

ONE HUNDRED TWELFTH 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

February 3, 2011

The Honorable Fred Upton  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Upton:

Recently, you have sent a flurry of four letters to the Department of Health and Human Services. On January 20, 2011, you sent a request to the director of the Center for Consumer Information and Insurance Oversight seeking information and documents about the Center and the waivers it has issued. On January 25, 2011, you sent a request to Secretary Kathleen Sebelius for information and documents about the new federal high-risk insurance program. On January 31, 2011, you sent a letter to Secretary Sebelius requesting documents and communications concerning the Health Insurance Reform Implementation Fund. And on the same date, you sent another letter to Secretary Sebelius requesting documents and information regarding American Recovery and Reinvestment Act expenditures to support comparative effectiveness research.

I support vigorous oversight of the executive branch and want to work with you to identify waste, fraud, and abuse and make government work better. There are portions of your letters that meet this standard and that I support.

At the same time, I do not support oversight that is designed to prevent agencies from carrying out their responsibilities. Commentators have suggested that House Republicans will “do oversight to the max” to inflict “death by a thousand cuts” and “make it very difficult to get health-care reform implemented.”<sup>1</sup> You have threatened that one agency head will spend so much time before the Committee she “is going to have her own parking spot up at the Rayburn

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<sup>1</sup> *Health-Care Reform in GOP Cross Hairs*, Christian Science Monitor (Nov. 15, 2010).

horseshoe.”<sup>2</sup> Document requests and hearings whose purpose is to overwhelm an agency and prevent it from fulfilling its duties would be an abuse of the oversight process. Unfortunately, there are portions of your letters that appear to cross this line.

I support asking the agency to provide an explanation on the relocation of the Center from the Office of the Secretary to the Centers for Medicare and Medicaid Services. I also think that the Center should provide the Committee with a list of entities that have requested, obtained, or been denied a waiver or exemption from the mandates included in the Affordable Care Act. I support your efforts to obtain more information about the options states have chosen to provide coverage to individuals who cannot acquire health insurance in the individual market due to pre-existing conditions. And I think it is reasonable for the agency to provide an accounting of the money that has been spent in the Implementation Fund and on comparative effectiveness research.

But there are other aspects of your letters that – whether intentional or not – appear to be unduly disruptive. In your first request, you ask the agency to produce “[a]ll documents or internal communications, including e-mail, between all individuals responsible for creating the CCIIO discussing the establishment and future operations of the potential office.” You have cited no evidence of wrongdoing at the new Center that would justify asking an entire agency for their internal e-mails. Without a solid predicate, asking an agency to disgorge its internal communications amounts to little more than a fishing expedition.

You also request all documents and e-mails relating to waivers under the Affordable Care Act, but provide no basis for this request. The Center has granted 222 waivers under the Act’s annual or lifetime limits and has made information about each of these waivers publicly available on its website. If you have evidence that one of these waivers was granted improperly, a request for the internal communications relating to the waiver would be appropriate. In the absence of any evidence of misconduct, asking for this much information for 222 waivers appears to be either another fishing expedition or an attempt to bog down the agency with excessive document requests.

Your request for information about high-risk plans raises similar issues. You ask the agency to provide “all documents of communications from any HHS personnel relating to the implementation of the PCIP or the status of the PCIP.” There have been no allegations of misconduct in the implementation or status of the Pre-Existing Condition Insurance Plan. The request lacks any basis of alleged wrongdoing and would encompass the communications of a large number of individuals employed by the agency.

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<sup>2</sup> *News of cap and trade’s demise may have been exaggerated*, The Daily Caller (Nov. 18, 2010).

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I am concerned that your request demanding documents and e-mails about the Implementation Fund, which was enacted as part of the Affordable Care Act to help fund HHS implementation activities, is similarly flawed. You seek “[a]ll documents discussing, concerning, or relating in any way to how the HIRI Fund will be spent” and “all communications, including e-mail, sent to or received by HHS personnel relating to the HIRI Fund.” There have been no claims that this fund has been used improperly, yet you request an entire agency to produce deliberative budgetary information and internal communications.

In your latest request, you ask Secretary Sebelius to produce essentially all documents and e-mails related to the \$400 million provided in the Recovery Act for comparative effectiveness research. Specifically, you ask for “[a]ll documents, including drafts, relating in any way to how any portion of the \$400 million to support comparative effectiveness research has been spent, or will be spent in the future.” You also request all e-mail communications, both internally and externally, relating to comparative effectiveness research. No predicate of wrongdoing has been established for seeking all documents and all communications concerning this disbursement.

I am a strong supporter of congressional oversight, and I respect and support the Committee’s right to seek information about the implementation of the Affordable Care Act. But I do not believe your oversight powers justify going on fishing expeditions or making extensive requests for internal e-mails and other communications where there is no evidence of waste, fraud, or abuse of any kind.

I urge you to take a more measured approach in the future.

Sincerely,



Henry A. Waxman  
Ranking Member

cc: The Honorable Cliff Stearns  
Chairman  
Subcommittee on Oversight and  
Investigations

The Honorable Joseph R. Pitts  
Chairman  
Subcommittee on Health

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The Honorable Diana DeGette  
Ranking Member  
Subcommittee on Oversight and  
Investigations

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