and let me know if you have any questions.

Thanks so much.



Hello –

Thank you for confirming your participation in the meeting with Ms. Valerie Jarrett and White House Chief of Staff Denis McDonough on Wednesday, October 23rd from 2:00PM – 3:00PM at the White House.

This is your confirmation that we have received your RSVP and security information. Please arrive on Wednesday, October 23rd no later than **1:45PM** and enter from the Northwest Appointment gate at **Pennsylvania Ave. and West Executive Ave.** (WH Area Map Attached). Once through the gate, please proceed down the sidewalk to the West Wing reception area, the meeting will be held in the **Roosevelt Room.**

Please bring a government issued photo ID and try to limit your personal belongings to avoid long lines at the entrance. If you are a foreign national, please bring your passport as your form of ID. Photocopies or other transmissions of these listed documents will NOT be accepted.

The following attendees are confirmed:

- Mark Bertolini, President & CEO, Aetna
- Bruce Broussard, CEO, Humana
- Patrick Geraghty, CEO, Blue Cross Blue Shield of Florida
- Patricia Hemingway Hall, President & CEO, Health Care Services Corporation
- Karen Ignagni, President & CEO, America's Health Insurance Plans
- Michael Neidorff, Chairman & CEO, Centene Corp.
- Scott Serota, President & CEO, Blue Cross Blue Shield Association

- Joseph Swedish, CEO, Wellpoint
- Bernard Tyson, President & CEO, Kaiser Permanente
- John Molina, CFO, Molina Healthcare
- James Roosevelt, Jr., President & CEO, Tufts Health
- Chet Burrell, CEO, CareFirst
- Jay M. Gellert, President & CEO, Health Net, Inc.

Please don't hesitate to reach out if you have any questions.

Sincerely,

The White House Business Council
Office of Public Engagement
The White House
(202)456-2973

From: Jennings, Christopher [REDACTED]@who.eop.gov>
Sent: Friday, October 25, 2013 7:54 PM
To: Geraghty, Patrick
Subject: Thank You and Follow Up

Pat: I wanted to reach out and thank you for coming to Wednesday's meeting in the Roosevelt Room at the White House. All of the Administration's representatives present felt it was an engaging and constructive discussion about the best ways to secure plan pathways in and out of the Federal Marketplace to improve enrollment. The discussions about direct enrollment and 834 forms as well as the advice about the best approaches to prioritize program improvements and to communicate around them was particularly helpful.

I want to assure you I am following up in close coordination with Marilyn Tavenner and Jeff Zients at CMS. Likewise, we all will continue our close working and productive relationship with Karen Ignagni and Scott Serota. They represent you incredibly well. Should you have any other specific information or suggestions you would like to share with me directly, please do not hesitate to reach out. I know we will continue our ongoing dialogue in the coming days and weeks. Again, thanks for altering your busy schedule to participate in the meeting. We look forward to continuing the collaboration.

All the best,
Chris

From: Jennings, Christopher [REDACTED]@who.eop.gov>
Sent: Saturday, October 26, 2013 6:53 PM
To: Geraghty, Patrick
Subject: RE: Follow-up

Great news. Thanks Pat. I just have one thing to go over – which is an agreed upon conversation about conversion products. In general, my instinct is for you to say that difficult to do apples/oranges comparisons, but there is no doubt that all of these folks will benefit over time because products will be in a far more stable pool with added consumer protections. Moreover, the vast majority of these policies will cost no more and, in many cases, less than current policies because of tax credit premium offset. Sound about right.

Chris

From: Geraghty, Patrick [mailto:REDACTED]
Sent: Saturday, October 26, 2013 2:43 PM
To: Jennings, Christopher
Subject: RE: Follow-up

I am in London and doing the program remote tomorrow. Feel free to call after 3:00 your time but before 7:00 if possible (5 hour time differen

I have connected with Tara and I think I am ready.

Pat

Sent with Good (www.good.com)

-----Original Message-----

From: Jennings, Christopher [REDACTED]@who.eop.gov]
Sent: Saturday, October 26, 2013 11:33 AM Eastern Standard Time
To: Geraghty, Patrick
Subject: Follow-up

Pat: Tara McGuinness will probably reach out to you directly today to give you latest info and suggestions for press prep. Please advise if you need anything from me. I may call you later to make sure all is ok. Thanks so much for all.

Chris

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responsible for delivering to the intended recipient, please (1) be advised that any use, dissemination, forwarding, or copying of this document IS STRICTLY PROHIBITED; and (2) notify sender immediately by telephone and destroy the document. THANK YOU.

From: Geraghty, Patrick
Sent: Saturday, October 26, 2013 3:45 PM
To: 'McGuinness, Tara'
Subject: RE: Press appearance

Missed you when I just called headed to the US Embassy in London in 15 minutes- you can catch me now or in 2 hours

Pat

Sent with Good (www.good.com)

-----Original Message-----

From: McGuinness, Tara [REDACTED]@who.eop.gov]
Sent: Saturday, October 26, 2013 11:37 AM Eastern Standard Time
To: Geraghty, Patrick
Subject: Press appearance

Pat,

Hope you are well. I wanted to touch base and see what you might need ahead of your sunday appearance. That is great you are doing it.

I wanted to share some of the points from the Zients review (see below).

We have lots of materials or I am happy to touch base via phone [REDACTED].

Let me know what you need.

-tara

From: Beirne Fallon, Katie
Sent: Friday, October 25, 2013 12:42 PM
To: Beirne Fallon, Katie
Subject: CONCLUSIONS OF THE ZIENTS' REVIEW OF HEALTHCARE.GOV

CONCLUSIONS OF THE ZIENTS' REVIEW OF HEALTHCARE.GOV

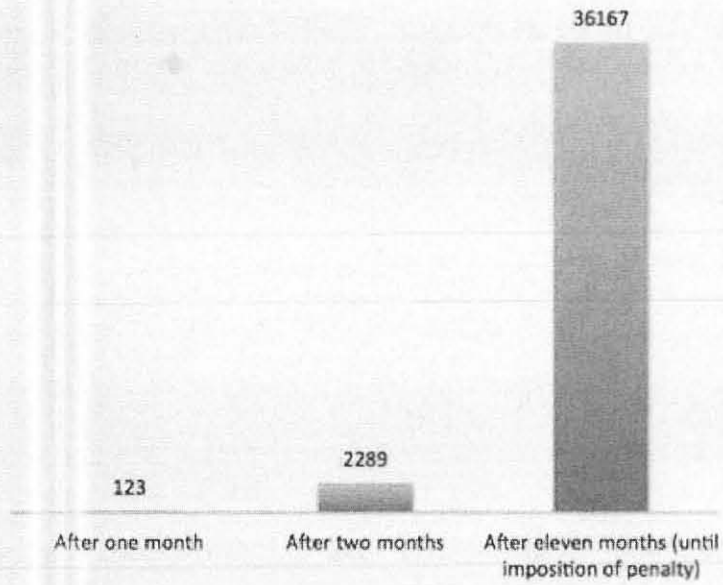
Today, after a fullscale review of the problems with the Affordable Care Act enrollment website, Jeff Zients presented an assessment and plan for fixing the problems.

- Over the last week, at the President's request, Jeff Zients worked with a team of expert engineers and technology managers from leading technology companies around the country to conduct an assessment of the overall state of the HealthCare.gov site. Today, they made the following conclusions:

- The website is fixable. It will take a lot of work, and there are a lot of problems that need to be addressed. But it is fixable.
 - The problems the team has identified fall into two broad categories:
 1. Performance problems: These are the problems that many consumers have been frustrated with, like site speed, response time and reliability.
 2. Functional problems: These are the bugs that prevent the software from working the way it is supposed to.
 - In order to work through the punch list of fixes as quickly and efficiently as possible, the team has made management changes. There is now a general contractor who is overseeing the other contractors and managing the effort. In the tech world, this would be called a new systems integrator. This general contractor will work around the clock with all the key decision makers and players, including CMS leadership and staff, vendors and contractors.
 - The team expects meaningful improvements in the site's performance every week as a result of these changes. The team's assessment is that by the end of November, HealthCare.gov will work smoothly for the vast majority of users.
- Assessing Problems and Progress:
 - Logging In/Creating Accounts: We know all too well that in the first days there were very few people who could even log in to create an account, now that number is at 90 percent.
 - Completing Applications: At points over the last few weeks, the success rate for those completing applications was very low with as few as three out of ten customers were getting through the application process. Addressing this particular problem of applications is a high priority. It is worth noting that even with these unacceptably low success rates, nearly 700,000 people have filled out applications nationwide, on the federal and state exchanges. (Over half are from the federal Marketplace.)
 - The site has improved, but still needs a lot of work. Each week, we believe it will get better as a result of these new management changes. The team's assessment is that by the end of November, HealthCare.gov will work smoothly for the vast majority of users.
 - Enrollment Expectations:
 - Obviously, the website problems will affect the enrollment numbers for October. Presumably some number of people wanted to enroll who were unable to do it.
 - But our expectation was always that the number of enrollees would be low on the front end, and higher as we approach the end of the six month enrollment period.
 - The experience in Massachusetts was that only 123 people - .3% of the eventual enrollment - signed up in the first month and over 20% enrolled in the last month. Most people buy closer to the deadline. (See Massachusetts enrollment chart below.)
 - And as improvements to the website continue to be made, the administration is encouraging consumers to access one of the four different options for signing up for coverage, including the website, Call Centers, in-person assistants and applications that can be mailed in.

Early Enrollment – It's Supposed to be Slow

■ Number of premium-paying enrollees in Massachusetts Commonwealth Care plans, February through December 2007



Source: Commonwealth Health Insurance Connector Authority, via MIT Professor Jonathan Gruber

From: Jennings, Christopher [REDACTED]@who.eop.gov>
Sent: Monday, October 28, 2013 2:03 PM
To: Geraghty, Patrick
Subject: THANK YOU!

Pat: You were extraordinary. You were harassed and you more than gave back what was thrown at you. We were all impressed. Thank you so much! Would like to talk soon; safe travels.