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

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

March 7, 2014

Marilyn Tavenner  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Administrator Tavenner,

We write in strong opposition to the “Proposed Rule for Medicare Advantage and Prescription Drug Benefit Programs” issued on January 6, 2014, by the Centers for Medicare and Medicaid Services (CMS). We believe the result of this rule, if finalized, is that millions of seniors will lose their plans, even though they like them, and millions of seniors could be forced to pay more for their prescription drugs. We find this unacceptable.

Over the past eight years, the Medicare Part D Prescription Drug program has been a remarkable success story, yielding high levels of beneficiary satisfaction at half the initially projected budgetary cost.<sup>1</sup> This impressive achievement is the result of Part D’s market-based structure, which allows seniors to choose from a wide array of plans by forcing providers to compete by meeting beneficiary needs at the lowest cost. Your agency’s proposed rule undermines these core principles that have helped make this program a success.

CMS’ proposed rule fundamentally redefines the “non-interference clause” at the heart of the Medicare Modernization Act, which has driven the establishment of innovative cost-cutting plan designs. This proposal would put bureaucrats in between Part D negotiations and prioritizes agency power over seniors’ choices.

The rule blatantly violates the principle of non-interference by imposing restrictions on the ability of plans to negotiate discounts for seniors with networks of “preferred pharmacies.” In testimony before the Health Subcommittee, CMS Deputy Administrator Jonathan Blum was unaware that the current Health and Human Services Inspector General had publicly stated the law “prohibits the Government from interfering with negotiations between PDP sponsors and pharmacies and from instituting a price structure for the reimbursement of covered Part D

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<sup>1</sup> Derived from CBO Projections and Baseline.

drugs.”<sup>2</sup> Mr. Blum’s inability to explain the legal inconsistency between the CMS proposed rule and the opinion of the HHS Inspector General was deeply troubling.

The rule also places arbitrary limits on the number of plans available to seniors by limiting plan offerings to two per region.<sup>3</sup>

These proposals, combined with the other questionable changes contained in the 700-page rule, will dramatically reduce choice and increase costs for seniors. Preliminary estimates show seniors will face a 20 percent premium increase.<sup>4</sup> Seniors who like their prescription drug plans may lose them as an estimated 214 plans would be eliminated or consolidated by the proposed rule.<sup>5</sup> Given the 90% satisfaction rate among seniors for the Part D program, the dramatic changes are both unnecessary and ill advised.<sup>6</sup>

A successful program Medicare Part D program should not be subject to regulatory upheaval at the whim of agency officials. When enacting the Part D program, Congress deliberately sought to prevent government micro-management from impeding successful efforts to deliver the best value for beneficiaries and taxpayers alike. Given the damage that seniors in our districts face, we call for this proposed rule to be rescinded immediately. If you fail to do so, we are prepared to move legislation through the House next week to block this rule.

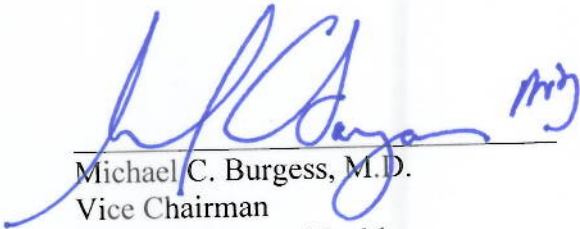
Sincerely,



Fred Upton  
Chairman



Joe Pitts  
Chairman  
Subcommittee on Health



Michael C. Burgess, M.D.  
Vice Chairman  
Subcommittee on Health



Joe Barton  
Chairman Emeritus

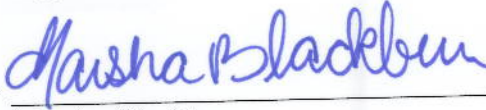
<sup>2</sup> Health and Human Services Inspector General Daniel R. Levinson letter to Kerry Weems, Acting Administrator for the Centers for Medicare and Medicaid Services: “Review of Medicare Part D Contracting for Contract Year 2006 (A-06-07-00082)” July 29, 2008.

<sup>3</sup> Hoadley et al., “MEDICARE PART D A First Look at Part D Plan Offerings in 2013” Kaiser Family Foundation, Nov. 2012.

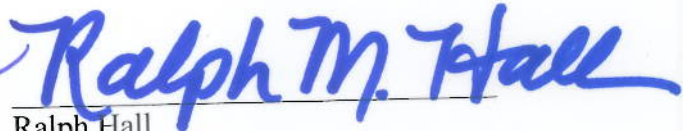
<sup>4</sup> PCMA calculations based on 2014 premium data as reported by Avalere Health in “2014 Premiums and Star Ratings for Medicare Part D Prescription Drug Plans with Preferred Pharmacy Networks,” December, 2013 and enrollment data as reported by Drug Channels, “For 2014, 3 out of 4 Seniors Choose a Narrow Network Medicare Drug Plan,” January 17, 2014.

<sup>5</sup> Emily Egan, Sang Kim: “Percentage of Medicare Beneficiaries at Risk of Losing Part D Plan.” February 18, 2014.

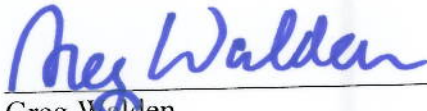
<sup>6</sup> Satisfaction data as reported by KRC Research, “Seniors’ Opinions About Medicare Prescription Drug Coverage,” September 2013.



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Member



Greg Walden  
Member



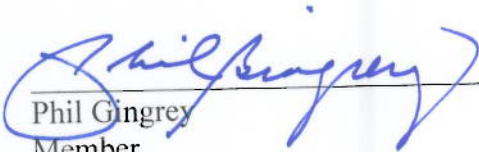
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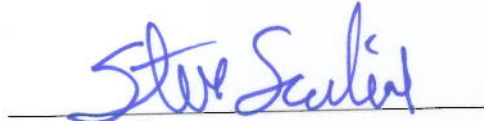
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Tim Murphy  
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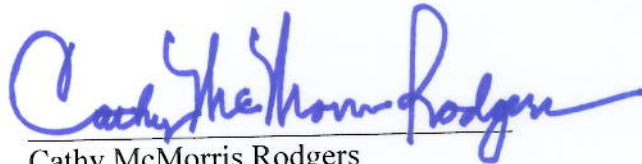
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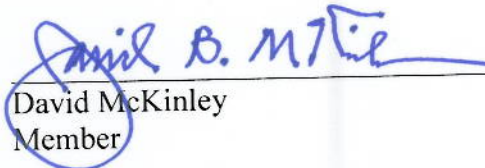
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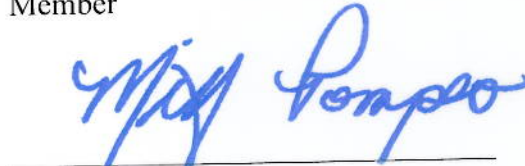
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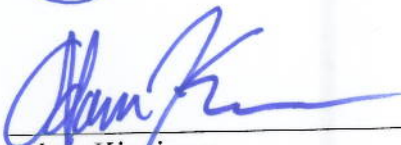
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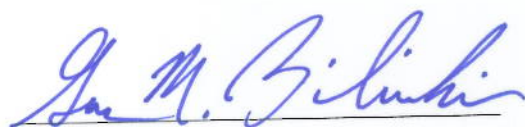
David McKinley  
Member



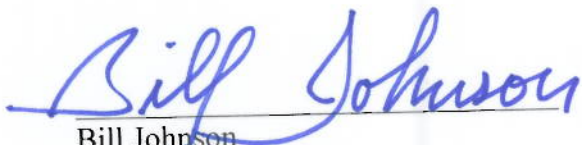
Mike Pompeo  
Member



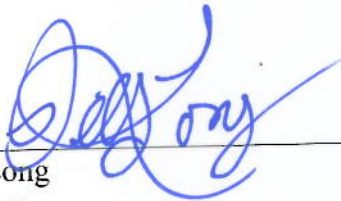
Adam Kinzinger  
Member



Gus Bilirakis  
Member



Bill Johnson  
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Billy Long  
Member



Renee Ellmers  
Member

cc: The Honorable Henry Waxman  
Ranking Member

The Honorable Frank Pallone, Jr., Ranking Member  
Subcommittee on Health