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ONE HUNDRED ELEVENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

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June 14, 2010

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The Honorable Kathleen Sebelius  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Sebelius:

We write to request information regarding two recent reports from the Centers for Medicare and Medicaid Services (CMS) on the cost of the *Patient Protection and Affordable Care Act* (P.L. 111-148) and the *Health Care and Education Reconciliation Act of 2010* (P.L. 111-152). Of particular interest is the report issued on April 22, 2010, by Chief Actuary Richard Foster entitled "Estimated Financial Effects of the 'Patient Protection and Affordable Care Act' as Amended." We are concerned that the information in this report, and other CMS Chief Actuary reports, was not released publicly before final passage of the legislation, thereby preventing Congress and the public from appreciating the information your agency had compiled on its cost prior to a vote on final passage.

In addition, the CMS Chief Actuary, on January 8, 2010, issued a report on the cost of pending health legislation as passed by the Senate (*see* "Estimated Financial Effects of the 'Patient Protection and Affordable Care Act,' as Passed by the Senate on December 24, 2009"). Three months later, Mr. Barton and other Members of Congress requested updated information from the Department of Health and Human Services (HHS) on national health spending and potential impacts of the proposed policy on Medicare and Medicaid beneficiaries (*see* Attachment A). One day later, Mr. Foster responded, stating that, due to the complexity of the legislation, he would not be able to prepare an updated analysis of the costs of health reform before the House of Representatives voted on final passage of the bill (*see* Attachment B).

The House of Representatives voted on final passage of the *Patient Protection and Affordable Care Act* (P.L. 111-148) on March 21, 2010. President Barack Obama signed the bill into law on March 23, 2010. The House of Representatives and the Senate then passed the

*Health Care and Education Reconciliation Act of 2010* (P.L. 111-152) on March 21, 2010, and March 25, 2010. President Obama signed that bill into law on March 30, 2010.

Nearly a month after health reform was signed into law, HHS finally released Mr. Foster's updated report on the costs of the bills. The updated report set forth a vastly different picture of the costs of the bills than was originally described in the January 8 report. Specifically, Mr. Foster reported that national health expenditures under the legislation would increase by \$311 billion over ten years (0.9 percent). This figure is substantially higher than the one reported in his January 8 report. Mr. Foster reported in his January 8 report that national expenditures would increase by \$222 billion over ten years (0.6 percent).

We are concerned by recent press reports that HHS may have had access to information that Mr. Foster used in his April report prior to Congressional consideration but did not share this information with the public or with Congress. While we recognize that the Office of the Actuary is an independent technical advisor to both the Administration and Congress, we question whether, or to what extent, HHS had access to the information in Mr. Foster's report prior to the report's release. Such information could have been helpful to the public's and Congress's understanding of the financial impact of the law.

For the reasons set forth above, we request that you provide the following information within two weeks of the date of this letter:

1. Please provide all records of communications relating to analysis prepared or being prepared by or for the CMS Office of the Actuary regarding the Patient Protection and Affordable Care Act, including, but not limited to, email, memoranda, and notes. These records should include records of presentations or briefings prepared by or for the CMS Office of the Actuary regarding such analysis, including preliminary presentations or briefings to any HHS agency or office.
2. Please provide all records of communications to or from the CMS Office of Actuary and the personnel and staff of CMS and any HHS agency and office regarding data sources, assumptions, and methodologies utilized in analysis prepared or being prepared by or for the CMS Office of the Actuary regarding the Patient Protection and Affordable Care Act, including, but not limited to, email, memoranda, and notes.
3. Please provide all records of communications to or from the CMS Office of Actuary and persons outside of CMS and HHS regarding data sources, assumptions, and methodologies utilized in analysis prepared or being prepared by or for the CMS Office of the Actuary regarding the Patient Protection and Affordable Care Act, including, but not limited to, email, memoranda, and notes.
4. Please provide all records of communications to or from personnel and staff of the Congressional Budget Office relating to any analysis prepared or being prepared by or for the CMS Office of the Actuary regarding the Patient Protection and Affordable Care Act, including, but not limited to, email, memoranda, and notes.

5. Please provide all records of communications between any personnel or staff of any HHS agency or office relating to the April 22, 2010, report by Chief Actuary Richard Foster, including, but not limited to, email, memoranda, and notes.

An attachment to this letter provides information on how to respond to this request.

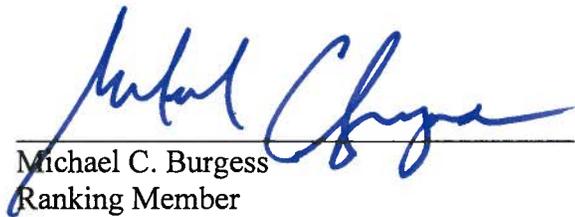
Should you have any questions, please contact Minority staff of the Committee on Energy and Commerce at (202) 225-3641.

Sincerely,



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Joe Barton  
Ranking Member



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Michael C. Burgess  
Ranking Member  
Subcommittee on Oversight and Investigations

Enclosures

cc: The Honorable Henry A. Waxman, Chairman

The Honorable Bart Stupak, Chairman  
Subcommittee on Oversight and Investigations

**Congress of the United States**  
Washington, DC 20515

March 19, 2010

Mr. Rick Foster  
Chief Actuary  
Office of the Actuary  
Centers for Medicare & Medicaid Services,  
7500 Security Boulevard  
Baltimore, Maryland 21244

Dear Mr. Foster,

The House of Representatives is slated to vote in less than 72 hours on a package of health care bills that have just been provided to us and the American people. According to Congressional Budget Office (CBO) estimates, the health care reconciliation bill (H.R. 4872), when combined with the Senate-passed version of H.R. 3590, contains nearly \$1.2 trillion in new health spending, one-half trillion dollars in cuts to Medicare and a massive \$434 billion expansion of Medicaid.

In order for Members of Congress to fully understand the impact of this legislation on the country and its health care delivery system, we respectfully ask that you promptly provide the following information:

- **IMPACT ON NATIONAL HEALTH SPENDING:** First, and most importantly, your office is uniquely able to analyze the impact of pending health legislation on national health spending. We note that you warned that H.R. 3590 would increase national health spending by \$222 billion, in effect “bending the curve” in the wrong direction. As H.R. 4872 would modify that legislation, by spending an additional \$65 billion according to CBO, please provide an estimate of the combined impact of the two bills on National Health Expenditures, both over the next decade and over the longer-term horizon.
- **IMPACT ON MEDICARE BENEFICIARIES:** In reviewing H.R. 3590, the Senate passed version of health reform, you cautioned that “providers might end their participation in the program (possibly jeopardizing access to care for beneficiaries).” Can you please provide an evaluation of how the access problems posed by those Medicare changes would be affected by the subsequent enactment of the substitute to H.R. 4872, the Reconciliation Act of 2010 (released today), which CBO indicates would cut Medicare by an additional \$59.5 billion over the next ten years?
- **IMPACT ON MEDICAID BENEFICIARIES:** If enacted, these two bills would force an additional 16 million Americans onto the Medicaid program. In light of increasingly frequent reports that Medicaid’s low reimbursement rates make it difficult for enrollees to find doctors who will treat them, please indicate the extent to which your concerns about access to care for Medicare patients would also exist for Medicaid’s new and expanded population.

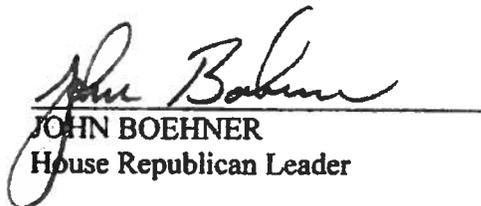
Before voting on these measures, Members of Congress and the American people must better understand what impact they will have.

Given that the legislation coming before the House this weekend stands to alter one-sixth of our nation's economy and fundamentally reshape the way health care is financed and delivered, we respectfully request that you immediately put the full resources and talents of your office behind analyzing these bills and to make public your findings in time for them to be reviewed prior to the expected House debate and vote on this legislation Sunday, March 21, 2010.

Sincerely,



MITCH MCCONNELL  
Senate Republican Leader



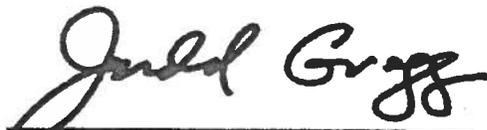
JOHN BOEHNER  
House Republican Leader



JON KYL  
Senate Republican Whip



ERIC CANTOR  
House Republican Whip



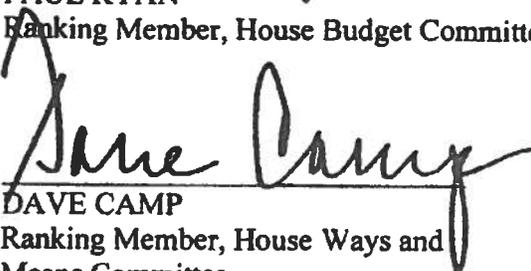
JUDD GREGG  
Ranking Member, Senate Budget Committee



PAUL RYAN  
Ranking Member, House Budget Committee



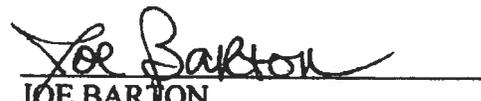
CHARLES GRASSLEY  
Ranking Member, Senate Finance Committee



DAVE CAMP  
Ranking Member, House Ways and Means Committee



MICHAEL ENZI  
Ranking Member, Senate Health, Education,  
Labor and Pensions Committee



JOE BARTON  
Ranking Member, House Energy and  
Commerce Committee



JOHN KLINE  
Ranking Member, House Education and  
Labor Committee



**Office of the Actuary**

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March 20, 2010

The Honorable Mitch McConnell  
Republican Leader  
United States Senate  
361-A Russell Senate Office Building  
Washington, DC 20510

Dear Senator McConnell:

This letter is in preliminary response to your inquiry of March 19 requesting an updated analysis by the Office of the Actuary of the Patient Protection and Affordable Care Act (as passed by the Senate) as it would be modified by the "Amendment in the Nature of a Substitute to H.R. 4872, the Reconciliation Act of 2010" (as released by the House Committee on Rules on March 18). This request was made jointly by yourself and 10 other members of the House and Senate Republican Leadership.

In your letter, you requested that we provide the updated actuarial estimates in time for your review prior to the expected House debate and vote on this legislation on March 21, 2010. I regret that my staff and I will not be able to prepare our analysis within this very tight time frame, due to the complexity of the legislation. We will, however, continue working to estimate the financial, coverage, and other impacts of the health reform package and will provide these results to you as quickly as possible.

As you know, the Office of the Actuary has assisted Congressional Administration policy makers on health legislative and policy initiatives for many years, including the original Medicare legislation in 1965, all subsequent amendments to this program, Medicaid amendments since 1976, and the Clinton Administration's proposed Health Security Act in 1993-94. Our goal has always been to provide independent, objective technical information for use by policy makers as they deliberate Medicare, Medicaid, and national health reform proposals.

We issued an analysis of the Senate Patient Protection and Affordable Care Act in a memorandum dated January 8, 2010.<sup>1</sup> While it is reasonable to expect that our updated analysis of this legislation, as modified by the reconciliation amendments, would be generally similar to the results in the January 8 memorandum, I cannot confirm this expectation without a full evaluation of the amendments and re-estimation of the provisions.

I am sending a similar letter to House Republican Leader Boehner, and, for expediency, will e-mail copies to the other cosigners of your request. I am sorry that we cannot respond more quickly. Please let us know if you have any other questions we can assist with.

Sincerely,

A handwritten signature in black ink that reads "Richard S. Foster". The signature is written in a cursive style.

Richard S. Foster  
Chief Actuary

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<sup>1</sup> Available at [http://www.cms.hhs.gov/ActuarialStudies/Downloads/S\\_PPACA\\_2010-01-08.pdf](http://www.cms.hhs.gov/ActuarialStudies/Downloads/S_PPACA_2010-01-08.pdf).