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4 THE FISCAL YEAR 2013 HHS BUDGET

5 THURSDAY, MARCH 1, 2012

6 House of Representatives,

7 Subcommittee on Health

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:00 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Joe
12 Pitts [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Pitts, Burgess,
14 Whitfield, Rogers, Myrick, Murphy, Blackburn, Gingrey, Latta,
15 McMorris Rodgers, Lance, Cassidy, Guthrie, Barton, Upton (ex
16 officio), Pallone, Engel, Capps, Schakowsky, Christensen,
17 Markey and Waxman (ex officio).

18 Staff present: Clay Alspach, Counsel, Health; Gary

19 Andres, Staff Director; Mike Bloomquist, General Counsel;
20 Howard Cohen, Chief Health Counsel; Brenda Destro,
21 Professional Staff Member, Health; Nancy Dunlap, Health
22 Fellow; Paul Edattel, Professional Staff Member, Health;
23 Julie Goon, Health Policy Advisor; Debbie Keller, Press
24 Secretary; Ryan Long, Chief Counsel, Health; Carly
25 McWilliams, Legislative Clerk; Nika Nour, NewMedia
26 Specialist; John O'Shea, Professional Staff Member, Health;
27 Monica Popp, Professional Staff Member, Health; Heidi
28 Stirrup, Health Policy Coordinator; Phil Barnett, Democratic
29 Staff Director; Alli Corr, Democratic Policy Analyst; Amy
30 Hall, Democratic Senior Professional Staff Member; Ruth Katz,
31 Democratic Chief Public Health Counsel; Purvee Kempf,
32 Democratic Senior Counsel; Elizabeth Letter, Democratic
33 Assistant Press Secretary; Karen Nelson, Democratic Deputy
34 Committee Staff Director for Health; and Anne Morris Reid,
35 Democratic Professional Staff Member.

36 Mr. {Pitts.} This subcommittee will come to order.

37 As agreed earlier with the Democrat side of the aisle,
38 each side will be recognized for 1 minute for opening
39 statements. Then we can move straight to Secretary
40 Sebelius's testimony and questions. The Chair reminds the
41 members that pursuant to the Committee rules, all members'
42 opening statements will be made part of the record. The
43 Chair recognizes himself for 1 minute for an opening
44 statement.

45 First, I would like to thank Secretary Sebelius for
46 being here with us today to discuss the fiscal year 2013
47 budget. One of the most striking features of this year's
48 budget is just how much of it is not dependent upon Congress.

49 For example, the phrase ``ACA Mandatory Funding''
50 appears throughout the budget tables, and this designation
51 means, of course, that the Affordable Care Act requires
52 automatic appropriations for certain items. The phrase
53 ``Prevention Fund'' also appears numerous times, referencing
54 the Prevention and Public Health Fund, a multibillion-dollar
55 fund over which the Secretary has sole discretion.

56 Beyond the absence of Congressional authority over these
57 funds, I am deeply troubled by the lack of accountability and
58 transparency practiced by the department, and I hope the

59 Secretary will be able to explain why her department is so
60 late on so many of the rules required by PPACA.

61 [The prepared statement of Mr. Pitts follows:]

62 ***** COMMITTEE INSERT *****

|
63 Mr. {Pitts.} The chair now recognizes the Ranking
64 Member of the Subcommittee, Mr. Pallone, for 1 minute for
65 opening statement.

66 Mr. {Pallone.} Thank you, Chairman Pitts, and Secretary
67 Sebelius for being here today.

68 I know I have to limit my remarks so I just want to say
69 with regard to the Affordable Care Act, I think we are making
70 a lot of progress and I certainly urge the President and the
71 Secretary to continue taking the steps necessary under the
72 ACA to improve our health care system.

73 But I am also a strong believer in the importance of
74 government investment in advancing science and research.
75 That is why I was also pleased to see the President's
76 continued support towards innovative biomedical and
77 behavioral advancements through investments in the NIH and
78 the FDA.

79 I was also pleased to see that the Administration has
80 proposed an expansion of the Small Business Health Care Tax
81 Credit that could benefit almost 3 billion workers this year.
82 My state of New Jersey has a high cost of living and a high
83 wage base, which has made it tougher for New Jersey small
84 employers to access this tax. I would like to see the wage
85 base in each State included in the calculation for

86 eligibility of the tax credit, and therefore I am planning on
87 introducing legislation that would remedy this issue, and I
88 hope I can work with HHS on this.

89 So thank you, Madam Secretary, for being here.

90 Thank you, Mr. Chairman.

91 [The prepared statement of Mr. Pallone follows:]

92 ***** COMMITTEE INSERT *****

|
93 Mr. {Pitts.} The chair thanks the gentleman.

94 Our witness today will be the Secretary of the
95 Department of Health and Human Services, the Hon. Kathleen
96 Sebelius. Secretary Sebelius, we are delighted to have you
97 back with us today, and you are recognized for 5 minutes for
98 an opening statement.

|
99 ^STATEMENT OF HON. KATHLEEN SEBELIUS, SECRETARY OF THE
100 DEPARTMENT OF HEALTH AND HUMAN SERVICES

101 } Secretary {Sebelius.} Thank you so much, Chairman Pitts
102 and Ranking Members Pallone and Waxman and members of the
103 committee. I am pleased to be with you today to discuss the
104 President's 2013 budget for the Department of Health and
105 Human Services.

106 Our budget helps to create an American economy built to
107 last by strengthening our Nation's health care, supporting
108 research that will lead to tomorrow's cures and promoting
109 opportunities for American children and families so everyone
110 has a fair shot to reach his or her own potential.

111 It makes investments that we need right now while
112 reducing the deficit in the long run to make sure that the
113 programs that millions of Americans rely on will be there for
114 generations to come, and I look forward to answering your
115 questions, Mr. Chairman, about the budget, but I want to just
116 take a few minutes to share some of the highlights.

117 Over the last 2 years, we have worked to deliver the
118 benefits of the Affordable Care Act to the American people.
119 Thanks to the law, we now have 2.5 million additional young
120 millions already getting coverage through their parents'

121 health plans. More than 25 million seniors have already
122 taken advantage of the free recommended preventive services
123 under Medicare, and small business owners are getting tax
124 breaks on their health care bills that allow them to hire
125 more employees. This year we will build on that progress by
126 continuing to support States as they work to establish
127 affordable insurance exchanges by 2014. Once these
128 competitive marketplaces are in place, they will ensure that
129 all Americans have access to quality, affordable health
130 coverage.

131 But we know that a lack of insurance isn't the only
132 obstacle to care, so our budget also invests in our health
133 care workforce. The budget supports training more than 7,100
134 primary care providers and placing them where they are needed
135 most. It also invests in America's network of community
136 health centers. Our budget helps health centers provide
137 access to quality care for 21 million Americans, 300,000 more
138 than were served last year.

139 This budget also continues the Administration's
140 commitment to improving the quality and safety of care by
141 spending health dollars more wisely, and that means in health
142 information technology. It means funding the first-of-its-
143 kind CMS Innovation Center, which is partnering with
144 physicians, nurses, private payers, hospitals and others who

145 have accepted the challenge to develop new, sustainable
146 methods for the health care system. In addition, the budget
147 ensures that a 21st century America will continue to lead the
148 world in biomedical research by maintaining funding for the
149 National Institutes of Health.

150 At the same time, we recognize the need to set
151 priorities, make difficult tradeoffs and ensure we use every
152 dollar wisely. That starts with continuing support for
153 President Obama's historic push to stamp out waste, fraud and
154 abuse in the health care system. Now, over the last 3 years,
155 every dollar we have put into health care fraud has returned
156 more than \$7. That is a pretty good investment. Last year
157 alone, those efforts recovered more than \$4 billion, which
158 are both in the Medicare and Medicaid trust funds around the
159 country. And this week, our Administration arrested the
160 alleged head of the largest individual Medicare and Medicaid
161 fraud operation in history. Our budget builds on those
162 efforts, giving law enforcement the technology and data to
163 spot perpetrators early and prevent payments based on fraud
164 from going out in the first place. The budget also contains
165 more than \$360 billion in health savings over the next 10
166 years, most of which comes from reforms to Medicare and
167 Medicaid. These are significant but they are carefully
168 crafted to protect beneficiaries.

169 For example, we proposed significant savings in Medicare
170 by reducing drug costs, a plan that not only reduces the
171 costs of pharmaceuticals but puts money back in the pockets
172 of Medicare beneficiaries. The budget makes smart
173 investments where they will have the greatest impact, and it
174 puts us all on a path to build a stronger, healthier and more
175 prosperous America for the future.

176 Again, thank you, Mr. Chairman, for this invitation and
177 I look forward to our conversation.

178 [The prepared statement of Ms. Sebelius follows:]

179 ***** INSERT 1 *****

|
180 Mr. {Pitts.} The chair thanks the gentlelady and we
181 will now begin questioning, and I will recognize myself for 5
182 minutes for that purpose.

183 Regardless of one's opinion of the health care law, I
184 think everyone can agree there is a lot of regulatory
185 uncertainty regarding the rules of the road moving ahead.
186 States, health providers, small businesses and patients have
187 been asking HHS for final or even just proposed federal rules
188 as they relate to PPACA's exchanges. The stakes are high
189 since taxpayers are on the hook for a new \$1 trillion
190 entitlement. With that in mind, I would like to ask you
191 about the status of PPACA rules required by the statute, and
192 given my limited amount, I would respectfully ask that you
193 answer yes or no. I have a series of questions.

194 First, has HHS released a final rule as it relates to
195 the individual market exchange?

196 Secretary {Sebelius.} The State-based market exchange,
197 a final rule? No, sir.

198 Mr. {Pitts.} Has HHS released a final rule detailing
199 what States must do to receive federal approval for their
200 exchange?

201 Secretary {Sebelius.} We have not issued a final rule,
202 sir, but we have certainly put out bulletins and guidance.

203 We are preparing an interim final rule. We want feedback at
204 every point along the way and we are actively working with
205 States around the country--

206 Mr. {Pitts.} But a bulletin has no real guidance for
207 the State. You have not proposed a final rule?

208 Secretary {Sebelius.} We have not proposed a final
209 rule, sir, but they have a lot of guidance and are very
210 actively engaged in the process of helping us shape the final
211 rule.

212 Mr. {Pitts.} Thank you. Has HHS released a final rule
213 related to the establishment and operation of a federal
214 exchange?

215 Secretary {Sebelius.} Again, no, Mr. Chairman, but we
216 are in the process. I don't think you would want us to do
217 that without actively engaging stakeholders along the way,
218 and that is exactly what we are doing including the last
219 weekend when the governors were in town and we spent hours
220 with state officials talking about--

221 Mr. {Pitts.} So the answer is no. Has HHS released a
222 final rule related to federal accreditation requirements for
223 health plans?

224 Secretary {Sebelius.} Regarding? I am sorry.

225 Mr. {Pitts.} Federal accreditation of health plans.

226 Secretary {Sebelius.} No, sir.

227 Mr. {Pitts.} Has HHS released a final rule related to
228 guaranteed issue and community rating bands?

229 Secretary {Sebelius.} We do not have the final rules
230 released at this point.

231 Mr. {Pitts.} Has HHS released even a proposed rule for
232 cost sharing or federally mandated benefits, otherwise known
233 as essential health benefits?

234 Secretary {Sebelius.} We have released guidance. Most
235 recently we are talking to States about the interim final
236 rule. We have given them a strategy with a--

237 Mr. {Pitts.} But not a final rule?

238 Secretary {Sebelius.} --benchmark plan, and we are
239 preparing the rules as we speak, Mr. Chairman.

240 Mr. {Pitts.} No final rule. The federal requirements
241 on benefit coverage and cost sharing are two of the most
242 basic and critical pieces of information needed for States to
243 implement an exchange. We are less than 18 months from when
244 plans are supposed to enroll customers in exchange plans yet
245 HHS has not even issued a proposed rule on these fundamental
246 pieces of law. Is that correct?

247 Secretary {Sebelius.} Mr. Chairman, again, we are
248 actively engaged in benchmark plans. We have released
249 guidance. We are getting input on that. We are trying to
250 make sure that when we release an interim rule and when we

251 move to final rules that these are workable arrangements with
252 States, with markets around the country. So that guidance is
253 very much underway. We are engaged in dialog and--

254 Mr. {Pitts.} I understand.

255 Secretary {Sebelius.} --they are beginning to frame
256 their plans but--

257 Mr. {Pitts.} My time is limited.

258 Secretary {Sebelius.} --we would agree that we need
259 rules to monitor them.

260 Mr. {Pitts.} Let me continue. I would submit this is
261 symbolic with the state of regulation in Washington. States,
262 small businesses and individuals are shoved aside and told
263 that a federal agency is needed to meddle around in their
264 lives and then we pass a law giving Washington almost
265 universal control over one-sixth of the economy and then
266 Washington writes some vague rules for some parts of the law
267 and delays rules for other parts of the law. Deadlines are
268 not met. States, health care providers and consumers are
269 left in the dark and Washington thinks it can just dump a
270 thousand requirements on States and the private sector at the
271 last minute with no consequences for patient health.

272 I have just 35 seconds left. Yesterday, I was contacted
273 by Catholic Charities, and I was asked if I would read into
274 the record their actual position on this so-called

275 accommodation because they believe some have mischaracterized
276 where they stand, and upon the announcement of the so-called
277 accommodation, Reverend Larry Snyder, President and CEO of
278 Catholic Charities USA, stated ``Catholic Charities USA
279 welcomes the Administration's attempt to meet the concerns of
280 the religious community and we look forward to reviewing the
281 final language. We are hopeful that this is a step in the
282 right direction. We are committed to continuing our work to
283 ensure that our religious institutions will continue to be
284 granted the freedom to remain faithful to our beliefs while
285 also being committed to providing access to quality health
286 care for our 70,000 employees and their families across the
287 country.'' However, upon actually seeing what was proposed
288 and having their position mischaracterized as if they
289 believed the accommodation was sufficient to protect
290 religious liberty, they posted the following clarification:
291 ``In response to a great number of mischaracterizations in
292 the media, Catholic Charities USA wants to make two things
293 very clear. One, we have not endorsed the accommodation to
294 the HHS mandate that was announced by the Administration on
295 February 10. Two, we unequivocally share the goal of the
296 U.S. Catholic Bishops to uphold religious liberty and will
297 continue to work with the USCCB towards that goal. Any
298 representation to the contrary is false.``

299 Now the Chair recognizes the ranking member, Mr.
300 Pallone, for 5 minutes for questions.

301 Mr. {Pallone.} Thank you, Mr. Chairman.

302 Madam Secretary, I apologize but I have to try to get in
303 two questions, one on Children's Graduate Medical Education
304 and the other is on cosmetic user fees, so if I cut you short
305 on the first one, it is only because I want to get to the
306 second one.

307 I want to say I am pleased that the Administration has
308 come to its senses and included funding for the Children's
309 Graduate Medical Education, or CHGME, in this year's budget.
310 However, I am dismayed that the White House only proposes \$88
311 million, approximately one-third the amount which Congress
312 appropriated for the program last year. As you know, there
313 are serious national shortages in many pediatric specialties,
314 shortages which the CHGME program has been crucial in helping
315 to address. Children's Specialized Hospital in New Jersey
316 has told me that significant reductions to the program would
317 exacerbate these shortages and create additional barriers to
318 access to specialty care for children.

319 So I wanted to ask you, if the CHGME is not adequately
320 funded, which obviously I don't think it is, how do you
321 expect to train these providers, not only for the shortage in
322 primary care pediatrics but also in the specialties with this

323 level of funding essentially?

324 Secretary {Sebelius.} Well, Mr. Pallone, we have had
325 this discussion before, and I know we share your interest in
326 training of primary care providers and particularly pediatric
327 providers. There are other streams of funding available. We
328 are trying to use what are relatively limited resources to
329 focus on a broad array of primary care training programs, and
330 in a better budget time, we clearly would have proposed
331 additional resources but this reflects tough decisions made
332 at a very difficult time.

333 Mr. {Pallone.} No, and I appreciate that. I just
334 wanted to stress that I just don't think the investments in
335 the pediatric specialty loan repayment program alone will be
336 enough to compensate for the cuts, and I know that the budget
337 eliminates the IME costs and only funds the direct medical
338 expenses for pediatric GME, but the problem is, and again, I
339 am very conscious of this and I am not saying this to you
340 personally, but I always think that we worry about adults,
341 particularly senior citizens, and then at the same time we
342 were not doing what we should for kids. And so the
343 Administration has not proposed to completely cut the IME
344 funding for adults in the Medicare population but eliminates
345 this funding that directly benefits the health of kids, and
346 it just seems like the kids are always taking the back seat.

347 It is not just here, it is in so many other aspects of the
348 budget, and I just think the consequence of that is that, you
349 know, we are really going to threaten the already vulnerable
350 pediatric health care workforce.

351 But let me get to my second question on cosmetic user
352 fees. The President's budget for the FDA includes a proposed
353 new user fee that would address cosmetic safety, and that fee
354 would cover activities relating to the establishment of
355 registration fees, cosmetic standards and refine inspections
356 and sampling of imported and domestic products. You know
357 that myself, Mr. Dingell and Mr. Waxman have been working on
358 a proposal that would require registration of cosmetic
359 facilities and listing of products requiring substantiation
360 of the safety of cosmetic products, requiring adverse-event
361 reporting and giving FDA the authority to recall cosmetic
362 products. It is obvious the Administration agrees that the
363 cosmetics program is in need of resources because your budget
364 includes fees for activities like registration and standard
365 setting, but if we were to adopt my proposal and add on more
366 responsibilities in the cosmetic area, do you agree that
367 there would be an even greater need for additional fees?
368 That is my question.

369 Secretary {Sebelius.} Mr. Pallone, we do share your
370 interest in this important area. I think that the fees in

371 the budget would support, according to the FDA, a cosmetic
372 registration program. We would be very eager to work with
373 you looking at other areas that might be appropriate but are
374 reluctant to do that without additional resources, giving the
375 FDA lots of assignments without the resources to carry them
376 out effectively. But this is an area that I think needs
377 attention, which is why the President has proposed the
378 cosmetic registration program and it would allow us to
379 implement and standardize and collect information that just
380 isn't available right now for consumer safety.

381 Mr. {Pallone.} And I appreciate that. I mean, we all
382 want the FDA to do a good job ensuring the safety of cosmetic
383 products, and I think it is critical that we ensure that they
384 have the resources to do it, and I appreciate your--

385 Secretary {Sebelius.} And we would be eager to work
386 with you to do that.

387 Mr. {Pallone.} Thank you.

388 Thank you, Mr. Chairman.

389 Mr. {Pitts.} The Chair thanks the gentleman and now
390 recognize the Chairman of the Full Committee, Mr. Upton, for
391 5 minutes for questions.

392 The {Chairman.} Thank you, Mr. Chairman.

393 Welcome, Madam Secretary. A couple things that I would
394 like to ask this morning. I am seeing different numbers in

395 the 2013 budget than the spending levels that you provided to
396 the committee a year ago, and I don't know if you want to
397 respond by letter in response back, but let me just walk you
398 through a couple things. Last year, you stated that HHS was
399 estimated to spend \$400 million on State exchange grants in
400 fiscal year 2012 but according to your latest budget, your
401 department will have spent \$900 million plus on these very
402 same grants in fiscal year 2012, more than double your
403 estimate from a year ago. Is that correct?

404 Secretary {Sebelius.} Mr. Chairman, we have spent so
405 far out of the allocation 2 years of a billion dollars about
406 \$475 million, and 261 of that was spent by HHS.

407 The {Chairman.} No, this is specifically the State
408 exchange grants.

409 Secretary {Sebelius.} Oh, the State exchange grants.

410 The {Chairman.} You might want to come back to us.

411 Secretary {Sebelius.} And I would be happy to get back.
412 I want to make sure we get all these details.

413 The {Chairman.} As a former budget official, we look
414 forward to a written response.

415 Secretary {Sebelius.} Now, Congress in the President's
416 health care law appropriated a billion dollars for the
417 implementation yet in this year's budget you estimated that
418 the fund will be exhausted by the end of 2012 and you have

419 asked for another billion to implement the law. Is that
420 correct?

421 Secretary {Sebelius.} Yes, Mr. Chairman, and that is
422 the question I was answering. I apologize. We had an
423 original \$1 billion in the Affordable Care Act when it was
424 passed.

425 The {Chairman.} Now it is two.

426 Secretary {Sebelius.} Pardon me?

427 Mr. {Chairman.} And now it is two.

428 Secretary {Sebelius.} Well, the CBO estimate in March
429 of 2010 was that it would cost about a billion dollars a year
430 to implement. We have actually well underspent that estimate
431 so we are now in fiscal year 2012. We have spent at HHS
432 about \$261 million, total with our other agency partners of
433 \$475 million but we think by the end of 2012 that original
434 billion dollars will be spent and 2-1/2 years will have
435 expired. So we are significantly underspending what the
436 estimates were.

437 The {Chairman.} Let me put this then in writing and let
438 me point some of these out. I want to get to a question as
439 it relates to my State and my district.

440 This Committee, we received a memo from CRS,
441 Congressional Research Service, outlining possible penalties
442 for religious employers if they failed to comply with the HHS

443 mandate to cover drugs and services that they have religious
444 or moral objections toward, and according to CRS, those
445 penalties of \$100 per day per affected individual could be
446 levied against the institution for following their
447 conscience. In my State and in my district, I have a
448 hospital, Borgess Hospital, a pretty large institution. It
449 is part of the Ascension Hospital System in Michigan. They
450 employ throughout the State 31,000 people. So according to
451 this CRS memo, Ascension is likely to be subject to fines of
452 over a billion dollars--that is B as in big--because of that
453 mandate. So my question, Ascension, like many religious-
454 affiliated organizations in fact is self-insured, so the so-
455 called accommodation announced by the White House on February
456 10th doesn't attempt, as I understand, to address the
457 violation of conscience against self-insured employers. So
458 what are your plans for accommodating self-insured employers
459 with conscience issues like Borgess Hospital?

460 Secretary {Sebelius.} Mr. Chairman, the accommodation
461 that the President talked about on the 10th of February would
462 apply to the non-exempted employers who currently do not
463 offer contraception because of religious objections. As you
464 know, churches, church auxiliaries, we think many parochial
465 and Catholic elementary schools and high schools are likely
466 to already be totally exempted. Grandfathered plans are

467 totally exempted. The accommodation--

468 The {Chairman.} So schools are totally exempted?

469 Secretary {Sebelius.} If a parochial school meets the
470 definition that is in the IRS where they have a majority of
471 Catholic employees, serve a majority of--or religious
472 employees, serve a majority of--

473 The {Chairman.} So how would this impact an institution
474 like Borgess Hospital?

475 Secretary {Sebelius.} Well, I am getting to that, Mr.
476 Chairman. So that the rule that we intend to propose, we
477 will propose a rule in the near future after reaching out and
478 having dialog with folks. It would require insurance
479 companies in a directly insured plan to provide contraceptive
480 coverage so that a religious employer who had objections
481 would not have to either pay for or provide or refer people
482 for contraception. We are confident that similar
483 arrangements can be made with self-insured institutions who
484 work with third-party administrators. There is an
485 independent body outside the board. There are a variety of
486 arrangements already in place in the 28 States that have this
487 already in place, and we intend to be informed by that when
488 we propose the rules. So whether it is through a third-party
489 administrator, which would not be the employer group, or a
490 side-by-side plan as operates in Georgetown or many other

491 hospital arrangements, we will offer a variety of strategies
492 to make sure that religious liberties are respected at the
493 same time that millions of women who work in these
494 institutions and spouses of employees and daughters of
495 employees have access to these important health--

496 The {Chairman.} I know my time is expired but I am not
497 sure that that is going to work, but I yield back.

498 Mr. {Pitts.} The Chair thanks the gentleman. We are
499 voting. We are going to go one more 5-minute and break and
500 come back immediately after the vote. The Chair recognizes
501 the Ranking Member of the Full Committee, Mr. Waxman, for 5
502 minutes for questions.

503 Mr. {Waxman.} Thank you very much, Mr. Chairman.

504 Madam Secretary, welcome to the Committee.

505 Secretary {Sebelius.} Thank you.

506 Mr. {Waxman.} I must say, in the decades that I have
507 been in the Congress, you are one of the finest Secretaries
508 we have had for Health and Human Services, and I am somewhat
509 amused at the questions you are going to get and have already
510 gotten today because you almost can't win. If you came in
511 with rules and regulations that spelled them out, you would
512 be criticized for dumping a lot of regulations on the table
513 without consulting, and now that you are consulting, you are
514 being criticized for not having the rules already in place

515 I know there is a lot of work to be done leading up to
516 2014 to create a transparent and competitive marketplace
517 where consumers will be offered quality insurance products
518 that cover their health care needs. Insurers, consumer
519 groups, States and others have been encouraging the
520 Administration to share their thoughts early to allow for
521 maximum planning and preparation. I recognize the need to
522 share information early. I also recognize the need to work
523 through issues thoroughly. That is why I was pleased with
524 the issuance of subregulatory guidance on the formation of
525 the essential health benefits package and on the actuarial
526 value and cost sharing and qualified health plans. This
527 starts the conversation early. It allows for input before
528 more formal and lengthy rulemaking is released. You have
529 been criticized for this position, wrongly, in my view. Can
530 you tell us what you see as the advantage of this approach
531 and confirm whether you intend to continue towards formal
532 notice and comment rulemaking process?

533 Secretary {Sebelius.} Mr. Waxman, I think you have
534 spelled out what has been part of the strategy, which is to
535 actually put in place around framework issues where States
536 need to know, so we do have proposed rules, in answer to the
537 chairman's questions earlier, around the exchange setup. We
538 have proposed rules for Medicaid expansion, both of which

539 were informed by active conversations from the States. We
540 have now put out lengthy guidance on a strategy toward the
541 essential health benefits and are having many conversations
542 trying to reach the balance between affordable coverage and
543 comprehensive coverage, making sure that we are mindful of
544 the law but know that having a product priced and able to be
545 operated in a State is also an essential piece of the puzzle.
546 So we fully intend to put out interim rules and final rules.
547 You can't enforce without final rules in place. But we want
548 to be informed by State insurance commissioners, employers on
549 the ground, our colleagues in governors' offices across this
550 country, and that dialog is very--

551 Mr. {Waxman.} Well, that sounds like to me a very
552 reasonable approach.

553 This hearing is about the budget, although you are going
554 to be asked about the budget, although you are going to be
555 asked about everything, but the budget includes important
556 funding to ensure effective administration of Medicare,
557 Medicaid, child health program, continued implementation of
558 the health care law. The budget request includes an increase
559 of a billion dollars over the fiscal year 2012 level. That
560 includes a request for \$864 million for establishing
561 insurance exchanges in the States.

562 Now, it is essential that Congress meet the President's

563 budget request. Some of my colleagues may wish to deny your
564 agency this funding in an effort to halt the progress of the
565 health reform law. I think this political approach would
566 jeopardize all the progress we made. More than 2.5 million
567 young adults under the age of 26 now have health insurance
568 under their parents' plan. More than 85 million people
569 including those in Medicare and private health insurance
570 plans have access to free preventive coverage. More than 30
571 States have begun to plan health exchanges, helping make good
572 on the promise of affordable coverage for all, and more
573 premium dollars going to health benefits, not corporate
574 overhead. So this will help consumers get the value for
575 their dollar.

576 Can you address the critics that are claiming that your
577 budget request for implementation money for the Affordable
578 Care Act is a wasteful overspending by the government? Can
579 you describe the kinds of initiatives that money will be used
580 for?

581 Secretary {Sebelius.} Well, Mr. Waxman, the additional
582 billion dollars in Medicare and Medicaid is for really two
583 categories. One is about \$800 million that actually is for
584 the one-time build-out of the federally operated exchange
585 program--IT, consumer outreach, the variety of services that
586 will be needed for those areas in the country where the State

587 has chosen not to set up a State-based exchange or wants a
588 State-based exchange in partnership with the federal
589 government, and we will be picking up the other pieces. So
590 part of the dollars are for that. Part of the dollars
591 actually about \$200 million are directed toward increases and
592 enhancements in the Medicare and Medicaid programs
593 themselves. So the overall administration of these two
594 efforts where we have about 118 million people currently
595 enrolled in either Medicare or Medicaid and needs to continue
596 to update. I will tell you, Mr. Chairman, even with that
597 additional request, our overall administrative costs for the
598 largest insurance programs in the world are running just
599 under 3 percent, even with that billion-dollar increase.

600 Mr. {Waxman.} That is very impressive. Thank you.

601 Mr. {Pitts.} The Chair thanks the gentleman. The
602 Committee will stand in recess until the end of the last vote
603 and we will reconvene immediately. The Committee stands in
604 recess.

605 [Recess.]

606 Mr. {Pitts.} The Committee is reconvened, and the chair
607 recognizes the Vice Chairman of the Subcommittee, Dr.
608 Burgess, for 5 minutes for questions.

609 Dr. {Burgess.} Thank you, Mr. Chairman, and Secretary,
610 welcome back to our Committee.

611 I have a lot of stuff to ask today. I know we have 5
612 minutes, so I will of necessity be having to submit a lot of
613 questions for the record and I really would appreciate a
614 thoughtful yet timely response to those questions, but let me
615 follow up on where Chairman Upton was going a few moments
616 ago. We have got the 2013 budget from the President on the
617 Refundable Premium Assistance Tax Credits, and the line items
618 between the fiscal year 2012 budget as submitted and the
619 fiscal year 2013 budget as submitted are different year by
620 year, and in fact, the total increase in this year's
621 President's budget is \$111 billion. So what has happened
622 that accounts for this change? Are you having to reassess
623 the number of people that perhaps might be driven out of
624 employer-sponsored insurance onto an exchange?

625 Secretary {Sebelius.} Mr. Burgess, the one issue that I
626 think has changed definitively is that there was a
627 legislative change dealing with the adjusted gross income for
628 people in Medicaid versus the exchange, which we feel will
629 actually have an impact on fewer people eligible for Medicaid
630 and more people eligible for the exchange. Much of the
631 changes in those numbers are also again in the Treasury
632 Department budget, not in our budget. I would be glad to get
633 you a very specific answer in writing but I am not as
634 familiar with some of the Treasury issues, but I can tell you

635 that legislative change has impacted the estimates of how
636 many people will be eligible for the exchange, the MAGI rule.

637 Dr. {Burgess.} Fair enough, but this is a budget
638 hearing and that is a 30 percent increase and--

639 Secretary {Sebelius.} I just--

640 Dr. {Burgess.} We would like--

641 Mr. {Sebelius.} There is a legislative change. I would
642 be delighted to get additional details from the Department of
643 Treasury.

644 Dr. {Burgess.} From the standpoint of the oversight
645 function of this Committee, I think we have to have that.

646 Now, speaking of the Treasury, can you give us a line
647 item on how much money has been transferred to the Internal
648 Revenue Service for their role in the Affordable Care Act?

649 Secretary {Sebelius.} Mr. Chairman, let me see if I can
650 get the Treasury number up. I know that of the \$474 million,
651 \$261 million has been spent by our department, and the rest
652 is our partners. Treasury dollars, we have transferred \$210
653 million to the Treasury Department. In terms of how they
654 have allocated those funds, I cannot answer that question.

655 Dr. {Burgess.} And that was my next question. Do you
656 require for them to provide you with the allocation numbers?

657 Secretary {Sebelius.} Yes, we do.

658 Dr. {Burgess.} And when do you expect to receive those

659 from Treasury?

660 Secretary {Sebelius.} Again, I would be happy to get
661 you that answer in writing. I know that is \$210 million, and
662 I will give you the detailed report of what we have so far.

663 Dr. {Burgess.} I think it is important.

664 Secretary {Sebelius.} We get a quarterly report from
665 them in terms of how they are expending and what dollars, and
666 I would be happy to answer that for you.

667 Dr. {Burgess.} Well, they are your partners on this.
668 After all, they are the enforcers who are going to enforce
669 the individual mandate, so I think it is important that you
670 share that information with the committee.

671 Now, last year, you were asked whether Section 1311(h)
672 of the Patient Protection and Affordable Care Act provided
673 you the authority to exclude doctors and other health
674 professionals from participating in exchange plans. Are you
675 prepared to answer that question today?

676 Secretary {Sebelius.} Sir, what is the question?

677 Dr. {Burgess.} Section 1311(h) of the Patient
678 Protection and Affordable Care Act that deals with exchanges,
679 (h) starts out, ``Beginning January 1, 2015, a qualified
680 health plan may contract with--it goes through A, which is
681 hospitals. Paragraph B is ``may contract with a health care
682 provider only if such provider implements such mechanisms to

683 improve health quality as the Secretary may by regulation
684 require.'" So are you prepared to exclude providers from the
685 exchange? Are you developing that set of criteria? Are
686 providers to see the day soon where they would be prohibited
687 from participating in an exchange if they don't comply with
688 all the things that you set forth?

689 Secretary {Sebelius.} Mr. Burgess, we see that issue as
690 one that at the State level will be decided between the board
691 of the exchange and the issuers who--

692 Dr. {Burgess.} How about a State that doesn't do an
693 exchange? My State is not right now, as you know, and there
694 will be a federal exchange.

695 Secretary {Sebelius.} Pardon me?

696 Dr. {Burgess.} And there may be a federal exchange if
697 we can get through the problems with the tax code.

698 Secretary {Sebelius.} We will again make decisions at
699 the federal exchange level about which issuers who have
700 networks of their own to include based on their quality
701 performance, based on their--

702 Dr. {Burgess.} But the Congress in its wisdom said that
703 you would decide, not that the State would decide.

704 Secretary {Sebelius.} I am telling you, for the federal
705 exchange, we will be making decisions about issuers. We do
706 not intend to reach into a State exchange. They will be

707 making the determinations at the State level.

708 Dr. {Burgess.} Well, are you asking us for a change in
709 legislative language in the Affordable Care Act to allow you
710 the freedom to do that?

711 Secretary {Sebelius.} I am not, Mr. Burgess.

712 Dr. {Burgess.} But it says in statute that you will
713 make that decision, correct?

714 Secretary {Sebelius.} Well, I am just telling you how I
715 will make the decision. We will be working with the State-
716 based exchanges so they will make determinations based on
717 their issuers. If for some reason there was an outlier, we
718 could have a conversation, but we intend to work with the
719 States as the law intends so the State will set up a State-
720 based exchange. We will at the same time be establishing a
721 program for a federal exchange.

722 Dr. {Burgess.} And will you exclude providers from an
723 exchange?

724 Secretary {Sebelius.} This is not an issue of
725 providers, this is an issue of which plans will be able to be
726 operated. Plans have their own networks, and we will be--

727 Dr. {Burgess.} So if you don't belong to a particular
728 ACO, you may not be able to see your patient of long
729 standing. Is that correct?

730 Secretary {Sebelius.} Mr. Burgess, that is not at all

731 what I said. Clearly, determinations will be made about how
732 many providers, how many plans.

733 Dr. {Burgess.} We might infer that from what you said.

734 Mr. {Pitts.} The gentleman's time is expired.

735 Dr. {Burgess.} I thank the Chairman.

736 Mr. {Pitts.} The Chair recognizes the gentlelady from
737 California, Ms. Capps, for 5 minutes for questions.

738 Mrs. {Capps.} Thank you, Honorable Kathleen Sebelius,
739 Secretary of Health and Human Services, for your testimony.

740 You know, we are all so aware of the challenging
741 economic climate in which we are living. However, I believe
742 on the whole that the President's budget does strike an
743 important balance between curbing spending and promoting the
744 public's health. As a nurse, I know that we cannot reach our
745 health care goals without a strong health care workforce made
746 up of a range of health care professionals. So I would like
747 to ask a couple of questions, if you could discuss briefly
748 what steps have been taken in the budget to ensure that we
749 have a health care workforce well equipped, diverse and large
750 enough so as to help us successfully reach these goals. It
751 is a tall order.

752 Secretary {Sebelius.} Well, I think you are absolutely
753 right, Ms. Capps, about the workforce being a critical part
754 of this effort to transform the health care system, and

755 certainly primary care providers become essential, not just
756 physicians but nurses, nurse practitioners, mental health
757 technicians, dental assistants. We are very pleased that
758 this budget continues the progress we have made. So far in
759 this Administration, we have tripled the number of National
760 Health Service Corps providers. This budget intends to
761 continue the training of 7,100 new health care providers who
762 will be serving in the most underserved areas, and I have the
763 privilege of meeting with some of these young people every
764 day who are thrilled with the idea they can both provide
765 service to their communities or underserved communities as
766 well as having their loans paid off so they don't emerge with
767 so much debt.

768 We are also, as you know, part of the Affordable Care
769 Act is encouraging more providers to deal with Medicaid
770 patients so changing Medicaid rates to Medicare, using our
771 graduate medical resources to focus on slots for primary
772 care, so we are very aware of the looming issue. If we are
773 going to change from a sick care system to a health care
774 system, the primary care workforce and an additional
775 community care workforce is essential, and we are trying to
776 use all the leverage that we have, many of which were part of
777 the Affordable Care Act.

778 Mrs. {Capps.} Thank you. And I want to just highlight

779 the commitment to the nursing workforce, which has clearly
780 been expanded in the Affordable Care Act including funds to
781 train advanced practice nurses, which can take some of the
782 expensive care costs away and transform them into excellent
783 care that can be delivered by nurses and others.

784 I am going to be circulating a letter in support of
785 these nursing programs and urge my colleagues to join me in
786 support of them.

787 Just one other topic I would like to get to. In
788 addition to a robust health care workforce, we all know that
789 improving public health requires investments in research, in
790 development and innovation. However, during the recent
791 economic downturn, I have heard from researchers, many in my
792 district, about the lack of reliable grant funding now
793 available, especially in the private sector. And this limits
794 their ability to pursue the kind of scientific achievements
795 and advancements that we need, and I think it also highlights
796 the importance of National Institutes of Health, NIH, which
797 has traditionally been such a bipartisan issue. The
798 President's budget only includes flat funding for NIH.
799 However, reports indicate that management streamlining is
800 going to free up money for 8 percent more grants to be
801 awarded. Would you please expound on that a bit and explain
802 what will go into that process and how it can actually

803 improve the economic situation in many of our Congressional
804 districts?

805 Secretary {Sebelius.} Well, I certainly share your view
806 that biomedical research is a critical component of not only
807 saving lives but lowering costs and improving strategies so
808 that the leadership at the National Institutes of Health led
809 by Dr. Francis Collins I think have reorganized the resources
810 at that very critical institution so that we anticipate with
811 this budget funding 672 new research grants. New research
812 grants will be funded.

813 Mrs. {Capps.} Wow.

814 Secretary {Sebelius.} About a 7.7 percent, almost an 8
815 increase in current grant funding. As you know, there is
816 also a new Center for Translational Science thanks to work
817 that we were able to do with Members of Congress that focuses
818 on some of the most promising areas, a Cure Acceleration
819 Network that is in place, again, moving resources to the most
820 promising strategies. So yes, funding is flat. About 40
821 percent of our discretionary budget is in the National
822 Institutes of Health so we found ways to make sure that those
823 critical programs go on and I would say that the
824 administrative costs will be diminished and more of those
825 resources will be focused on the research that needs to go
826 forward.

827 Mrs. {Capps.} Thank you very much.

828 Mr. {Pitts.} The Chair thanks the gentlelady and
829 recognize the gentleman from Kentucky, Mr. Whitfield, for 5
830 minutes for questions.

831 Mr. {Whitfield.} Madam Secretary, in the health care
832 act, 2010-2011, it provided for basically \$1,250,000,000 for
833 the Prevention Fund, and under the Prevention Fund, you have
834 the authority I guess almost unilaterally to move that money
835 into various accounts at HHS. So I would like to ask you to
836 provide to the Committee for the year 2010 and 2011 the
837 amounts of money that were transferred to which particular
838 accounts, and then from those accounts if grants were made to
839 grantees around the country, the name of the grantee, the
840 amount of the money, the purpose of the grant and the date of
841 the grant. Would you be able to do that for us?

842 Secretary {Sebelius.} I would be happy to do that.

843 Mr. {Whitfield.} Thank you. Thank you very much.

844 Now, one of the things that is a little bit troublesome
845 to me in the President's 2013 budget is that he in essence
846 eliminates part of the anti-lobbying provisions of the use of
847 federal funds. As you know, in the appropriation bills since
848 the mid-1970s, we have had prohibitions against using federal
849 funds for lobbying, and to define it more specifically,
850 prohibits using federal funds to influence in any manner an

851 official of any government to favor, adopt or oppose by vote
852 or otherwise any legislation, law, ratification or policy.
853 Why would the President want to omit that from his fiscal
854 year 2013 budget?

855 Secretary {Sebelius.} Mr. Whitfield, I have to confess,
856 I am not sure exactly what is being referred to. I know that
857 our fiscal year 2012 budget, our budget, and there may be
858 other statements in other budgets that I am not as familiar
859 with, but our fiscal year 2012 budget actually included
860 additional lobbying restrictions which we are actively
861 working to comply with which not only apply to our
862 department, which have been in place traditionally for years
863 and we have complied with in terms of lobbying but also now
864 apply to downstream grantees who receive money through the
865 Prevention Fund. So we are updating our grant language,
866 enhancing our oversight of grantees, retraining--

867 Mr. {Whitfield.} Well, I mean, I--

868 Mr. {Sebelius.} So I am not--

869 Mr. {Whitfield.} I think that is commendable and I do
870 appreciate it, but the prohibition has been very specific
871 about using those funds at the federal level, State level or
872 local level, and the President explicitly in his 2013 budget
873 allows those funds to be used at the local level, and my
874 question to you would be, do you know why that action was

875 taken by the White House?

876 Secretary {Sebelius.} Again, I would be--I will provide
877 a more thorough answer in writing. What I have just been
878 told by our staff is that the language that we are proposing
879 be eliminated is duplicative of existing law, that it already
880 exists in statute. I will verify that and get back to you,
881 but I am not aware of any new measures that we are talking
882 about.

883 Mr. {Whitfield.} So from your perspective, you are
884 already doing that?

885 Secretary {Sebelius.} That is what--

886 Mr. {Whitfield.} Now, the reason I am asking the
887 question is because I have seven pages here of 25 specific
888 instances where grantees of HHS receiving money from HHS are
889 explicitly trying to influence laws at the State and local
890 levels relating to all sorts of issues. For example, in one
891 town in California, Baldwin Park, they are using these--the
892 entity, the grantee, is using this money to reduce the
893 density of fast food establishment and convenience stores,
894 for example, and we have seven pages of this, and it looks to
895 me just on the surface that it is explicitly violating the
896 law as set out in the Appropriation Act.

897 Secretary {Sebelius.} Again, Mr. Whitfield, the new
898 language in our budget for fiscal year 2012, we have not

899 issued any new grants where that new language would be
900 applicable. We are updating our grantee advice. We are
901 updating but the prospective language has not impacted any of
902 the grants in place. We are going to comply with the law.
903 The language that has been statutory applied to our use of
904 our federal funds. We have also complied with that law for
905 years. So I can assure you that the new language attached to
906 the fiscal year budget, and it did go beyond statutory
907 language, is one that we are currently updating and updating
908 grantees about but there have been no grant releases where
909 that new language would apply.

910 Mr. {Whitfield.} Mr. Chairman, I might just make the
911 comment that it was my understanding that this prohibition
912 also applied to fiscal year 2010 and 2011, so--

913 Secretary {Sebelius.} Not by grantees, Mr. Whitfield.
914 It applied to us but not our grantees.

915 Mr. {Pitts.} The Chair thanks the gentleman.

916 The gentlelady from Illinois, Ms. Schakowsky, is
917 recognized for 5 minutes for questions.

918 Ms. {Schakowsky.} Thank you, Mr. Chairman.

919 Just in regard to family budgets, I wanted to point out
920 and thank you for the fact that 54 million Americans were
921 provided at least one preventive service in 2011 through
922 their private health insurance plan for no cost, and I think

923 that the consequences of that are probably priceless in terms
924 of colonoscopy screenings and flu shots and all the disease
925 that has been prevented, so this is one of the consequences
926 of the Affordable Care Act.

927 But I also wanted to tell you that I had the privilege
928 of going out with the Fraud Prevention and Enforcement Action
929 Team on a drive-around, which was very interesting, where
930 there is this real effort to make sure that we are spending
931 all the taxpayer dollars correctly, although we didn't have
932 anything quite as exciting as what we learned earlier this
933 week about a Dallas doctor arrested for a shocking \$375
934 million in health care fraud schemes.

935 So what I wanted to ask is how the Affordable Care Act
936 contributed to greater oversight and enforcement and what
937 kind of additional--how much money was found through that
938 effort, and that is it.

939 Secretary {Sebelius.} Well, Ms. Schakowsky, I think
940 there is no question that the Affordable Care Act contains
941 provisions that are probably the toughest anti-fraud
942 provisions ever in the history of the Medicare program.
943 Criminal penalties were enhanced. Civil penalties were
944 enhanced. We were given tools to re-credential providers in
945 some of the most fraud-ridden areas, new resources for these
946 law enforcement teams that are a Justice Department-HHS

947 partnership on the ground. We now have teams in seven
948 cities. We are expanding to nine. We intend to continue
949 that. Probably as important as anything are the resources
950 that allow us to for the first time ever catch up with the
951 private sector and put together a data system where real data
952 is pulled together in real time. In the past, 12 different
953 billing systems had various parts of CMS billing data so you
954 could never identify the provider in Texas in one space. It
955 was coming through too many portals. So data analysis is now
956 in 2 years significantly better than it was in the past and
957 we now have a predictive modeling system to look at billing
958 errors--not errors, billing anomalies and be able to target
959 our resources on the ground to immediately investigate and
960 stop money from going out the door.

961 So the Attorney General and I were able to announce a
962 couple of weeks ago that \$4 billion, the largest amount ever,
963 came back to the taxpayers and to the trust funds because of
964 these anti-fraud efforts, and yesterday alone, as you
965 identified, a provider--I am sorry--on Tuesday in Texas, a
966 provider was arrested who has been fraudulently billing we
967 think 28 or 29 home health agencies. We knew that that was
968 an area fraught with problems and we targeted that area, used
969 the new analytics, identified this provider, but I think it
970 is the first of many, many that will follow.

971 Ms. {Schakowsky.} So did the additional resources and
972 tools in the ACA, was it responsible for this increase in
973 recovery, the \$4 billion that were recovered?

974 Secretary {Sebelius.} I think it was enormously
975 helpful. There is an ongoing underlying fraud program but
976 the new resources and the new tools we have allowed us to for
977 the first time put together some of these technology advances
978 that really have been used by the private sector very
979 effectively for a long time but missing in our critical
980 health care programs.

981 Ms. {Schakowsky.} In the moments remaining, there are
982 two issues that I would like to work with you and your staff
983 on. One is, Medicare beneficiaries are often designated as
984 being in the hospital on an outpatient observation status,
985 and they could be in the hospital up to 3 days or whatever
986 under that status, and they are not really admitted as an
987 inpatient, and this affects when they are sent to a nursing
988 home or put in an ambulance, and often they don't really
989 understand what observation status is. You are in a hospital
990 bed. You think you are in the hospital. You think you have
991 full insurance coverage. I would like to work with you on
992 that.

993 And the other is, the important information, Hospital
994 Compare, that is a useful tool for consumers, but there is

995 also the feeling that some of the safety-net hospitals for
996 reasons, for example, dealing with non-English speakers, that
997 their ratings get lowered and that concern has been brought
998 to me. I would like to work with you on this. These are
999 little tweaks that I think we can fix. And I want to thank
1000 you for the fact that you are working with the States, you
1001 are working with Members of Congress to make this a better
1002 bill and a better policy. Thank you.

1003 Mr. {Pitts.} The gentlelady's time is expired.

1004 The gentleman from Michigan, Mr. Rogers, is recognized
1005 for 5 minutes for questions.

1006 Mr. {Rogers.} Thank you, Mr. Chairman.

1007 Madam Secretary, thank you for being here. I have been
1008 working with my Democratic colleague Anna Eshoo on the BARDA
1009 reauthorization bill. I would hope that we could submit some
1010 questions for the record. It is very important to us and I
1011 know it is important to you.

1012 Secretary {Sebelius.} That would be great.

1013 Mr. {Rogers.} And we look forward to working with you
1014 on that.

1015 In the 2013 budget, how many employees are dedicated and
1016 committed to getting the health care law up and implemented
1017 and coordinated with the States?

1018 Secretary {Sebelius.} I do have those numbers here if

1019 you could give me just a moment to make sure I give you the
1020 accurate number. We have 210 people in the division that is
1021 specifically working on exchanges, health insurance reform
1022 and others. We have about another 146 working on the parts
1023 of the Affordable Care Act relating to Medicare and Medicaid,
1024 and then some department-wide folks who have picked up
1025 basically some of this effort, so about 800 people throughout
1026 CMS are actually dedicated to this effort.

1027 Mr. {Rogers.} And do you expect that number to rise in
1028 future budgets just for the implementation and management and
1029 regulatory administration of the health care law?

1030 Secretary {Sebelius.} And this is an fiscal year 2013
1031 number that we are supporting so it includes any increase
1032 that we are seeing right now. A lot of what we are doing I
1033 think is covered by the folks that we have.

1034 Mr. {Rogers.} So my concern was, when the chairman went
1035 through, and there is no federal State exchange rule, there
1036 is no--for States--excuse me. There is no federal exchange
1037 rule. There is no guidance and rule on what is an accredited
1038 health plan, nothing that outlines benefits. We have about
1039 18 months. And my concern here is--and I understand what you
1040 have been saying, but we have insurance agents who have been
1041 a bastion for small business being laid off. As a matter of
1042 fact, I had 150 workers at one company, 30 of which were in

1043 my district alone, we think there are thousands and thousands
1044 across the country, because I think the Medical Loss Ratio
1045 rule is wrong. We have a very bipartisan effort to fix it.
1046 Can you commit to fixing that today?

1047 Secretary {Sebelius.} We are following the guidance
1048 from the very bipartisan National Association of Insurance
1049 Commissioners. We adopted their rule on the MLR and we
1050 intend to stay with their rule.

1051 Mr. {Rogers.} So it is okay that we are going to
1052 continue to lose these jobs and we are losing them today, we
1053 are going to lose more tomorrow, and these are the very
1054 people who are going to try to make some sense out of this
1055 massive set of rules that is only going to give them a matter
1056 of months before they are fined by the federal government.
1057 You understand why I am concerned, I think.

1058 Secretary {Sebelius.} Well, I think that there is a
1059 slight mischaracterization about our progress on the rules.
1060 We do have a proposed rule that is out, has been for months,
1061 on the framework of the exchange, on--

1062 Mr. {Rogers.} But I understand that, but--

1063 Secretary {Sebelius.} --Medicaid. We have a very
1064 detailed bulletin--

1065 Mr. {Rogers.} And reclaiming my time. I get it. I
1066 have heard your answer on that earlier. That does nothing if

1067 you are the person who actually has to raise the money, sell
1068 the money--excuse me--sell the product, raise the money, hire
1069 the people. A proposed rule does nothing for certainty for
1070 me, nothing, and so here is, I guess, my point. It doesn't
1071 seem like there is any sense of urgency about what is going
1072 to hit these very companies who are fighting for their very
1073 survival, and the one sector of that that was at least going
1074 to give them some guidance are now eliminated. The federal
1075 government by that law and by your rule eliminated these
1076 broker agents from even having the opportunity to show up at
1077 the small cafe and say let me guide you through this before
1078 you get slapped with a \$2,800 fine.

1079 Secretary {Sebelius.} But there is no elimination of
1080 brokers and agents, and having served as insurance
1081 commissioner, I can guarantee you that--

1082 Mr. {Rogers.} Reclaiming my time--

1083 Secretary {Sebelius.} --they are valuable folks.

1084 Mr. {Rogers.} That is great, except they are losing
1085 their jobs.

1086 Secretary {Sebelius.} The Medical Loss Ratio in no way
1087 eliminates brokers and agents. It didn't define brokers and
1088 agents--

1089 Mr. {Rogers.} It just adds to their costs so they are
1090 eliminated through the back door, and Secretary, that is--

1091 Secretary {Sebelius.} Exchanges at any point along the
1092 way can--

1093 Mr. {Rogers.} We ought to at least just be frank with
1094 each other and admit the fact that these brokers are going
1095 away. Yes, the law didn't directly say you are going away
1096 but the impact of this law is, they are going away. I am
1097 very, very concerned.

1098 Let me get to the second part here. I don't have much
1099 time left. Thirty percent of doctors according to the AMA
1100 have already said they are restricting the number of Medicare
1101 patients in their practices. Two-thirds of physicians have
1102 looked into opting out of Medicare for treating patients. We
1103 see this huge cultural shift in the practice of medicine.
1104 They are selling to hospitals at an alarming rate. Costs go
1105 up. They are reducing the number of appointments per week
1106 for senior citizens and they are stopping to take new
1107 patients. How are you going to stop this and fix this for
1108 the future? This is a disaster for our seniors and it is
1109 something I hope you are spending a lot of time trying to get
1110 right.

1111 Secretary {Sebelius.} Well, I think the best way to
1112 actually make sure that the 97, 98 percent of doctors who
1113 currently have contractual arrangements with Medicare
1114 continue those contractual arrangements is a long-term

1115 discussion and actual fix of the payment rate, which over the
1116 last 3 years expires a week at a time, a month at a time, a
1117 year at a time. The President has proposed in his budget and
1118 paid for in his budget a 10-year fix for the Sustainable
1119 Growth Rate. That is the biggest issue that I hear day in
1120 and day out from physicians practicing is, they don't know if
1121 they are going to get paid. Being a good payment partner for
1122 the 48 million Americans who rely on Medicare benefits I
1123 think is the most essential thing, and we would love to work
1124 with Congress to get that done long term.

1125 Mr. {Terry.} And I would agree with you on that. Also,
1126 if you talk to those doctors, the Medicare health care bill
1127 has made it almost impossible for them to survive.

1128 Secretary {Sebelius.} The Medicare health care bill?

1129 Mr. {Rogers.} No, excuse me, the health care law, which
1130 is why you see this cultural shift in the way medicine is
1131 practiced.

1132 Mr. {Pitts.} The gentleman's time is expired.

1133 Mr. {Rogers.} And I hope that you get a sense of
1134 urgency on this, because people are impacted today.

1135 Thank you. I yield back my time.

1136 Mr. {Pitts.} The gentleman's time is expired. The
1137 Chair recognizes the gentleman from New York, Mr. Engel, for
1138 5 minutes for questions.

1139 Mr. {Engel.} Thank you very much, Mr. Chairman.

1140 And Madam Secretary, I want to echo the remarks that Mr.
1141 Waxman made. I think you are doing a fine job as Secretary
1142 and I want to thank you for the job and the good work that
1143 you do.

1144 I am very proud of the fact that my State, New York,
1145 trains the largest number of medical residents in this
1146 country. We have over 15,000 residents developing all kinds
1147 of lifesaving skills in our State as of 2010 and New York
1148 also trains the largest number of primary care physicians in
1149 the country. Given the increasing age of our Baby Boomer
1150 generation and 32 million newly insured Americans projected
1151 to enter into our health care system in the next few years, I
1152 am concerned about the significant physician shortage that
1153 this country is facing.

1154 So I want to echo the statements that Mr. Pallone made
1155 earlier. I was disappointed to see that the President's
1156 budget included a 10 percent cut to indirect medical
1157 education funding and \$177 million cut to children's hospital
1158 graduate medical education funding. I think we need to be
1159 training more physicians and adequately supporting our
1160 teaching hospitals, not cutting their funding as they strive
1161 to train more providers. Hospitals already see significant
1162 cuts to bad-debt and DSH payments, which disturbs me greatly

1163 because we fought for DSH payments for New York in the
1164 Affordable Care Act. So as a result of H.R. 3630, the Middle
1165 Class Tax Relief and Job Creation Act, bad-debt cuts and DSH
1166 payments cuts are there. So I would just ask that the
1167 Administration reconsider additional cuts, especially when it
1168 comes to training our physicians.

1169 Secretary {Sebelius.} Well, again, I share your feeling
1170 that a critical piece of this puzzle for the United States
1171 having better health care, better patient care, better health
1172 is certainly a robust workforce focused on prevention and so
1173 we would work with you to make sure that we are using all of
1174 the assets, all of the resources to do just that.

1175 Mr. {Engel.} Well, on prevention, one of the best parts
1176 of the Affordable Care Act, I think, was the establishment of
1177 the Prevention and Public Health Fund. I think that should
1178 be a priority, and I was also disappointed to see that
1179 significant reductions were made to various HHS agencies
1180 including the CDC as part of the budget request. The
1181 rationale which we read was that the Prevention Fund would
1182 help fund these programs facing cuts, but the point of the
1183 Prevention Fund was to add to the budgets of various public
1184 health programs, not to just supplant their existing funding.
1185 So given the fiscal year 2013 budget request and in light of
1186 the fact that the Middle Class Tax Relief and Job Creation

1187 Act cut over \$5 billion from the Prevention Fund, I am
1188 concerned that we won't be able to fulfill the goals of the
1189 Prevention Fund. So could you please explain how the various
1190 programs facing cuts, especially those at the CDC, will be
1191 impacted, given the payroll tax extension legislation which
1192 is now law?

1193 Secretary {Sebelius.} Well, I think that we are eager
1194 to not only have the basic programs of the Centers for
1195 Disease Control and Prevention continue on, they are vital,
1196 they are vital to States around the country. They are vital
1197 to the health of all Americans and some of the prevention
1198 funding, you are correct, is paying for those ongoing
1199 programs. I would say that also there are some innovative
1200 and new programs that are showing great promise that also are
1201 part of that prevention funding and we are going to, now that
1202 we have an outline for the further reduction of \$250 million,
1203 be working closely with Congress to make sure that these
1204 initiatives don't take even more disabling cuts.
1205 Unfortunately, at the State level, as you know, Congressman,
1206 the States have made some serious reductions in their public
1207 health budgets. So we are really trying to not only make
1208 sure that the national efforts go forward but that the State
1209 workers who are embedded in state departments across this
1210 country doing vital public health are also continued.

1211 Mr. {Engel.} I want to quickly mention dental care. In
1212 a report, the Pew Center says that preventable dental
1213 conditions were the main cause for over 830,000 emergency
1214 visits in 2009, which is a 16 percent increase from 2006, and
1215 in New York, we estimate \$32 million was spent treating
1216 children for dental-related ailments in emergency rooms in
1217 2008 alone.

1218 I introduced H.R. 1606, the Special Care Dentistry Act,
1219 which would require Medicaid programs to provide dental
1220 services to aged, disabled and blind beneficiaries, and I am
1221 just wondering, is HHS working to address the shortage of
1222 dentists in both our urban and rural areas, and how can we
1223 encourage more dentists to serve children and vulnerable
1224 adults on Medicaid?

1225 Secretary {Sebelius.} Well, Congressman, we would be
1226 really eager to work with you on this. It is an enormously
1227 challenging problem. I think more so than virtually any
1228 other provider group, we see a great shortage of dentists who
1229 are willing to participate in the Medicaid program. We are
1230 working actively with States and others to figure out
1231 strategies to engage more dentists but I would say that we
1232 would love to have your strategies, your ideas because it is
1233 a challenge in virtually every part of the country, rural and
1234 urban, where we see this lack of providers who actually

1235 deliver incredibly important health services.

1236 Mr. {Engel.} Thank you, Madam Secretary. I will be in
1237 touch with your office on this and another bill that I have
1238 introduced, the Moms and Babies Act.

1239 Thank you, Mr. Chairman.

1240 Mr. {Pitts.} The gentleman's time is expired.

1241 The Chair recognizes the gentlelady from North Carolina,
1242 Ms. Myrick, for 5 minutes for questions.

1243 Mrs. {Myrick.} Thank you, Mr. Chairman. Thank you,
1244 Madam Secretary, for being here.

1245 I want to go back to the Medicaid expansion issue again.
1246 I know Dr. Burgess touched on it a little bit. Beginning in
1247 2014 under the health reform law, it will expand to include
1248 all non-elderly individuals with incomes below 133 percent of
1249 the federal poverty level, and that accounts for more than
1250 half of the newly insured population under the law. The CBO,
1251 Congressional Budget Office, estimates that by 2022, federal
1252 outlays for Medicaid are expected to total \$605 billion, more
1253 than twice the 2012 amount. Obviously, many millions of new
1254 people would be covered by Medicaid at that point but it
1255 certainly is a pretty disastrous budget outlook.

1256 So, as you know, the President's budget forces about \$60
1257 billion worth of additional Medicaid burden on to States, and
1258 States already can't afford their Medicaid programs. I know

1259 the problems we have in North Carolina. So long as the
1260 Administration doesn't allow the States more flexibility and
1261 insists on enrolling these millions of new Medicaid
1262 recipients, how are we going to afford as a country double
1263 spending on the program in less than a decade? And I don't
1264 see that the budget really addresses it this year.

1265 Secretary {Sebelius.} Well, Congresswoman, the
1266 Affordable Care Act laid out a program, as you say, that in
1267 2014 regardless of where an individual lives in the country,
1268 the Medicaid enrollment eligibility will be identical so that
1269 individuals up to 133 percent of poverty will qualify for
1270 Medicaid. Those up to 400 percent will qualify for tax
1271 credits in the exchange program. The vast majority of those
1272 new enrollees are paid for by the federal government. They
1273 do not add to the State budget. In fact, the first several
1274 years it is 100 percent federal funding. It decreases over
1275 the first 10 years so that the highest level a State would be
1276 paying for those additional enrollees is a 10 percent match.
1277 The Congressional Budget Office estimated that actual State
1278 expenditures on Medicaid populations would go down, not up,
1279 and States will also be saving what is estimated to be about
1280 \$80 billion that they are spending on an annual basis right
1281 now in uncompensated care, having a payment system under a
1282 lot of the individuals who come into community hospitals, who

1283 come into the health system but have no payment strategy
1284 whatsoever.

1285 Mrs. {Myrick.} Well, most of that money is paid by us,
1286 the federal government, when we pay the hospitals. The
1287 States don't pay that.

1288 Secretary {Sebelius.} We pay some of it, but I can
1289 guarantee you as a former Governor, States pick up an
1290 enormous amount of that uncompensated care at the State level
1291 also.

1292 Mrs. {Myrick.} Right. I yield back, Mr. Chairman.

1293 Dr. {Burgess.} Would the gentlelady yield?

1294 Mrs. {Myrick.} Yes, I will.

1295 Dr. {Burgess.} Madam Secretary, let me just ask you,
1296 because when the President came out announcing the compromise
1297 a couple of week ago--

1298 Secretary {Sebelius.} I am really having trouble. I am
1299 sorry.

1300 Dr. {Burgess.} When the President came out and
1301 announced the compromise on the conscience in contraception a
1302 couple of weeks ago, he described that he wanted this to be
1303 free, and I got to tell you, I was a little taken aback by
1304 the President's seemingly superficial knowledge of health
1305 economics. So have you tried to help educate him when things
1306 are free that they are really not free if they have health

1307 care or medicine stamped on the side of them? Even assume
1308 you get the active pharmaceutical ingredient for next to
1309 nothing, which under some generic scenarios you might if you
1310 were willing to impose a formulary on all the patients in the
1311 country, you still have to involve a doctor's office. A
1312 doctor's time is still involved with evaluating the patient
1313 and writing the prescription. A doctor is still going to be
1314 required to manage that patient, hear about the complications
1315 as they occur, answer their phone calls at 2 o'clock in the
1316 morning and the doctor still has to buy liability insurance.
1317 So none of those things looks free to me, having practiced
1318 medicine for 25 years. Have you tried to help educate the
1319 President on the fact that health care is generally not free?

1320 Secretary {Sebelius.} Mr. Burgess, I think what the
1321 President was referring to, and I think he understands the
1322 economics of the insurance industry very well, is that this
1323 directive first of all in the law is to insurers, and in an
1324 insurance pool, there is a balance of risk. What is
1325 estimated by actuaries, by federal actuaries, by company
1326 actuaries to be free is the provision of contraception to
1327 women balanced against unintended and in some cases unhealthy
1328 pregnancies. That is not only a no cost but estimated by--

1329 Dr. {Burgess.} It was already working. Why did we have
1330 to interfere? Obviously it was in the marketplace in that

1331 instance.

1332 I yield back, Mr. Chairman.

1333 Mr. {Pitts.} The Chair thanks the gentleman and
1334 recognizes the gentleman from Georgia, Dr. Gingrey, for 5
1335 minutes for questions.

1336 Dr. {Gingrey.} Mr. Chairman, thank you.

1337 Madam Secretary, thank you for being here this morning.
1338 Ranking Member Waxman was quoted in the Hill newspaper
1339 yesterday as saying, and this is a quote, ``IPAB is a useful
1340 backstop to impose some discipline on Congress to stop out-
1341 of-control Medicare health spending.'' Do you agree with
1342 that statement?

1343 Secretary {Sebelius.} I do.

1344 Dr. {Gingrey.} Does the President believe we need to
1345 save the Medicare program from bankruptcy like Ranking Member
1346 Waxman obviously does and you obviously do?

1347 Secretary {Sebelius.} I think the President believes
1348 very strongly, which is why he has proposed in this budget
1349 and supported aspects of the Affordable Care Act--

1350 Dr. {Gingrey.} And my time is limited, so yes or no is
1351 fine on this, and your answer to that is yes, and I thank you
1352 for that, Madam Secretary.

1353 Secretary {Sebelius.} I didn't give you an answer, sir.

1354 Dr. {Gingrey.} I know the President has used the slogan

1355 we can't wait to highlight Congressional inaction really on
1356 many issues. Tell me this, should we take Ranking Member
1357 Waxman's advice and start showing discipline to reform
1358 Medicare this year or should we tell our seniors to wait
1359 until after the next election? Yes or no.

1360 Secretary {Sebelius.} The President's budget has a very
1361 positive proposal for Medicare which not only ensures that
1362 the 48 million people have the benefits that are committed to
1363 them but that we continue to slow the growth rate, which has
1364 happened every year since--

1365 Dr. {Gingrey.} Well, I understand that, and my time is
1366 limited, so let me just say this. I asked you the question,
1367 does the President think that we need to address this issue
1368 now or--

1369 Mr. {Sebelius.} He would ask that you pass his budget,
1370 yes, sir.

1371 Dr. {Gingrey.} And the answer is yes. Thank you.

1372 Are you aware that the CMS Actuary predicts that the
1373 Medicare program could become bankrupt as early as 2016?

1374 Secretary {Sebelius.} Mr. Gingrey, I think that again
1375 action is required. We are taking that action. We would ask
1376 you to pass the budget which has additional slowdown in the
1377 growth rate, adding another 2 years to the trust fund. As
1378 you know, the Affordable Care Act added an additional 12

1379 years to the trust fund and we would love to engage in a more
1380 comprehensive discussion as long as we don't blow up the
1381 benefits that 48 million people rely on, which seems to be
1382 the alternative.

1383 Dr. {Gingrey.} Madam Secretary, I think I just heard
1384 you say that the Affordable Care Act according to the
1385 Medicare trustees adds another 12 years.

1386 Secretary {Sebelius.} It was according to the
1387 Congressional Budget Office.

1388 Dr. {Gingrey.} According to the CBO, an extra 12 years.
1389 Well, I think that is possibly based in part, Madam
1390 Secretary, with all due respect, upon your belief that \$500
1391 billion in cuts to Medicare under the Affordable Care Act,
1392 Obamacare, can be spent twice and other disingenuous
1393 accounting gimmicks. What do you say to that?

1394 Secretary {Sebelius.} This was not our number. It was
1395 the Congressional Budget Office number, sir, and also numbers
1396 that are included in the Republican proposal that was put
1397 forward last year. So there seems to be some bipartisan
1398 agreement that we could slow the growth rate of Medicare by
1399 \$500 billion over the next 10 years.

1400 Dr. {Gingrey.} Thank you, Madam Secretary. Let me
1401 shift to the issue of the individual mandate. In December,
1402 actually a December 14, 2010, editorial in the Washington

1403 Post, you wrote with Attorney General Holder, and here is
1404 what you stated, ``It is essential that everyone have
1405 coverage. Imagine what would happen if everyone waited to
1406 buy car insurance until after they got in an accident.
1407 Premiums would skyrocket, coverage would be unaffordable and
1408 responsible drivers would be priced out of the market.'' In
1409 your opinion, if the individual mandate is found to be
1410 unconstitutional by the Supreme Court, would premiums
1411 skyrocket or would the cost curve for PPACA remain unchanged?

1412 Secretary {Sebelius.} I can't speculate about that but
1413 I am confident that given the review by the majority of
1414 justices who have looked at the bill that the Affordable Care
1415 Act will be found constitutional.

1416 Dr. {Gingrey.} Well, that really wasn't my question.
1417 So in your opinion, is the individual mandate the linchpin to
1418 the other insurance reforms in the bill?

1419 Secretary {Sebelius.} I think having everyone included
1420 in the insurance market is an essential component.

1421 Dr. {Gingrey.} So in other words, the individual
1422 mandate is essential to ensuring that everyone has coverage
1423 and the remainder of the bill of course would not work
1424 effectively without that coverage?

1425 Secretary {Sebelius.} I didn't say that, sir. I think
1426 it is an essential component of the bill.

1427 Dr. {Gingrey.} Close enough, Madam Secretary. Thank
1428 you.

1429 Secretary {Sebelius.} Sir, you can't--

1430 Dr. {Gingrey.} Let me ask you this question about
1431 Medicaid.

1432 Secretary {Sebelius.} Could I answer your question, or
1433 not?

1434 Dr. {Gingrey.} You did. I thank you for--

1435 Secretary {Sebelius.} I did not.

1436 Dr. {Gingrey.} I thank you for your question, and I
1437 have only got 15 seconds left, but let me address Medicaid,
1438 and this is going back to what Representative Myrick
1439 addressed but taking a step further. Can you assess the
1440 impact of the provision of PPACA requiring States to raise
1441 Medicare primary care physician rates up to the Medicare
1442 level in 2013 and 2014 with federal funding for States and
1443 doctors, especially in 2015 when the requirement and the
1444 funding goes away, resulting in an inevitable cut to their
1445 reimbursement? Have you thought about that?

1446 Secretary {Sebelius.} We would hope that Congress would
1447 work with us to make sure that that cut does not occur in
1448 future budgets.

1449 Mr. {Pallone.} Mr. Chairman, can I just--

1450 Dr. {Gingrey.} Madam Secretary, thank you, and I yield

1451 back.

1452 Mr. {Pallone.} Mr. Chairman, I just want to ask, you
1453 know, I think that Mr. Gingrey was asking questions, then not
1454 giving the Secretary the time to answer them. I know that he
1455 has only 5 minutes, but I really think if she feels that she
1456 needs an opportunity to answer his questions, I don't mind
1457 if--

1458 Dr. {Gingrey.} You know, the gentleman, I think I need
1459 to respond to him, Mr. Chairman. You make a statement in
1460 regard to my approach, and Mr. Pallone, I think you spent 4-
1461 1/2 minutes of your 5-minute allotted time giving a speech.
1462 So when I ask questions and I want a yes or no answer, I
1463 expect a yes or no answer. It is my time, not hers.

1464 Mr. {Pallone.} I didn't--

1465 Dr. {Gingrey.} She gave her opening 5 minutes.

1466 Mr. {Pallone.} I understand, but if you don't give her
1467 an opportunity to answer the question and then you go back
1468 and suggest what she said and she disagrees that she said
1469 that, I mean, it is really not an opportunity for her to
1470 respond, in my opinion.

1471 Mr. {Pitts.} The Chair thanks the gentleman and
1472 recognizes Dr. Cassidy for 5 minutes for questions.

1473 Dr. {Cassidy.} Hello, Madam Secretary, how are you?

1474 Secretary {Sebelius.} Is that a yes or no question?

1475 Dr. {Cassidy.} Believe me, that is a greeting, not a
1476 true inquiry. I can imagine how you are.

1477 Listen, you said something earlier to Ms. Myrick which
1478 I, you know, was intrigued by. You suggested that under the
1479 ACA that Medicaid costs for States will decrease. Now, I
1480 know I heard that. The reason I find that curious is the New
1481 York Times just had an article speaking about how Medicaid
1482 costs have gone from 21 to 23 or 24 percent, expected to rise
1483 further. There is a blog, Ed Watch, Education Watch, which
1484 is, you know, obviously not even part of this fight except
1485 that they are saying that they anticipate continued crowd-out
1486 of funding for education by the money required for Medicaid
1487 expenditures. In my own State, even though you speak of the
1488 newly eligible having 90 percent coverage and at some point
1489 falling off or 100 percent falling off to 90, my own State,
1490 Louisiana, predicts that there will be \$7 billion State
1491 general funds required to comply with the ACA over the next
1492 10 years. We may quibble whether it is \$7 billion or \$5
1493 billion but it is a significant expense.

1494 Now, I say that in context, and if I interrupt, I am not
1495 trying to be rude, it is only because we have limited, when
1496 you mention that the ACA is going to save the States money,
1497 that seems to be contrary to objective analyses from those
1498 not connected with government.

1499 Secretary {Sebelius.} Well, Mr. Cassidy, I would love
1500 to get you a more detailed answer but I can tell you that
1501 part of what is going on is overall Medicaid expenditure and
1502 State portion of Medicaid expenditure, two very different
1503 numbers. Overall Medicaid expenditure will go up with a
1504 number of newly insured Medicaid beneficiaries. What I was
1505 referring to is the State's share of that newly insured--

1506 Dr. {Cassidy.} So if I may, absolute dollars will
1507 increase even if these States' percentage of that total
1508 spending decreases?

1509 Secretary {Sebelius.} That is correct.

1510 Dr. {Cassidy.} But absolute dollars will still
1511 increase?

1512 Secretary {Sebelius.} Absolute dollars certainly, sir.
1513 If we pay 90 percent of the costs, I mean the absolute
1514 dollars are going up.

1515 Dr. {Cassidy.} Now, the next issue that arises though
1516 of course is important. I am a doctor that works in a public
1517 hospital for the uninsured, and they always point out that
1518 when more people are put on Medicaid, my lines get longer
1519 because the Medicaid dollar is spread more thinly. And
1520 California is kind of like a case study in this right now.
1521 Just for everybody--you and I know this--but they receive \$2
1522 billion a year for the next 5 years to expand Medicaid

1523 coverage. Now they are paying but since then their deficit
1524 has caused them to now decrease payments to physicians--Mr.
1525 Engel spoke about dentists--to \$12 a visit that providers
1526 have filed lawsuits to stop this but your Administration,
1527 your office has filed a friend of the court on behalf of
1528 California while acknowledging that low reimbursement does
1529 affect access. So I have always been struck that we have the
1530 form of insurance without the power of it. Can you respond
1531 how if California is paying a dentist 12 bucks to see
1532 somebody, we don't really have access, how do we defend that,
1533 number one, and number two, how will that improve under the
1534 ACA?

1535 Secretary {Sebelius.} Well, I think the reference that
1536 Mr. Gingrey made to the increase for Medicaid providers to
1537 Medicare rates is part of the strategy. We understand that--

1538 Dr. {Cassidy.} Now, of course, it doesn't affect dental
1539 because dental is not a Medicare-covered benefit, and so
1540 dental I presume will stay at 12 bucks.

1541 Secretary {Sebelius.} Oh, I am sorry. Yes.

1542 Dr. {Cassidy.} This is heterogeneous. It doesn't cover
1543 specialists, for example. It won't cover many other
1544 entities. It is just primary care in particular.

1545 Secretary {Sebelius.} Well, it covers primary care.

1546 Dr. {Cassidy.} And that is for 2 years, correct, and

1547 then it reverts back to--

1548 Secretary {Sebelius.} It is built in for 2 years in
1549 terms of the overall budget but there is no question, I
1550 think, that the concerns about provider rates and Medicaid
1551 are ones that we share. As you know, the court case was--

1552 Dr. {Cassidy.} I know we share that, but how can the
1553 ACA make it better if it is, one, increasing cost as an
1554 absolute dollar? California is already going bankrupt, which
1555 is acknowledged by the Administration. And yet somehow as we
1556 increase absolute cost and put more people on we are going to
1557 somehow improve rates. I don't follow that.

1558 Secretary {Sebelius.} Well, I would say a lot of those
1559 folks right now are entering the health care system at
1560 various points with no reimbursement strategy whatsoever. So
1561 Medicaid rates may be too low in many instances but I would
1562 suggest that it is better than no rate at all, which is being
1563 absorbed in some way in those same budgets that you are
1564 talking about.

1565 Dr. {Cassidy.} Twelve dollars a doctor's visit is not.
1566 Fair statement? I mean, \$12 is way below the threshold for
1567 somebody covering their cost and so, again, it seems as if
1568 the ACA is providing the form of insurance without the power
1569 of it.

1570 Secretary {Sebelius.} Again, this is, as you know, a

1571 State-federal partnership. Decisions about provider rates
1572 are made at the State basis. We are trying to work with
1573 States to make sure that they don't deny access to
1574 beneficiaries based on slashing provider rates.

1575 Dr. {Cassidy.} It seems inevitable with the policies,
1576 but I am out of time. I yield back.

1577 Mr. {Pitts.} The Chair thanks the gentleman and
1578 recognizes the gentleman from Kentucky, Mr. Guthrie, for 5
1579 minutes for questions.

1580 Mr. {Guthrie.} Thank you very much. Thanks for coming
1581 this morning.

1582 I kind of want to touch on what my colleague from
1583 Kentucky, Congressman Whitfield, was talking about on the
1584 grants, the community transformation grants, and there is
1585 evidence they are being used to advocate or lobby pending
1586 positions, and I would agree that if you look at the language
1587 in the budget, you are striking the language that was put in
1588 the Appropriations Act but you do leave ``no part of any
1589 appropriation contained in this act shall be used to pay the
1590 salary, expenses of federal, state'' but you do leave in for
1591 local. So it seems that the proposal would grant access to
1592 the local because it says in the law that no money shall be
1593 enacted by Congress without express authority by Congress.
1594 So it appears the way I read this that you are asking for

1595 authority to do local. But anyway, but the current law, the
1596 way I read it, now, that is going forward, obviously it is
1597 not enacted because it is a proposed budget. But the grants
1598 were put out under the existing laws, as you said, and I
1599 think you said it applied to you but not the grantee at the
1600 end of his comment.

1601 Secretary {Sebelius.} Pardon me?

1602 Mr. {Guthrie.} You said that the language applied to
1603 us, I guess meaning the government, but not the grantee. I
1604 am not sure exactly what you meant by that. That is what I
1605 was going to ask you on that.

1606 Secretary {Sebelius.} The original language that has
1607 been part of the law that we have administered and had our
1608 grantees administer applied to grantees lobbying the federal
1609 government. That has been prohibited. That is part of the
1610 underlying law. What was added to our appropriation bill in
1611 2012 and what I was trying to explain is that no new
1612 prevention grants have been issued under this new language
1613 and we are retraining grantees is that a prohibition for
1614 grantees to lobby at the local level or the State level is
1615 now an additional piece of the law that was not part of the
1616 underlying statute. So that is new. We will administer the
1617 directives to grantees to comply with that. There have been
1618 no funds that have been issued under the new law, and I think

1619 the pages of examples which began to be recited were grantees
1620 who are lobbying at either the State or local level, not
1621 lobbying the federal government.

1622 Mr. {Guthrie.} Okay. Well, it says in the current law
1623 that you cannot use the grant money intended to design or
1624 influence in an any manner a Member of Congress or
1625 jurisdiction or an official of any government to favor, adopt
1626 or oppose or vote otherwise any legislation or ratification,
1627 policy or appropriation. So I don't think it just limits--
1628 current law doesn't limit you to Congress. It is any
1629 lobbying. And U.S. Code 1913. So the point is, that is the
1630 way I read it. It says a Member of Congress or jurisdiction
1631 or any official of any government or an official of any
1632 government to favor or oppose, vote or otherwise, and maybe
1633 that is the misunderstanding because in the Recovery Act on
1634 the website in the Recovery Act, Connecticut said a
1635 grassroots coordinator spent 163 hours establishing community
1636 support by educating, advocating adoption of smoke-free
1637 policies. There is several. In Idaho, to address obesity
1638 through nutrition, and it says working for proposals in the
1639 2012 State legislature for vending machines for schools. And
1640 I can give these to you. And then in the grants, so that was
1641 Recovery Act money. Now it has gone to community
1642 transformation grants and the department that has been

1643 approved actually in their grant proposal says they want to
1644 pass at least 70 regional local institutional policies to--
1645 and the New York public fund says they want a tax on lobby
1646 for local--they say advocate but lobby for a tax on sugar-
1647 sweetened beverages.

1648 Having said that, my reading of the law is that is a ban
1649 on any form of government. Does the department think it is
1650 only federal government?

1651 Secretary {Sebelius.} Again, Congressman, I apologize.
1652 I do not have the existing statute here. I would love to
1653 answer this question in writing. I can tell you fiscal year
1654 2012 appropriations through Congress that we just have added
1655 new language.

1656 Mr. {Guthrie.} Right.

1657 Secretary {Sebelius.} The new language, which was not
1658 part of the underlying law, applied to grantees lobbying at
1659 the local level. So--

1660 Mr. {Guthrie.} Except you have a grant based on--

1661 Secretary {Sebelius.} The underlying law clearly didn't
1662 cover some of what is covered in the new language.

1663 Mr. {Guthrie.} Well, that may be where we are--I am
1664 agreeing with you that the money that--you haven't seen
1665 grants out with the appropriation language in section 503 but
1666 I think the existing law--and maybe that is where we--because

1667 it says to me--and I know you didn't have a chance to read
1668 it, and I agree with you, you need the time to read it, but
1669 it says any Member of Congress, a jurisdiction or an official
1670 of any government, so I think that would be city governments,
1671 State governments. And if you all don't think that is the
1672 case, I would like to have that in writing what your position
1673 is.

1674 Secretary {Sebelius.} I would be glad to do that.

1675 Mr. {Guthrie.} I appreciate that. Thank you.

1676 Mr. {Pitts.} The Chair thanks the gentleman and
1677 recognizes the gentlelady from Tennessee, Ms. Blackburn, for
1678 5 minutes for questions.

1679 Mrs. {Blackburn.} Thank you, Mr. Chairman.

1680 Madam Secretary, thank you for staying with us to take
1681 these questions. I want to ask you about Section 220. And
1682 we had Section 220. The President supposedly--

1683 Secretary {Sebelius.} Section 220 of--

1684 Mrs. {Blackburn.} Of the Obamacare bill, you know.

1685 Secretary {Sebelius.} The Affordable Care Act? Is
1686 that--

1687 Mrs. {Blackburn.} Yes, ma'am. The President goes back
1688 to 2009 saying we are going to have transparency, we are
1689 going to have open government, and this was a major push.
1690 Fiscal year 2012 appropriations bill that the President

1691 signed included Section 220. This was an important thing.
1692 We are going to have transparency, going to let you know
1693 where the money gets spent on this bill. Yet we get the 2013
1694 budget and Section 220 has been removed in its entirety.

1695 So we have a lot of concerns about what is happening
1696 with the transparency components and how the money is going
1697 to be spent. So I would encourage you to look at this and
1698 see if you can find out what has happened with the money that
1699 was going to be designated to transparency. We would like to
1700 have an answer to that one if you do not mind.

1701 Secretary {Sebelius.} I would be glad to do that.

1702 Mrs. {Blackburn.} Thank you. I appreciate that.

1703 In light of that, in trying to keep track of where the
1704 money is going with this bill, you and I have talked about
1705 TennCare and the lessons that should have been learned from
1706 TennCare as the test case for public option health care. One
1707 of those we repeatedly or I repeatedly discussed, and I know
1708 you didn't think TennCare was a traditional public option
1709 program, not sure what we think was a traditional public
1710 option, but nonetheless, your estimates for the Obamacare
1711 bill were to be a trillion dollars in spending, and now I am
1712 looking at the figures for 2014 through 2023 as being a \$2
1713 trillion estimate. So you are already running ahead of
1714 estimates. Forbes is looking at these programs, these grant

1715 programs being about 30 percent over budget. Forbes had an
1716 article out on that.

1717 So I just want--you know, our problem with TennCare,
1718 Madam Secretary, was that within 5 years it had quadrupled in
1719 its cost over the original estimates. So how do you see this
1720 playing out and what accommodations are you and your team
1721 making for this program doubling and then possibly
1722 quadrupling in its anticipated cost?

1723 Secretary {Sebelius.} Well, Congresswoman, I would be
1724 happy to try and get you an answer. I don't know what you
1725 are quoting. I don't know what it is based on. So I would
1726 be delighted to get you a specific answer. We don't think
1727 the program will double or quadruple in cost. We tried to
1728 give as accurate an estimate as we could at every point all
1729 the way.

1730 Mrs. {Blackburn.} Let me ask you--

1731 Secretary {Sebelius.} Two years in, we are
1732 underspending a lot of the estimates--

1733 Mrs. {Blackburn.} Okay. Let me ask you this. As we
1734 worked on this legislation, I asked repeatedly if you had any
1735 example where spending these near-term, ramping up all these
1736 near-term expenses had resulted in long-term savings. To my
1737 knowledge, you had no example of any program that showed
1738 where ramping up these near-term expenses would yield a long-

1739 term savings. Were you all ever able to find an example?
1740 Because you are running over budget. You have got a budget
1741 that has increased 25 percent since 2008. Your estimates are
1742 running ahead of what they have been, and we are at record
1743 spending, record deficits, record debt in this country. So
1744 if you ever came up with that example, I sure would like to
1745 see it, and I have got some constituents that would certainly
1746 like to see it.

1747 Let me shift gears for just a moment. I want to your
1748 narrow religious exemption rule and what I think is a fee-
1749 for-faith principle that is out there. USA Today had an op-
1750 ed, an editorial, and they made the comment that not only had
1751 you crossed the line on religious liberty but you had
1752 galloped over it. I just have to ask you, Madam Secretary,
1753 did you all consult the Department of Justice before you made
1754 this decision?

1755 Secretary {Sebelius.} Which decision are you referring
1756 to, Congresswoman?

1757 Mrs. {Blackburn.} Religious liberty, the First
1758 Amendment.

1759 Secretary {Sebelius.} Which decision are you referring
1760 to?

1761 Mrs. {Blackburn.} The mandate to the Catholic churches.
1762 I think you know what I am talking about.

1763 Secretary {Sebelius.} We have consulted with a number
1764 of people. Did we consult before we finalized the rule on
1765 prevention with the Department of Justice?

1766 Mrs. {Blackburn.} Yes, ma'am.

1767 Secretary {Sebelius.} No, we did not.

1768 Mrs. {Blackburn.} You did not? Okay.

1769 Thank you. My time is expired. I yield back.

1770 Mr. {Pitts.} The Chair thanks the gentlelady.

1771 The Chair recognizes the gentleman from Pennsylvania,
1772 Dr. Murphy, for 5 minutes for questions.

1773 Mr. {Murphy.} Thank you, Madam Secretary. I want to
1774 follow up on the religious freedom First Amendment issue as
1775 well. I just want to be sure. If an employer is saying that
1776 he or she cannot find it in their conscience in terms of
1777 practicing their religion that they cannot pay for a plan or
1778 have a plan that allows for or requires provision of
1779 abortifacient drugs and they therefore do not provide that
1780 plan, just clarify for me, do they pay the \$2,000 tax for not
1781 having it or do they pay the \$3,000 tax for having a plan
1782 that is in violation?

1783 Secretary {Sebelius.} There is no penalty attached to
1784 the provision of preventive care. There certainly are
1785 penalties for employers who don't comply with the law. There
1786 also is no abortifacient drug that is part of the FDA-

1787 approved contraception. What the rule for preventive care--
1788 Mr. {Murphy.} Ma'am, that is not true.
1789 Secretary {Sebelius.} Well, the scientists--
1790 Mr. {Murphy.} Isn't the morning-after pill or something
1791 like that an abortifacient drug?
1792 Secretary {Sebelius.} It is a contraceptive drug, not
1793 an abortifacient.
1794 Mr. {Murphy.} Yes or no, does it--
1795 Secretary {Sebelius.} It is not an abortifacient. It
1796 does not interfere with a pregnancy. If the morning-after
1797 pill were taken and a female were pregnant, the pregnancy is
1798 not interrupted.
1799 Mr. {Murphy.} Ma'am, I appreciate that is your
1800 interpretation.
1801 Secretary {Sebelius.} That is what the scientists and
1802 doctors inform me, and--
1803 Mr. {Murphy.} We are not talking about scientists, we
1804 are talking about religious belief.
1805 Secretary {Sebelius.} I am telling you that--
1806 Mr. {Murphy.} Ma'am, I am asking about a religious
1807 belief.
1808 Secretary {Sebelius.} --the definition of an
1809 abortifacient--
1810 Mr. {Murphy.} In a religious belief, that is a

1811 violation of a religious belief based upon those within a
1812 religion.

1813 Now, let me expand on that then. So if an employer says
1814 I cannot have this plan provided for by the employer whether
1815 it is paid for directly or someone says it is going to be
1816 paid for by somebody else, do they end up paying the \$2,000
1817 tax or the \$3,000 tax per employee?

1818 Secretary {Sebelius.} The rule which we intend to
1819 promulgate in the near future around implementation will
1820 require insurance companies, not a religious employer but an
1821 insurance company to provide coverage for contraceptives for
1822 employees who choose to access that--

1823 Mr. {Murphy.} Ma'am, that is not what I am asking
1824 about. Ma'am, I am not asking about that. This is very
1825 important. This is a First Amendment issue. You keep
1826 talking about these things in a different way.

1827 Let me try and help make this clear, because one of the
1828 things I think you say is that if an organization has people
1829 within that organization that are not part of that same faith
1830 value system, that they therefore couldn't claim an
1831 exemption. Am I correct in that? So let us say Catholic
1832 Charities has other employees who are not Catholic or a
1833 Jewish hospital may have other doctors who are not Jewish or
1834 Catholic Charities may provide services to non-Catholics that

1835 they therefore could not claim a religious exemption. Is
1836 that accurate?

1837 Secretary {Sebelius.} They don't fall under the
1838 definition that is total exemption from the rule. They will
1839 fall under the secondary rule of a religious objection to the
1840 service and--

1841 Mr. {Murphy.} But under that, they would still have to
1842 provide the objectionable medical services.

1843 Secretary {Sebelius.} Absolutely not. The religious
1844 employer who objects to contraception because of religious
1845 beliefs will not provide, will not pay for, will not refer
1846 employees to an objectionable service. On the other hand,
1847 the insurance company will--

1848 Mr. {Murphy.} Ma'am--

1849 Secretary {Sebelius.} --provide the service to
1850 employees--

1851 Mr. {Murphy.} --let me make sure I understand this
1852 correctly. So if a child in school--

1853 Secretary {Sebelius.} --upholds religious liberty and
1854 it makes sure that it doesn't--

1855 Mr. {Murphy.} Ma'am, not it doesn't. Ma'am--

1856 Secretary {Sebelius.} --access to benefits.

1857 Mr. {Murphy.} Ma'am, no, you are wrong. You are wrong
1858 for this reason. You know, you are setting up a rule that

1859 not even Jesus and his apostles could adhere to. Jesus was
1860 Jewish. He recruited Jewish people--tax collectors, sinners,
1861 Mary Magdalene and others--and therefore saying you know
1862 what, because you are not bringing all Christians into this
1863 fold you can't do this. What you are missing here is because
1864 someone else is paying for it, somehow that makes sense. If
1865 I go to a tire store, which I recently did, it was buy three,
1866 one free tires, I know I am paying for that extra tire by the
1867 other three being pumped up or someone else is paying for it
1868 by their costs going up somewhere else. It is one thing--I
1869 have searched for ways of trying to help you understand it,
1870 and I don't know, maybe the Administration just refuses to
1871 understand so therefore can't happen. Whether or not you
1872 have someone else pay for it or whether something else is
1873 under the guise of being free, as long as it is imposed upon
1874 someone to have this available, that it is still a violation
1875 of their faith, which gets into the First Amendment. I don't
1876 understand why this isn't clear.

1877 Secretary {Sebelius.} Well, first of all, I think the
1878 tire analogy is not quite accurate. Insurance is--

1879 Mr. {Murphy.} Well, who is going to pay for it?

1880 Secretary {Sebelius.} --about a balance of risk--

1881 Mr. {Murphy.} Who is going to pay for the--

1882 Secretary {Sebelius.} --we know because it was done in

1883 the federal employees--

1884 Mr. {Murphy.} Who pays for it? There is no such thing
1885 as a free service.

1886 Secretary {Sebelius.} The reduction in a number of
1887 pregnancies compensates for the cost of contraception. The
1888 overall plan--

1889 Mr. {Murphy.} So by not having babies born, we are
1890 saving money? I just want to get this on the record, Mr.
1891 Chairman. So you are saying by not having babies born, we
1892 are going to save money on health care?

1893 Secretary {Sebelius.} Providing contraception as a
1894 critical preventive health benefit for women and for their
1895 children reduces--

1896 Mr. {Murphy.} Not having babies born is a critical
1897 benefit. This is absolutely amazing to me. I yield back.

1898 Secretary {Sebelius.} Family planning is a critical
1899 health benefit for--

1900 Mr. {Murphy.} You said avoiding pregnancy--

1901 Secretary {Sebelius.} --women in this country according
1902 to the Institute of Medicine, and that is again--

1903 Mr. {Murphy.} I think that is--

1904 Mr. {Pitts.} The gentleman's time is expired.

1905 The Chair recognizes the gentleman from New Jersey, Mr.
1906 Lance, for 5 minutes for questions.

1907 Mr. {Lance.} Thank you very much, Mr. Chairman.

1908 Madam Secretary, the President's budget requests the
1909 level of exclusivity for follow-on biologics, reducing it
1910 from 12 years to 7 years, and I think that that might be
1911 counterproductive and I am wondering whether you would be
1912 willing to reexamine that. On a bipartisan basis, this
1913 Committee has repeatedly indicated that it favors the 12-year
1914 period. There was a bipartisan vote of 47 to 11 on that
1915 issue in this Committee.

1916 Secretary {Sebelius.} Well, I think, Mr. Lance, this is
1917 an important and ongoing dialog. The balance of making sure
1918 we protect research and development, making sure that
1919 companies can in fact make a profit when they find a
1920 successful strategy, and opportunities for patients to have
1921 an affordable adoption that may be lifesaving is, I think,
1922 what is at risk here, and certainly I think there is a
1923 difference of opinion of whether 12 years is the appropriate
1924 time, whether 7 years adequately compensates companies and
1925 yet makes more cost-affordable options available.

1926 Mr. {Lance.} Thank you. I would encourage you to work
1927 with us on that.

1928 Secretary {Sebelius.} I would be glad to.

1929 Mr. {Lance.} I favor 12 years, and I appreciate any
1930 work we might be able to do together on that.

1931 We are hearing from those who have to implement the new
1932 summary of benefits and coverage requirements that the time
1933 period may be difficult to meet. Given the fact that
1934 employers and plans need to get this done and if they don't
1935 comply there are significant financial penalties, might the
1936 Department consider any sort of delay of the non-enforcement
1937 period?

1938 Secretary {Sebelius.} Well, I think, again, the
1939 essential health benefits are a critical component. We put
1940 out very detailed guidance because we were hearing from a lot
1941 of States, from insurers and others saying tell us what is
1942 going on. I think the strategy of suggesting that a
1943 benchmark plan already marketed and in place in a State is a
1944 really accelerated strategy. This is not something that has
1945 to be started from the ground up. This is an ability at a
1946 State level to choose a plan, the most popular small employer
1947 plan, the federal health benefit plan, a state health
1948 benefits plan that is in place, is marketed, is priced at the
1949 State level. We made it very clear in the guidance that this
1950 is what we intend to propose. We are trying to get as much
1951 feedback as possible from insurers, from States. We have had
1952 a very robust discussion and in the very near future will be
1953 issuing the interim rule.

1954 Mr. {Lance.} Thank you. Regarding the Supreme Court

1955 argument on the health care legislation, undoubtedly the
1956 Solicitor General's Office will be arguing that case. Does
1957 your department also have lawyers who will be involved in the
1958 oral argument or is it exclusively the Solicitor General?

1959 Secretary {Sebelius.} It is the Solicitor General who
1960 will be involved in the oral argument.

1961 Mr. {Lance.} Thank you. I am willing to yield back to
1962 any member who is interested in further questions. Thank
1963 you, Madam Secretary.

1964 I yield to Dr. Burgess.

1965 Dr. {Burgess.} Thank you. It is very kind of you to
1966 provide a little additional time.

1967 Madam Secretary, you were here before and we talked a
1968 little bit about the difference between a voucher and premium
1969 support, and you had some difficulty articulating a
1970 difference between the two. I am going to try to help you,
1971 because of course under the exchanges, you will provide a
1972 subsidy, but that subsidy is not coming in the form of a
1973 check or cash to a household. There will presumably be some
1974 sort of acknowledgement that this help is now available to
1975 you to help you purchase your insurance in the exchange so
1976 that might be regarded as a voucher, a coupon that you could
1977 take to the exchange and in return you get a discounted price
1978 for your health insurance.

1979 Now, premium support, I don't know, you might have your
1980 insurance through the Federal Employee Health Benefits Plan.
1981 Many people in the Administration do. That is premium
1982 support where the FEHBP goes out and takes requests for
1983 proposals from all these different insurance companies.
1984 There is in fact a bill, H.R. 360. Members of Congress are
1985 going to be required to buy their insurance in the exchange
1986 after 2014. Members of the Administration, members of the
1987 federal agencies are exempted from that requirement. You in
1988 fact could experience the world of a voucher versus premium
1989 support by supporting H.R. 360, which would move all members
1990 of leadership, leadership staff and the Administration and
1991 the agencies from the FEHBP into the exchanges. Would that
1992 be a good idea?

1993 Secretary {Sebelius.} We would be happy to look at it.

1994 Dr. {Burgess.} I would appreciate your response.

1995 Mr. {Pitts.} The Chair thanks the gentleman.

1996 That concludes the first round of questioning. We will
1997 now go to Dr. Christensen, who is a member of the Full
1998 Committee, who has sat patiently since the beginning of the
1999 hearing, for 5 minutes for questions.

2000 Dr. {Christensen.} Thank you, Mr. Chairman and Ranking
2001 Member, I really appreciate the opportunity to sit on this
2002 hearing and your generosity in allowing me to participate.

2003 Welcome, Madam Secretary.

2004 Secretary {Sebelius.} Thank you.

2005 Dr. {Christensen.} Your being here gives me an
2006 opportunity to formally and publicly thank for you the
2007 unprecedented efforts that the Department has taken under
2008 your leadership to end inequalities in health care and health
2009 status through your national strategy to end health
2010 disparities.

2011 On the other hand, I wanted to say briefly that the 2013
2012 budget does raise some concerns about our ability to meet the
2013 goals that you have set out, but I also know that across the
2014 budget, President Obama has worked with agencies wherever
2015 there are cuts to take steps to ensure that important
2016 programmatic activities are not really cut as might appear,
2017 that they don't suffer but are covered in other ways, and 5
2018 minutes doesn't give me the opportunity to go through those
2019 areas of concern, but would you be willing to meet with the
2020 Tri-Caucus to go over some of those areas and show us perhaps
2021 where steps have been taken to make sure that those
2022 programmatic activities have not been cut?

2023 Secretary {Sebelius.} I would be pleased to do that.
2024 As you know, we have tried to work carefully with Members of
2025 Congress who share our concern about the health disparities
2026 issues present around the country, and we have lots of

2027 strategies, and agencies hard at work closing those gaps, and
2028 for the first time ever have a national strategy on health
2029 disparities that is a real action plan. So we would be
2030 delighted to go over that with you and meet with you about
2031 it.

2032 Dr. {Christensen.} Thank you. And the President's
2033 budget proposes a single blended federal matching Medicaid
2034 rate. I am sure there are different opinions about that, but
2035 I think that the time has come for the territories to have
2036 the same methodology used for setting our match, and we did
2037 have that included in the House version of the Affordable
2038 Care Act, and the Senate actually agreed to it but we weren't
2039 able to get it done because of just technical reasons and how
2040 both bills were structured. If given the authority, would
2041 you be supportive of setting the match according to the way
2042 the States are done on the average income? Right now we are
2043 a 50/50 match in statute, and that is very difficult. Would
2044 you be supportive of having the authority to set our match as
2045 the States are set?

2046 Secretary {Sebelius.} Well, we would certainly be happy
2047 to work with you. I know it is a huge issue for the
2048 territories and the islands and we are working on that. The
2049 framework does not allow us to do that, and we do not have
2050 the budget to do that currently. So we would be happy to

2051 pursue that discussion.

2052 Dr. {Christensen.} And if we went into the blended
2053 rate, if that does take place, it is my understanding you
2054 need about 2 years of history to be able to make the
2055 determination, so it would be helpful--we wouldn't mind going
2056 into the blended rate if that takes--if that is the way we
2057 are going to go.

2058 Just one more question. There are two new institutes at
2059 the NIH. One is the one you mentioned on translational
2060 medicine and the other one is the National Institute for
2061 Minority and Health Disparity Research, one created
2062 administratively, the latter one, and the Minority and Health
2063 Disparity Institute by the Affordable Care Act. The budget
2064 for the National Institute for Minority and Health
2065 Disparities is one of the lowest of all of the institutes,
2066 and that is despite the major initiatives that we have to
2067 eliminate health disparities. Is there language in the
2068 budget or would you accept language to bring the National
2069 Institute of Minority and Health Disparity Research on par
2070 with the other institutes? And I do know that the Research
2071 Centers of Minority Institutions would--that program was
2072 transferred to the institute and even funding with it, but
2073 even that funding was insufficient to support the research
2074 centers so it remains under underfunded under the institute.

2075 So is there language that would bring the National Institute
2076 on Minority and Health Disparity Research on par with the
2077 others or would you be willing to accept that language?

2078 Secretary {Sebelius.} Well, again, Congresswoman, I
2079 think you have identified that the transfer along with staff
2080 and budget actually has significantly enhanced this whole
2081 effort over where we were 2 years ago. We would be happy to
2082 work with you around ideas and strategies for continuing
2083 improvement, but there has been kind of a big move forward I
2084 would say from where we were when we began this conversation.

2085 Dr. {Christensen.} Okay, but my understanding it is
2086 still underfunded even with moving the RCMI in, so we
2087 appreciate your willingness to work with us, Madam Secretary,
2088 and thank you for your testimony and your answers.

2089 Secretary {Sebelius.} Thank you.

2090 Mr. {Pitts.} The Chair thanks the gentlelady.

2091 Madam Secretary, we have one follow-up on each side, if
2092 you can stay for that.

2093 Mr. {Pallone.} And Mr. Markey too.

2094 Mr. {Pitts.} And Mr. Markey has come in and would like
2095 to ask questions. The gentleman, Mr. Markey, is recognized
2096 for 5 minutes for questions.

2097 Mr. {Markey.} Thank you, Mr. Chairman, very much.

2098 This is my 36th year on the Committee, on the health

2099 care Committee, so it has been a long time trying to get to
2100 this point where we actually have a plan to deal with the
2101 long-term health care problems of our country, and amongst
2102 those includes the National Alzheimer's Project Act to deal
2103 with this very important issue that costs the federal
2104 government--Medicare and Medicaid last year spent \$130
2105 billion on Alzheimer's patients in America. Unbelievable
2106 amount of money, and that is with only 5 million Americans
2107 having it. By the time all the Baby Boomers have retired,
2108 the cost is going up to maybe \$600 billion a year just on
2109 Alzheimer's patients if we don't find a cure for it, and it
2110 is obviously a budgetary crisis that is looming.

2111 And last week, Madam Secretary, we thank you, you issued
2112 your draft national plan pursuant to the National Alzheimer's
2113 Project Act, which I am the principal House author of along
2114 with Congressman Smith, and I think it is great. One thing I
2115 wanted to talk about here today is that at NIH there is \$6
2116 billion a year spent on cancer research and there is \$3
2117 billion a year spent on AIDS research but only \$489 on
2118 Alzheimer's, even though 15 million Baby Boomers are going to
2119 have it. We have to find a cure.

2120 And so Madam Secretary, I congratulate you and the
2121 Administration on announcing the addition of \$80 million more
2122 in this coming year's budget on the research for Alzheimer's.

2123 I think that that is absolutely critical, and I congratulate
2124 you on that and I just think it has to be dramatically
2125 higher, and if there is one thing we should just single out
2126 and just say this has to be spared, it is the NIH budget,
2127 that just has to go up and up and up because the National
2128 Institutes of Health are really the National Institutes of
2129 Hope, and in Alzheimer's, there is really going to be a
2130 medical catastrophe that hits this country when all the
2131 diseases that we have been successful in helping to cure lead
2132 to people living so long that half our population winds up in
2133 retirement with Alzheimer's. It is going to be an absolute
2134 disaster and it is going to cost us a fortune.

2135 And the second thing, Madam Secretary, is in the
2136 Affordable Care Act, I was able to include language for an
2137 Independence at Home pilot project, and there are now more
2138 than three times as many applicants, that is, medical
2139 institutions, that are applying for those slots in order to
2140 conduct this experiment. I would just like to draw to your
2141 attention the fact that the VA has already had a wildly
2142 successful program that has 10,000, 11,000 people in it that
2143 reduced hospital stays by 60 percent and nursing care days by
2144 80 percent, and so I appreciate all of your efforts in this
2145 area but I think it could help us to telescope the time frame
2146 that is going to take us in order to put together a program

2147 to keep people at home, share it with the institutions that
2148 are working hard in partnership to keep them at home, making
2149 the patients and their families better able to deal with the
2150 disease.

2151 So I was just looking for a little wisdom from you in
2152 terms of what your agency is doing and how much of an
2153 imperative you see this for our country.

2154 Secretary {Sebelius.} Well, first of all, Mr. Markey, I
2155 want to thank you for your tenacious leadership on the
2156 Alzheimer's issue and continuing to raise it and make sure it
2157 is an issue that is focused on. As you know, not only is
2158 there 80 million new research dollars in the 2013 budget,
2159 there were also reallocated another \$50 million in the 2012
2160 budget at NIH. So it is about a 25 percent increase in
2161 Alzheimer's research. We also have proposed a portion of
2162 those funds, additional funds, not those funds, for care
2163 giving and at-home care because we know family care providers
2164 are the largest number of providers for family members.

2165 But I would share your interest, and we look forward to
2166 working with you on what is the long-term strategy, how fast
2167 we can get there. As you know, some timetables were set for
2168 the first time in the National Alzheimer's Plan. There is a
2169 lot of agreement that we probably need to move ahead of that
2170 pace but at least we have a pace and a measurable pace

2171 outlined and so we would look forward to working on getting
2172 the resources, getting the research, getting the care-giving
2173 strategies in place.

2174 Mr. {Markey.} A fully implemented Independence at Home
2175 project could save billions of dollars a year if we could
2176 just get to the point where we verify what the VA has already
2177 determined.

2178 Secretary {Sebelius.} Well, that is a great point, and
2179 we will definitely work with our partners at the VA.

2180 Mr. {Pitts.} The Chair thanks the gentleman.

2181 Mr. {Markey.} Thank you for your great work. I
2182 appreciate it.

2183 Mr. {Pitts.} The Chair thanks the gentleman and
2184 recognizes Dr. Burgess for one follow-up for 5 minutes.

2185 Dr. {Burgess.} Thank you, Mr. Chairman.

2186 I will just point out to Mr. Markey while he is still
2187 here, this is one of the rare instances of bipartisanship in
2188 the Affordable Care Act where we worked with your office on
2189 getting the Independence at Home language refined and
2190 included, so perhaps there is hope down the road.

2191 But actually, going back to State exchanges for a
2192 moment, some States are concerned that without the final
2193 rules on the exchanges, they are bumping up against a
2194 deadline that is going to be pretty tough for them to meet.

2195 I mean, they need these rules probably within the next couple
2196 of months if they are to be able to finalize their issues to
2197 meet the deadlines.

2198 Secretary {Sebelius.} And they will have them shortly.
2199 We have the interim final rule out and we intend to finalize
2200 the rule in the very near future.

2201 Dr. {Burgess.} So we can look for that by, what, the
2202 Ides of March? April Fools Day? Tax Day? What day can we--

2203 Secretary {Sebelius.} Shortly.

2204 Dr. {Burgess.} Shortly? Okay.

2205 Secretary {Sebelius.} So if they need them in the next
2206 couple of months, they will definitely have them in the next
2207 couple of months.

2208 Dr. {Burgess.} And then the essential health benefits
2209 rule also will be coming out in that same very short time
2210 span?

2211 Secretary {Sebelius.} The essential health benefits
2212 rule has not yet been proposed as an interim rule. I am
2213 talking about finalizing the exchange rule. That will happen
2214 in the very near future. They will have the exchange rule.
2215 They will have the Medicaid expansion rule. That has been
2216 out as interim final rule. The essential health benefits
2217 rule will be promulgated in the near future but there is
2218 detailed guidance right now that States are working on.

2219 Dr. {Burgess.} I will just make a prediction: that
2220 won't happen until after Election Day in November, but that
2221 is just me being cynical.

2222 For a State like--let us say, for example, there is a
2223 State out there that worries about what is happening under
2224 the Affordable Care Act and really thinks the federal
2225 government is maybe going a little too far on this so they
2226 are reticent to set up a State exchange. I mean, I can think
2227 of a State that might fall into that category. I may be
2228 going there this afternoon. So you are preparing a national
2229 exchange for those States that will not either because they
2230 haven't had time or because they did not have the inclination
2231 will not have an operational State exchange?

2232 Secretary {Sebelius.} There will be a federal
2233 facilitated exchange in some cases operating fully the
2234 exchange for States and others in partnership.

2235 Dr. {Burgess.} But the Federal Government will step in
2236 and provide that operational control. Is that correct?

2237 Secretary {Sebelius.} Pardon me?

2238 Dr. {Burgess.} The Federal Government will step in and
2239 provide that?

2240 Secretary {Sebelius.} Yes, sir.

2241 Dr. {Burgess.} Now, will that be administered through
2242 your office or through the Office of Personnel Management?

2243 Secretary {Sebelius.} It will be administered through
2244 the CMS, through--we will be operating at HHS the federally
2245 funded exchange.

2246 Dr. {Burgess.} My understanding is, there will be both
2247 a for-profit and a non-for-profit offered under the language
2248 of the law. Is that correct? Will there be a not-for-profit
2249 federal exchange?

2250 Secretary {Sebelius.} No, there will not.

2251 Dr. {Burgess.} I thought the language of the law said
2252 there had to be a for-profit--

2253 Secretary {Sebelius.} No, I think you are talking about
2254 the co-op situation.

2255 Dr. {Burgess.} No, I am talking about the exchanges, or
2256 the federal exchange for public option, whatever we want to
2257 call it.

2258 Secretary {Sebelius.} No, there will not be a not-for-
2259 profit. States have that option. That is not at the federal
2260 level, sir.

2261 Dr. {Burgess.} Let me ask you this. A lot of talk
2262 about the contraception issue and the essential benefits.
2263 When will we see--are you proposing that an institution that
2264 refuses to comply with your contraceptive mandate, what is
2265 going to happen to them?

2266 Secretary {Sebelius.} Sir, I am hopeful that the rule

2267 that we intend to promulgate in the very near future, which
2268 will be informed by conversations with not only religious
2269 employers but labor leaders, women's groups and others and
2270 actually greatly informed by the 28 States which have a
2271 framework like we are talking about already in place will
2272 indeed satisfy the religious liberty issues and make sure
2273 these preventive health benefits are provided.

2274 Dr. {Burgess.} Are the noncompliers going to be fined?

2275 Secretary {Sebelius.} Sir, we will get--as you know,
2276 this is a situation where--

2277 Dr. {Burgess.} Well, let me just share with you
2278 something. It bothers me that for the first time in this
2279 country, regardless of what the issue is, and I personally
2280 support the issue of contraception but at the same time it
2281 bothers me that there might be a fine for faith. I don't
2282 think that has ever happened before in this country, and I am
2283 concerned about the direction--

2284 Secretary {Sebelius.} No one will be fined for faith.
2285 This is an issue dealing with insurers--

2286 Dr. {Burgess.} Well, why did you propose a two-tier
2287 system where some churches might be exempt but a Catholic
2288 hospital might not? I mean, that sounds like that the
2289 direction you are going.

2290 Secretary {Sebelius.} The exemption, which is in the

2291 original rule finalized in January--I am sorry--in February
2292 is the language used in the majority of State laws which have
2293 some religious exemption. That is where we got that
2294 language. It is a definition that is in the IRS code. It is
2295 not something that we invented. It is a definition of
2296 churches and church-affiliated associations.

2297 Dr. {Burgess.} If a State required sterilization as a
2298 condition of citizenship, would you be prepared to do that at
2299 the federal level?

2300 Secretary {Sebelius.} Sir, I am not going to answer
2301 that question.

2302 Dr. {Burgess.} Thank you, Mr. Chairman.

2303 Before we finish up, can I have unanimous consent? Mr.
2304 Whitfield had a number of observations that he wanted entered
2305 into the record, and I would ask to enter those now under
2306 unanimous consent.

2307 Mr. {Pallone.} Mr. Chairman, reserving the right to
2308 object. I know you handed that to us but we haven't had time
2309 to really look at it, so if we could take a look at it before
2310 we agree to unanimous consent?

2311 Mr. {Pitts.} All right. We will wait until you take a
2312 look at that, and recognize the Ranking Member, Mr. Pallone,
2313 for 5 minutes for questions in follow-up.

2314 Mr. {Pallone.} Thank you.

2315 Madam Secretary, I just wanted to give you an
2316 opportunity to address somewhat of a follow-up to Dr. Burgess
2317 and others have said. Clearly the matter of insurance
2318 coverage for FDA-approved contraceptives under the ACA has
2319 become controversial. Unfortunately, what I think has been
2320 lost in the debate is an understanding of how HHS arrived at
2321 the decision it has made, and I would just ask you to take a
2322 few moments--you know, I have got 4 minutes or so--to provide
2323 the broader picture, to tell us about the ACA's provisions on
2324 preventive health services and women's preventive health
2325 services, the role of the Institute of Medicine study on
2326 coverage of women's preventive health services and the HHS's
2327 process in developing these regulations that are now under
2328 attack. I know you started to get into that with Dr. Burgess
2329 but take the 4 minutes to maybe explain it a little more.

2330 Secretary {Sebelius.} Well, Mr. Pallone, the Affordable
2331 Care Act had a provision that as part of a definition of
2332 essential health benefits various populations should be
2333 looked at. The recommended strategies for children around
2334 immunizations would be included. The strategies for
2335 preventive health that are recommended by the United States
2336 Preventive Health Services Task Force would be included. And
2337 recognizing that too many insurance plans often did not
2338 include benefits that were specifically recommended for

2339 women's health, we were asked to develop a set of preventive
2340 health services for women. We turned to the independent
2341 scientifically driven Institute of Medicine and asked them to
2342 make recommendations to us. They came back with eight
2343 various health benefits--domestic violence screening, mental
2344 health benefits, well woman visits and the full range of
2345 scientifically recommended contraception services.

2346 We promulgated their rules as part of the strategy for
2347 women's health as an interim rule and added a religious
2348 exemption, and to be informed by what language should be used
2349 in that religious exemption, we looked at the 28 States which
2350 have some kind of contraceptive mandate in place right now
2351 often for a decade or more operationally right now and we
2352 included language that was used by the States in the majority
2353 of cases that have an exemption. Many States don't have an
2354 exemption at all. That language was put out. It was
2355 finalized in February and an additional accommodation was
2356 made. We announced that we would have an additional year for
2357 religious-based organizations who had a religious objection
2358 to the provision of contraceptives so that their
2359 implementation date would be deferred until August of 2013,
2360 and that we would promulgate additional rules around their
2361 ability to both uphold their religious freedoms, not refer,
2362 not pay for, not provide contraceptive coverage and yet make

2363 sure that women who were janitors, teachers, nurses,
2364 employees, the spouses of employees, the daughters of
2365 employees would have access to this very critical health
2366 benefit.

2367 And so we will be promulgating a rule around the
2368 implementation strategy for preventive health services, which
2369 will be a huge step forward for American women, knowing that
2370 contraception is the most frequently taken prescription drug
2371 for women 14 to 44. Ninety-nine percent of women of all
2372 religions use contraceptives at some point in their health
2373 lives and that often if you purchase contraception out of
2374 your own pocket, it can be an expensive strategy. If it is
2375 provided within an insurance pool, it not only is no cost but
2376 often reduces the cost of the pool.

2377 Mr. {Pallone.} Thank you very much. I appreciate it.

2378 Thank you, Mr. Chairman.

2379 Mr. {Pitts.} The Chair thanks the gentleman.

2380 I think that concludes all of our questioning. Thank
2381 you, Secretary Sebelius, for again taking time to be with us
2382 today and for all of your answers.

2383 I ask unanimous consent that all members' opening
2384 statements be made part of the record. Without objection, so
2385 ordered.

2386 I remind the members that they have 10 business days to

2387 submit questions for the record, and I ask the Secretary to
2388 respond to the questions promptly. Members should submit
2389 their questions by the close of business on Thursday, March
2390 15th.

2391 Without objection, the Subcommittee is adjourned.

2392 [Whereupon, at 12:40 p.m., the Subcommittee was
2393 adjourned.]