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HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

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

August 1, 2011

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

Dear Secretary Sebelius:

We are writing to express our concern with statements you recently made regarding the Independent Payment Advisory Board (IPAB).

On July 13, 2011, during your appearance before the Energy and Commerce Health Subcommittee hearing, you responded to Chairman Pitts under questioning that any person wishing to challenge IPAB decisions would be able to do so through the courts, and further stated: "our General Counsel feels very strongly" on this matter.

We are concerned that your statements may be at odds with federal statute. Section 1899A(e)(5) of the Social Security Act, as established by Section 3403 of the Patient Protection and Affordable Care Act (PPACA), stipulates that "There shall be no administrative or judicial review under Section 1869, Section 1878, or otherwise of the implementation by the Secretary under this subsection of the recommendations contained in a proposal."


As you know, PPACA grants the Secretary of Health and Human Services (HHS) an unprecedented level of authority over the Medicare program – indeed our entire health care system. Judicial reviews are key tenets of our political system and based on the principle that each separate branch of government should have certain checks on the powers of the other branches of government, thus creating a balance of power among all branches of government. Absent such checks, we fear Section 3403 of PPACA could undermine the safety and welfare of Medicare seniors.


Therefore, given your statements on the subject, we respectfully request that the General Counsel of HHS detail for this Committee in writing what rights, under current federal law, he feels a person or entity would have to challenge any recommendation, proposal, or action – administrative or otherwise – initiated by IPAB or the Secretary, or implemented by the Secretary as required by Section 3403 of PPACA. Given the complexity of the law, we would respectfully request the answer include detailed situations in which your Department believes judicial review would be available and the situations your Department believes judicial review would not be an available recourse.


We look forward to your timely response within two weeks of the date of this letter. If you have any questions regarding this request, please contact Ryan Long or John O’Shea of the Majority Committee staff at (202) 225-2927.

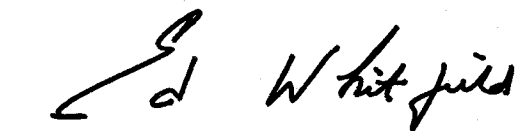
Sincerely,

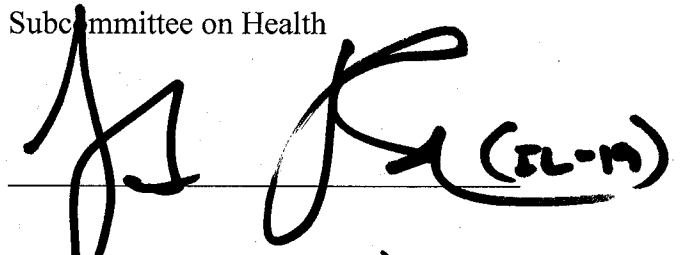

Fred Upton
Chairman

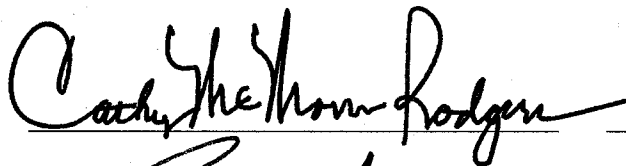

Joe Barton
Chairman Emeritus

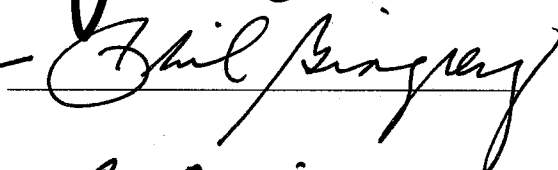

Joseph R. Pitts
Chairman
Subcommittee on Health

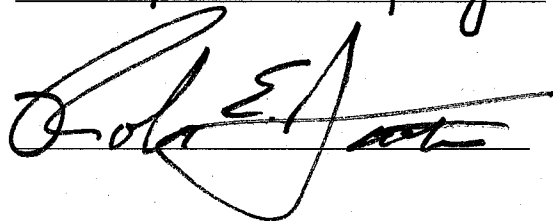

Michael C. Burgess
Vice Chairman
Subcommittee on Health

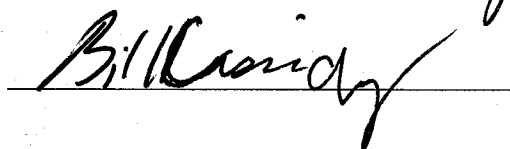

Ed Whitfield


AS (IL-19)


Cathy McMorris-Rodgers


Phil Gingrey


Bob E. Latta


Bill Keating

Mike Royce

Ann Myrick

Martha Blackman Leonard Lane

Tim Runyan

Brett Guthrie

cc: The Honorable Henry A. Waxman, Ranking Member

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

Mr. William B. Schultz, Acting General Counsel
Office of the General Counsel
Department of Health and Human Services