

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

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

April 18, 2011

Mr. Charles N. Kahn III
President and Chief Executive Officer
Federation of American Hospitals
750 9th Street, N.W., Suite 600
Washington, D.C. 20001

Dear Mr. Kahn:

We are writing to request your assistance and cooperation on a matter of great importance to our Committee.

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (PPACA) into law. The negotiations leading up to the passage of the PPACA lasted for more than a year and involved numerous meetings between representatives of the Administration and various interest groups, including the Federation of American Hospitals (FAH).¹

Given that representatives from Congress were often not included in these meetings, there is a substantial public interest in learning about the Administration's negotiations regarding health care reform. On February 18, 2011, we wrote to Ms. Nancy-Ann DeParle, the former head of the White House Office of Health Reform (WHOHR), requesting information related to those negotiations. In response, on March 4, 2011, Mr. Robert Bauer, Counsel to the President, sent us a collection of press releases and visitor logs "in an effort to address [our] request." This information was not responsive to our request.

Although we will most certainly pursue more information from the White House, we are writing to you because among the materials provided by Mr. Bauer is a visitor log entry indicating a meeting between FAH representatives and staff of the White House regarding health care reform. FAH's involvement in the negotiations regarding the health care reform legislation is well known.² Attached is a partial list of meetings FAH held with White House staff.³

¹ Carrie Budoff Brown, *Joe Biden to Announce Hospital Deal*, POLITICO, July 6, 2009; Aliza Marcus and Kim Chipman, *Obama Promised \$2 Trillion Savings in 10 Years by Health Groups*, BLOOMBERG, May 11, 2009; Ceci Connolly and Michael D. Shear, *Discord on Health Care Dulls Luster of New Pacts*, WASHINGTON POST, July 9, 2009.

² *Obama Leaves Door Open to Health Benefits Tax*, ASSOCIATED PRESS, July 22, 2009.

Because FAH worked directly with the WHOHR, we request that you provide information regarding FAH's meetings and discussions with the WHOHR and any other Administration officials relating to health care reform. The relevant time period for all of the following requests is March 2, 2009, to the present. Please provide the following documents and information within two weeks of the date of this letter:


1. A list of each employee or representative of FAH who discussed reforms or changes to the health care system with any employee, detailee or any other representative of the WHOHR, the White House, or the Department of Health and Human Services (HHS). Provide a list of your officers and directors for 2009 and 2010. Include a list of the individuals from the Administration with whom FAH representatives discussed such reforms or changes.
2. A list of each meeting, briefing, or telephone call (including conference calls or video conferences) regarding reforms or changes to the health care system, between any employee or representative of FAH and any employee, detailee or any other representative of the WHOHR, the White House, or HHS. Please provide the following information about any such meetings, briefings, or telephone calls: the date, the duration, the names of the individuals present and their organization, office, or employer, and the subject matters discussed.
3. All notes, minutes, transcripts, documents, summaries or any other written or recorded materials prepared for, generated or utilized during, or resulting from each meeting, briefing, or telephone call described in response to request number 2.
4. All written communications, including e-mail, regarding reforms or changes to the health care system between any employee or representative of FAH and any employee, detailee, or any other representative of the WHOHR, the White House, or HHS.
5. All written communications, including e-mail, regarding reforms or changes to the health care system, between or among the employees or representatives of FAH, or between any employee or representative of FAH and any employee or representative of FAH's members.
6. All estimates or analyses of the impact of health care reform legislation on your organization or its members.

You should immediately take steps to preserve all relevant documents. An attachment to this letter provides additional information on how to respond to the Committee's request. Please

³ It is impossible to compile a complete list of FAH's meetings with WHOHR or other executive branch personnel based on the White House visitor logs in our possession.

contact Todd Harrison, Chief Counsel for Oversight and Investigations, at (202) 225-2927 if you have any questions about the nature of the information requested or the manner of production.

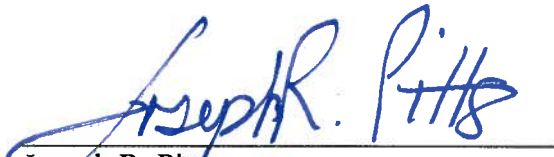
Sincerely,



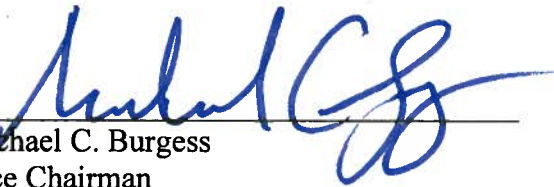
Fred Upton
Chairman



Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations



Joseph R. Pitts
Chairman
Subcommittee on Health



Michael C. Burgess
Vice Chairman
Subcommittee on Health

Attachments

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member
Subcommittee on Oversight and Investigations

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

White House Visitor Logs
Federation of American Hospitals

Burch	Samantha	Director, Health Care Policy and Research	8/4/10	JEFF CRUZ
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Campbell	Victor L.	Secretary	9/22/09	ROBERT KOCHER
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Cohen	Jeffrey E.	Executive Vice President, Advocacy and Political Affairs	1/7/10	MIKE HASH
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Kahn	Charles	President	3/3/10	BARACK OBAMA
Kahn	Charles	President	5/25/10	ROBERT KOCHER
Kahn	Charles	President	6/1/10	ROBERT KOCHER
Kahn	Charles	President	3/6/09	EZEKIEL EMANUEL

Speil	Steve	Senior Vice President	6/14/10	PATRICK WHITTY
Speil	Steve	Senior Vice President	6/22/10	BARACK OBAMA
Speil	Steve	Senior Vice President	6/23/10	ARIEL LEVIN
Speil	Steve	Senior Vice President	8/4/10	JEFF CRUZ

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should immediately consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If any document responsive to this request was, but no longer is, in your possession, custody or control, state:

- a. how the document was disposed of;
- b. the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
- c. the date of disposition;
- d. the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

12. If any document responsive to this request cannot be located, describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.

13. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee majority staff regarding the method of delivery prior to sending any materials.

17. In the event that a responsive document is withheld on any basis, including a claim of privilege, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each

other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document. If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced. As used herein, "claim of privilege" includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.

18. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the Committee, identified in a privilege log provided to the Committee, as described in (17) above, or identified as provided in (10), (11) or (12) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.

4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" mean and refers to

For government recipients:

"You" or "your" means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.