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Senators Push to Extend Comment Period for Complex Health Care Rules

In Letter, Lawmakers Question Administration' s Weak Regulatory Process;
Seek Additional Time to Ensure Stakeholders Understand Full Impact of New
Regulations

WASHINGTON – Today, ten U.S. Senators, led by Finance Committee Ranking Member Orrin Hatch (R-Utah), questioned the political motivation behind the Obama Administration' s implementation of new regulations under the President' s health law and called for an extension of the 30-day comment period to allow for appropriate review of three recently proposed rules involving health insurance exchanges. U.S. Senators Mike Enzi (R-Wyo.), Pat Roberts (R-Kan.), Chuck Grassley (R-Iowa.), Lamar Alexander (R-Tenn.), John Cornyn (R-Texas), John Thune (R-S.D.), Tom Coburn (R-Okla.), Richard Burr (R-N.C.), and Rand Paul (R-Ky.) joined Hatch on the letter to the U.S. Departments of Health and Human Services (HHS), Treasury, and Labor.

“ The most recently published proposed rules issued with respect to the insurance exchanges provide even more evidence of the politicization of the regulatory process and the alarming lack of interest in stakeholder involvement,” **wrote the Senators.** “ Our request to extend the deadline is based on our desire to see a fully transparent and fair regulatory process that allows stakeholders to thoroughly consider the consequences of implementing these rules and fully understand their impact.”

Specifically, the Senators requested a deadline extension for the following proposed rules: 1) Standards Relating to Essential Health Benefits, Actuarial Value, and Accreditation; 2) Health Insurance Market Rules; Rate Review; and the 3) HHS Notice of Benefit and Payment Parameters for 2014, all of which have comment period deadlines later this month.

Given the scope and impact of these complex regulations, the Senators want to ensure stakeholders have adequate time to review, understand, and submit constructive comments to the agencies.

“ It is not every day that a bill passes congress impacting more than 17 percent of the gross domestic product and every person living in this great nation,” the Senators continued. “ As you continue to implement the law, we strongly suggest the Administration change the current approach by welcoming, not discouraging, public input into this process.”

Below is the full text of the letter:

The Honorable Timothy Geithner
Secretary
U.S. Department of Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

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

The Honorable Hilda Solis
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretaries Geithner, Sebelius and Solis:

As members of the Senate Finance and Health, Education, Labor and Pensions (HELP) Committees, we are mandated to ensure that the regulations issued by the Departments within the jurisdiction of the Committees are promulgated in a fair, reasonable and transparent manner in accordance with well established processes. We have written to you numerous times in the past two years about the need for stakeholder engagement in the regulatory process and our concerns regarding the politically motivated, overly burdensome and far reaching effects of the Patient Protection and Affordable Care Act (PPACA) with respect to the regulations issued by the Department of Health and Human Services (HHS), the Department of Labor (DOL) and the Department of the Treasury (Treasury). The most recently published proposed rules issued with respect to the insurance exchanges provide even more evidence of the politicization of the regulatory process and the alarming lack of interest in stakeholder involvement.

HHS, DOL and Treasury collectively posted proposed rules on November 20, 2012, to implement the essential health benefits (EHB) mandate, actuarial value (AV) calculator, market rules and wellness provisions under the PPACA. In total these rules amount to 331 pages of new regulations and more than \$300 million in costs to the public. On November 30, 2012, the Administration posted a proposed rule to implement provisions related to risk programs, cost-sharing, the federally-facilitated exchange (FFE) user fees, and medical loss ratio (MLR) that amount to 373 pages of regulations and more than \$600 million in costs to the

public. Of the four rules proposed in the last three weeks, all were considered significant, three were considered economically significant, and one raises novel legal or policy issues.

Considering the significance of these rules indicated by the Administration it is surprising that the Administration would use what is considered the bare minimum, 30 day comment period for stakeholders to comment on these important regulations. Three of the four rules published on November 20 were cleared by the Acting Administrator of the Centers for Medicare & Medicaid Services (CMS) in August to be sent for Office of Management and Budget (OMB) review. However, none of these CMS approved regulations were published until nearly four months later. While we understand the urgency in implementing the law due to delays caused by its unpopularity, the Administration has had two years to draft and publish regulations. Considering that OMB had more than 30 days to review the proposed rules, it is surprising that the Administration should give the public and key stakeholders tasked with implementing the law less than that amount of time to review and comment on the proposed regulations. Such haste raises concerns that politics are being put before policy.

States have been working feverishly and diligently to prepare for implementation of the PPACA. The comment periods included in the most recently issued regulations make it extremely burdensome, if not nearly impossible, to formulate an accurate and instructive response. If the Administration is serious about considering and accepting fully developed comments from states, then a public comment period of more than 30 days is required. These minimally mandated comment period timeframes suggest a lack of interest in the state' s input and perpetuates concerns regarding the federal government' s overreach and general dismissive attitude toward state' s role in implementing the law.

Therefore, we respectfully request that the comment periods for regulations recently issued be extended to no less than 60 days, that comment periods for future PPACA regulations provide no less than 60 days public comment period, and that additional time to comment is allowed when the length or complexity of regulations warrants additional review to ensure appropriate stakeholder input in the process. Our request to extend the deadline is based on our desire to see a fully transparent and fair regulatory process that allows stakeholders to thoroughly consider the consequences of implementing these rules and fully understand their impact.

Lastly, in addition to our concerns about the high level of regulatory burden, we continue to question how the Administration is determining the regulatory impact analysis (RIA) included in the regulations being issued. We stand by our concerns that the RIA in each of these rules seem to lack consistency, or accuracy without any methodical standards. The estimates of the costs are minute considering the rules will be implementing reforms that will establish an entirely new market and create new regulatory standards and definitions.

It is not every day that a bill passes congress impacting more than 17 percent of the gross domestic product and every person living in this great nation. As you continue to implement the law, we strongly suggest the Administration change the current approach by welcoming, not discouraging, public input into this process.

Sincerely,

HATCH

ENZI

ROBERTS

GRASSLEY

ALEXANDER

CORNBYN

COBURN

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PAUL

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