EXAMINING OBAMACARE TRANSPARENCY FAILURES

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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EXAMINING OBAMACARE TRANSPARENCY FAILURES

Tuesday, December 9, 2014

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:32 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Turner, McHenry, Jordan, Chaffetz, Walberg, Lankford, Amash, Gosar, Meehan, DesJarlais, Gowdy, Farenthold, Lummis, Woodall, Massie, Collins, Meadows, Bentivolio, DeSantis, Cummings, Maloney, Norton, Tierney, Clay, Lynch, Cooper, Connolly, Speier, Cartwright, Kelly, Welch, and Lujan Grisham.

Also Present: Representative Rice.

Staff Present: Melissa Beaumont, Assistant Clerk; Molly Boyl, Deputy General Counsel and Parliamentarian; Lawrence J. Brady, Staff Director; Ashley H. Callen, Deputy Chief Counsel for Investigations; Caitlin Carroll, Press Secretary; Sharon Casey, Senior Assistant Clerk; Steve Castor, General Counsel; John Cuaderes, Deputy Staff Director; Howard A. Denis, Senior Counsel; Adam P. Fromm, Director of Member Services and Member Operations; Linda Good, Chief Clerk; Elizabeth Gorman, Professional Staff Member; Meinan Goto, Professional Staff Member; Frederick Hill, Deputy Staff Director for Communications and Strategy; Christopher Hixon, Chief Counsel for Oversight; Emily Martin, Counsel; Laura L. Rush, Deputy Chief Clerk; Jessica Seale, Digital Director; Andrew Shult, Deputy Digital Director; Matthew Tallmer, Investigator; Rebecca Watkins, Communications Director; Tamara Alexander, Minority Counsel; Meghan Berroya, Minority Chief Investigative Counsel; Aryele Bradford, Minority Press Secretary; Jennifer Hoffman, Minority Communications Director; Una Lee, Minority Counsel; Juan McCullum, Minority Clerk; Dave Rapallo, Minority Staff Director; Cecelia Thomas, Minority Counsel; Michael Wilkins, Minority Staff Assistant.

Chairman ISSA. The committee will come to order.

Without objection, the chair will be authorized to declare a recess at any time.

The Oversight Committee exists to secure two fundamental principles. First, Americans have a right to know that the money Washington takes from them is well spent. And, second, Americans deserve an efficient, effective Government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to taxpayers because taxpayers have a right to know what they get from their Government.

It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is and has been our mission for 4 years that I have been honored to serve.

Ms. Tavenner, before I begin with my opening statement, I want to make you aware, in hopes that your people will deliver documents pursuant to a subpoena that expired—or didn't expire—that was due 8 days ago related to the documents behind your coming before this committee and giving false and misleading testimony related to the so-called 7.3 million enrollment figure.

We asked for and we received only half of the documents, and the documents that were excluded were the ones that created the talking points and the people who caused you to use inarticulate language that carefully allowed you to say 7.3 million without disclosing that that included at least 400,000 dental plans. That was subpoenaed. It was clearly understood.

Last night we received a huge data dump, and it was not in there. And it makes it very difficult for us to go forward with some aspects of today's hearing, as you can imagine. It is clear that this hearing in no small part was not because of what Obamacare is about, not about the health care. It is about honesty and transparency to the American people.

Today's hearing is likely the last full committee hearing of this Congress. This committee has a primary obligation—and has lived up to that obligation—to look at Government to make Government more transparent and accountable.

And, at times, Members on both sides of the dais have helped in trying to create that transparency, but no Government program needs increased transparency and accountability and honesty more than the Affordable Care Act, known as Obamacare. It has proven time and time again to, in fact, have made false claims.

Every Member on both sides of the dais can agree that the Affordable Care Act, or Obamacare, is a large, expensive program reliant on a complex network of Government programs which significantly impact the lives of all Americans and, yet, the history of design passage and implementation with the law is fraught with half-truths and deceptions.

Here are just a few of the false claims the administration has made regarding Obamacare: If you like your doctor, you will be able to keep your doctor, period. Nothing in Obamacare forces people out of their health plans. No change is required unless insurance companies change existing plans. Healthcare inflation has gone down every year since the law—Affordable Care Act—has been passed and that it now has the lowest increases in healthcare costs in 50 years. To that, we add we have got close to 7 million Americans who have access to health care for the first time because of Medicaid expansion. If you like your plan, you can keep your plan.

When trying to pass Affordable Care, Obamacare, the administration repeatedly claimed that the law's individual mandate was

not a tax. However, months after passage, in a brief defending the mandate's constitutionality, the Justice Department argued just the opposite, that it was a tax.

One of our three witnesses this morning offered a simple answer to this change in position.

[Video shown.]

Chairman ISSA. I wish it was right and we had made it all transparent.

Professor Jonathan Gruber is considered by many as the architect of Obamacare. As a former Obama Administration official put it, "Professor Gruber was the man on Obamacare, the guru of health care." The official went on to say, "I remember that, when I was at the White House, he was certainly viewed as an important figure in helping to put Obamacare together."

No one can look at the amount of money he has—he was compensated for his work on Obamacare, totaling millions of dollars, and think that our witness was anything but a critical player in the Affordable Care Act.

Current administration officials, however, have attempted to distance themselves from Professor Gruber ever since he stated and started telling the truth about the tactics used to pass this law. In fact, the Center for Medicare and Medicaid Services urged the committee not to seat him with the Administrator next to him.

And, Dr. Gruber, we think you are right to be there. In fact, we believe that this is a perfect pairing, a pairing of individuals who are, in fact, responsible for what we know and don't know before, during and after the passage and implementation of the Affordable Care Act.

September 18, 2014, the Administrator, Ms. Tavenner, came before us and testified that, in fact, there were 7.3 million people enrolled in the—and I quote this carefully—"health insurance marketplace coverage."

That tortured language had not previously been used and it followed a series of document requests after we were told, "Trust us. The numbers are good," in which we discovered that, in fact, 7.3 million would have to include a fairly large 400,000 individuals in more or less $50-dental plans.

Obviously, when you say you met a goal—and the difference between making a goal and not making a goal are plans that nobody would consider a key element of the Affordable Care Act. HHS initially failed to provide any documents to explain how the numbers had been interpreted.

On October 1, 2014, the committee requested the enrollment data underlying Tavenner's 7.3 million enrollment announcement. Our requests were met with delays, runarounds that bordered on obstruction.

After weeks of negotiation, CMS finally provided the enrollment data, printed on spreadsheets with—and for those who are at my age will appreciate this—6 point font, something that is not readable even with your reading glasses. When electronic copies were demanded and the data was finally delivered, Oversight investigators discovered that all of the hundreds of spreadsheets were, in fact, password-protected and locked.

After further negotiation, we finally were able to receive the passwords and recognized that, all along, there had been an inherent deception. This was quickly discovered and would have been discovered by anybody simply by putting the spreadsheets in ascending order of dollars.

On November 21, 2014, only after it was publicly noted, the committee discovered the administration was willing to acknowledge 393,000 dental plans in the figures released in September.

Moreover, HHS included dental plans in its enrollment figures not just once, but twice. The Agency has included dental plans in its November enrollment figures and has now been forced to revise down to not greater than 6.7 million enrollees.

The administration claims it made a mistake; however, there is great skepticism about that and, particularly, the term "mistake," when it appears as though, instead, HHS and CMS were too clever in an attempt to inflate the numbers and say they had met a goal.

It is a small technical error in many ways whether you had 7.3 million or 6.7 million if, in fact, it is simply a matter of whether you made a goal or didn't make a goal. But when you doctor the books, add additional numbers, and then use careful language so that you didn't lie, but you did deceive, that is exactly what we are concerned about here at this committee.

The American people have a right to know the honest numbers. Management has an obligation to know it if they are, in fact, going to be accountable to the taxpayers for doing their job. And, in fact, the American people expect no less.

Professor Gruber is often said in Washington to be the definition of a gaff. That is when somebody accidentally tells the truth. You made a series of troubling statements that were not only an insult to the American people, but revealed a pattern of intentional misleading the public about the true impact and nature of Obamacare, which is in many ways—in many ways you helped craft.

Today we will have an opportunity to ask you to apologize for your low opinion of the American people and, hopefully, apologize for the false information on which the analysis of what the Affordable Care Act would do was built, leading to the disappointments we see here today.

Chairman ISSA. And, with that, I would recognize the ranking member for an opening statement. He is not here.

All Members will have 7 days to submit opening statements for the record.

We now go to our——

Mr. CARTWRIGHT. Mr. Chairman.

Chairman ISSA. —panel of witnesses.

Ms. Marilyn Tavenner is the Administrator of Centers for Medicare and Medicaid Services at the Department of Human Services.

And Mr. Jonathan Gruber is a professor at MIT—Mr. Massie would probably normally introduce him—the Massachusetts Institute of Technology.

Pursuant to the committee rules, all witnesses will be sworn in before they testify.

Mr. CARTWRIGHT. Mr. Chairman.

Chairman ISSA. Would you please both raise your right hands to—stand and raise your——

Mr. CARTWRIGHT. Mr. Chairman.

Chairman ISSA. —right hand to take the oath.

Just a moment. I am going to go through where I am, please.

Do you solemnly swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

Please be seated.

Let the record reflect the witnesses have answered in the affirmative.

Please be seated.

For what purpose does the gentleman seek recognition?

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

At this time, Mr. Chairman, in the absence of the ranking member, may I ask that—we have a minority witness, Mr. Ari Goldmann, for whom we thank your indulgence, and we would ask, for convenience sake, since we have a small panel here, that Mr. Goldmann be added to the panel and be sworn in and testify at the same time.

Chairman ISSA. You know, I appreciate your suggestion. He is not a Government witness and not an expert in the—any of the facts being discovered today. So we will leave him on the second panel. But I thank you for your suggestion.

Ms. Tavenner, you are recognized for 5 minutes for your opening statement.

WITNESS STATEMENTS

STATEMENT OF THE HON. MARILYN TAVENNER

Ms. TAVENNER. Thank you, Mr. Chairman, Members of the committee.

I appreciate the opportunity to appear here today and answer your questions about CMS's continuing work to provide affordable, high-quality health care to the Americans we serve.

In my previous——

Chairman ISSA. Ma'am. Ma'am. I appreciate it, but if you would just pull the mic a little closer. Thank you. Sorry.

Ms. TAVENNER. In my previous appearance before your committee, I reported a number of Americans that were enrolled in marketplace coverage and had paid their premiums that included both medical and dental coverage. Simply put, this was a mistake.

Some individuals with both medical and dental coverage were counted twice in the individual affected enrollment numbers. Moving forward, only individuals with medical coverage will be included in our individual effected enrollment numbers.

We are now providing weekly snapshots of the 2015 marketplace data, including the number of consumers who have submitted an application, contacted the call center, or visited the Web site.

We have also created a new data office and have named our first chief data officer. This new office will help CMS strengthen its processes and, more broadly, will help CMS better harness and use our vast data resources to drive better care at a lower cost.

While this mistake was regrettable, it should not obscure the fact that the Affordable Care Act is working. We have 6.7 million Americans enrolled in healthcare coverage and paying their premiums

as of October 15th, and the number of uninsured adult Americans is down 26 percent.

Since the beginning of the open enrollment period, about 9.1 million additional individuals have enrolled either in Medicaid or CHIP. For the first year of a new program, this is a tremendous accomplishment.

2015 open enrollment is off to a solid start. Because of new choices and more competition in the health insurance marketplace, many consumers are now able to shop and find even more affordable options in the second year of the program.

We have seen a 25 percent growth in the number of issuers participating in the marketplace, which means that more than 90 percent of consumers will be able to choose from at least three or more issuers and over 60 percent of the marketplace enrollees are able to renew coverage at their middle level for less than $100 a month after tax credits.

Those already covered should come back to the marketplace to review their options for next year. People may find an option that is either more affordable or better suits their needs.

We have improved the consumer experience as well. The shopping and enrollment process is simpler, faster, and more intuitive for consumers. With the new streamlined application, for many consumers, we have reduced the number of screens from 76 down to 16, with fewer clicks to navigate through the questions for most consumers.

Consumer interest is strong. Since open enrollment began last month, there have been over 765,000 plan selections, 48 percent of which are new consumers. Over 1.5 million applications have been submitted, and there have been more than 5 million Web site visits.

But the Affordable Care Act is not just about coverage. In recent years, we have seen historically low growth in overall healthcare spending. Just last week, CMS's Office of the Actuary released their 2013 health expenditure report, which at 3.6 percent is the lowest reported growth in health expenditures since this report's inception in 1960.

While the recent slow cost growth has multiple causes, reforms to the Medicare and Medicaid programs are meaningful contributors to these gains and are improving quality as well. For example, preliminary estimates indicate that hospital-acquired infections by 17 percent from 2010 to 2013, resulting in 50,000 fewer admissions and over $12 billion in cost savings.

I am proud of our progress at CMS. I am proud of our team. They work hard every day to ensure better, safer, and more affordable health care.

Thank you. And I look forward to your questions.

[Prepared statement of Ms. Tavenner follows:]

House Committee on Oversight & Government Reform

The Affordable Care Act

December 9, 2014

Good morning, Chairman Issa, Ranking Member Cummings, and members of the Committee. I appreciate the opportunity to update you on the Centers for Medicare & Medicaid Services (CMS') continuing work to implement the Affordable Care Act and provide consumers with affordable access to high quality health coverage. The second Health Insurance Marketplace Open Enrollment period is underway, and CMS is continuing our focus on providing consumers with more coverage options, affordable rates, and a secure, consumer friendly online Marketplace. CMS remains committed to having the Marketplace continue to adhere to the stringent privacy and security protocols necessary to protect consumers' personally-identifiable information (PII).

As you know, in my previous appearance before your Committee, I reported that 7.3 million Americans were enrolled in Marketplace coverage and had paid their premiums as of August 15, 2014. This number represented effectuated enrollments in both medical and dental plans, rather than the number of individuals enrolled.

Simply put, this was a mistake. While there were 7.3 million effectuated enrollments, approximately 393,000 individuals had both Marketplace medical and dental coverage as of August 15, 2014. As a result, these individuals were inadvertently counted twice in the individual effectuated enrollment numbers. The number of individuals enrolled in medical coverage plans was approximately 6.9 million as of August 15, 2014. Moving forward, only individuals with medical coverage will be included in our individual effectuated enrollment numbers.

We are taking steps to enhance our processes used to generate and validate CMS' data before it is released. To help drive some of these changes, CMS is using the Office of Enterprise Data and Analytics (OEDA), which was recently created. OEDA will help CMS strengthen its

processes and, more broadly, better harness its vast data resources to guide decision-making and develop frameworks for promoting appropriate external access to and use of data to drive higher quality, patient-centered care at a lower cost.

In addition, we are providing weekly snapshots of preliminary data that includes an analysis of those who have selected a plan, submitted an application, reached out to the Marketplace call center or visited HealthCare.gov or CuidadoDeSalud.gov to shop or learn more about their health coverage options.

While this mistake was regrettable, it shouldn't obscure the fact that the Affordable Care Act is working. We have seen a dramatic decrease in the number of uninsured Americans and exceptionally low growth across a wide variety of measures of health care costs. The second Marketplace Open Enrollment period is off to a promising start, and we will continue to look for ways to improve the consumer experience and provide high-quality affordable health coverage to Americans.

Security Remains a Top Priority

Throughout our planning and preparation for the second Open Enrollment period, CMS has made the security of the Marketplace and the Information Technology (IT) systems that support it a top priority. We remain committed to stringent privacy and security protocols to protect consumers' personally identifiable information; consumers can use the Marketplace with the confidence that their personal information is secure.

CMS developed the Marketplace systems consistent with Federal statutes, guidelines, and industry standards that help to ensure the security, privacy, and integrity of the systems and the data that flow through them. Each and every day, U.S. businesses face a myriad of cyber threats, and government IT systems are no different. There are inherent risks for every IT system, and while no website is immune from attempted attacks, CMS will continue to maintain and strengthen the security of HealthCare.gov throughout its second Open Enrollment period.

CMS has implemented measures to protect PII, including penetration testing, which happens on an ongoing basis using industry best practices to appropriately safeguard consumers' personal information. As part of the ongoing testing process, and in line with Federal and industry standards, any open risk findings are appropriately addressed with risk mitigation strategies and compensating controls. The security of the system is also monitored by sensors and other tools to deter and prevent unauthorized access. CMS conducts continuous monitoring using a 24/7, multi-layer IT professional security team, added penetration testing, and ongoing testing and mitigation strategies implemented in real time. These layered controls help protect the privacy and security of PII related to the Federally-facilitated Marketplace.

CMS continues to test security functionality through quarterly Security Control Assessments (SCAs) which exceeds the industry standard. In addition to daily operational security testing, we conducted another comprehensive end-to-end Security Control Assessment that meets Federal and industry standards before the start of the second Open Enrollment period. CMS resolved the 22 technical recommendations in the September 16th GAO report, "HealthCare.gov: Actions Needed to Address Weaknesses in Information Security and Privacy Controls."[1]

The Affordable Care Act is Working

The Affordable Care Act is working: millions of Americans who were previously uninsured now have access to affordable, high-quality health care. The number of uninsured nonelderly adults (ages 18 to 64) in the United States has decreased by nearly 26 percent since 2012 and 2013.[2] Recent years have seen historically low growth in overall health spending, and a variety of data show that slow growth in health care costs is continuing.[3,4] Medicare spending rose just 2.8 percent in FY 2014, similar to or smaller than estimated enrollment growth in 2014.[5] Similar trends are playing out in the employer-based insurance market: according to the Kaiser Family

[1] http://www.gao.gov/assets/670/665840.pdf
[2] http://aspe.hhs.gov/health/reports/2014/InsuranceEstimates/ib_InsuranceEstimates.pdf
[3] http://www.whitehouse.gov/blog/2014/12/03/historically-slow-growth-health-spending-continued-2013-and-data-show-underlying-slo
[4] http://aspe.hhs.gov/health/reports/2014/MedicareCost/ib_medicost.pdf
[5] https://www.cbo.gov/sites/default/files/cbofiles/attachments/49759-MBR.pdf

Foundation, the average premium for employer-based family coverage rose just three percent in 2014, tied for the smallest increase since the survey began in 1999.[6] Slow growth in underlying per capita costs has helped drive exceptionally low growth in aggregate national health expenditures in recent years: national health care expenditures grew just 3.6 percent in 2013 and has been below 4.1 percent for five consecutive years, the slowest rates since recordkeeping began in 1960.[7] While the recent slow cost growth has multiple causes, reforms to the Medicare and Medicaid programs are meaningful contributors to these gains, and are improving quality as well. For example, preliminary estimates show indicate that hospital acquired infections fell by 17 percent from 2010 to 2013, resulting in an estimated 50,000 fewer patient deaths and $12 billion in cost savings.

An Improved Consumer Experience and Expanded Coverage Options

Evidence suggests that in the first year of Open Enrollment, consumers found coverage that fit their budgets, with nearly seven out of ten people who selected a plan through the Marketplace during the initial enrollment period finding coverage for less than $100 per month with tax credits.[8] As we have moved into the second Open Enrollment, we are seeing stability in terms of price and increases in the number of choices consumers have. In fact, because of new choices and more competition in the Health Insurance Marketplace, many consumers are able to shop around to find even more affordable options during Open Enrollment this year. With 25 percent more issuers participating in the Marketplace in 2015, more than 90 percent of consumers are able to choose from three or more issuers – up from 74 percent in 2014. Consumers can choose from an average of 40 health plans for 2015 coverage—up from 30 in 2014, based on data at the county level. In terms of premium costs, 2015 premiums for the benchmark (second-lowest cost) silver plan will increase modestly, by two percent on average this year before tax credits, while premiums for the lowest cost silver plans will increase on average by five percent.[9] This is consistent with findings from independent analyses.[10,11,12]Additionally, for current enrollees who

[6] http://kff.org/health-costs/press-release/employer-sponsored-family-health-premiums-rise-3-percent-in-2014/
[7] http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical.html
[8] http://aspe.hhs.gov/HEALTH/REPORTS/2014/PREMIUMS/2014MKTPLACEPREMBRF.PDF
[9] http://aspe.hhs.gov/health/reports/2015/premiumReport/healthPremium2015.pdf
[10] http://kff.org/health-reform/issue-brief/analysis-of-2015-premium-changes-in-the-affordable-care-acts-health-insurance-marketplaces/

are returning to the Marketplace, it pays to shop. Sixty-five percent of current Marketplace enrollees can get coverage within their same metal level for less than $100 after tax credits.[13]

We are building on the successes and the lessons learned from the first Marketplace Open Enrollment to improve the consumer experience. The shopping and enrollment process is simpler, faster, and more intuitive for consumers. People can view plans available in their area without logging in or filling out an application. With a new streamlined application for most new consumers, we've reduced the number of screens from 76 to 16, with fewer clicks to navigate through the questions for most consumers. Consumers can shop and enroll in the way that best meets their needs: on a smartphone, tablet or computer; by calling the call center; or with local, in-person assistance that includes agents and brokers. The Federally-facilitated Small Business Health Options Program (FF-SHOP) Marketplace now allows qualifying employers to find, compare, purchase, and enroll in 2015 SHOP medical and dental coverage entirely online through HealthCare.gov. Employees are able to view offers of insurance from their employer and enroll online through HealthCare.gov.

An important part of this year's Open Enrollment period, which runs until February 15, 2015, is helping those who obtained coverage during the first Open Enrollment period to re-enroll in a plan that will provide them with health insurance coverage beginning January 1, 2015. For assistance with this process, consumers should visit HealthCare.gov, or contact the call center or other local help to review and compare health plan options. Every year insurance companies make changes to premiums, cost-sharing and benefits, and with more choices available, the vast majority of consumers will be able to find a more affordable option. They might also find a plan that offers more services, or includes more doctors. All consumers shopping for health insurance coverage for 2015— even those who currently have coverage through the Marketplace — should enroll or re-enroll by December 15 in order to have coverage effective on January 1, 2015. Generally, if consumers do nothing, they will be auto-enrolled (for coverage effective

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[11] http://avalere.com/expertise/life-sciences/insights/avalere-analysis-2015-exchange-premium-file
[12] http://www.nytimes.com/2014/11/15/upshot/why-shopping-is-so-important-in-health-enrollment.html
[13] http://aspe.hhs.gov/health/reports/2015/premiumReport/healthPremium2015.pdf

January 1, 2015) in the same plan with the same advanced premium tax credit and other financial assistance as the 2014 plan year.[14]

We have also seen progress in those states that are operating their own Marketplace (State-Based Marketplaces). For example, as of Tuesday, November 18, after only four days of enrollment, 35,877 consumers were determined eligible for coverage and 11,357 selected a plan through Covered California, California's Marketplace.[15] Covered California has added more than 200 storefront locations that are open on evenings and weekends to give consumers who work full time a place they can visit and return to enroll or get questions answered. Additionally, Covered California has partnered with more than 12,000 Certified Insurance Agents, 10,000 county eligibility workers and more than 6,000 Certified Enrollment Counselors to help enroll consumers.

Kentucky's Marketplace – kynect – has seen strong consumer interest. During the first week of the second Open Enrollment period, nearly 27,000 calls were handled by their contact center; 4,180 new accounts were created; and over 6,400 applications were submitted. To better meet the needs of consumers, the state opened a retail store at a shopping mall in Lexington, and in the first week over 1,800 individuals visited the store and 500 completed applications. An additional improvement was the creation of a mobile application to give consumers a preliminary estimate and guide them to enrollment help or to an enrollment event in their area; in the first week over 1,900 people had downloaded the app. By the end of the first week, more than 4,100 Kentuckians had newly enrolled or renewed their enrollment in a qualified health plan.[16]

More work remains to reach out to those who are not yet covered, to educate them about the benefits of health insurance and assist them in signing up for plans that fit their needs and budget. One of the lessons we learned over the past year was that one of the most effective ways to get people enrolled is through in-person help in their own communities. In a survey of Marketplace assister programs, including Navigators, in-person assisters, certified application

[14] https://www.healthcare.gov/keep-or-change-plan/automatically-enrolled/
[15] http://news.coveredca.com/2014/11/open-enrollment-off-to-strong-start.html
[16] http://kentucky.gov/Pages/Activity-Stream.aspx?viewMode=ViewDetailInNewPage&eventID={773F649B-85FD-43C8-A95D-EADF998179C2}&activityType=PressRelease

counselors, and others, Kaiser Family Foundation found that assister programs helped an estimated 10.6 million people during the first open enrollment period.[17] We've put a priority on encouraging more organizations to sign up to be Certified Application Counselors and recruiting more local leaders to be in-person assisters. We will also continue working with agents and brokers as they utilize their experience and existing relationships with consumers and small businesses to assist them in enrolling in coverage.

Expanding Coverage Through Medicaid

CMS is committed to working to expand the Medicaid program in a way that works for each state and its residents, as well as the Federal government. To date, 27 states and the District of Columbia have expanded Medicaid and we have approved program flexibilities in a number of states. At the same time, since the beginning of last year's Open Enrollment period, about 9.1 million additional individuals have enrolled in Medicaid and CHIP.[18] A recent study by the Gallup Organization showed that the states that expanded Medicaid have seen a larger decrease in the number of uninsured than states that did not expand Medicaid.[19] Research has shown that states that have expanded their Medicaid programs have also seen greater reductions in hospital uncompensated care than those that chose not to expand.[20] We are eager to continue to work with states still considering the expansion to reduce their uninsured populations and provide more Americans the security of having health coverage.

Conclusion

The Affordable Care Act is delivering on the promise of access to high quality, affordable health care coverage, while controlling the growth of health care costs. CMS has used the lessons learned from the problems we encountered during the first Open Enrollment period to improve our processes and management, resulting in an improved consumer experience. We plan to do the same from the mistake with our effectuated enrollment data: we will learn from our error

[17] http://kff.org/health-reform/report/survey-of-health-insurance-marketplace-assister-programs/
[18] http://www.medicaid.gov/medicaid-chip-program-information/program-information/medicaid-and-chip-september-2014-application-eligibility-and-enrollment-report.pdf
[19] http://www.gallup.com/poll/174290/arkansas-kentucky-report-sharpest-drops-uninsured-rate.aspx
[20] http://aspe.hhs.gov/health/reports/2014/uncompensatedcare/ib_uncompensatedcare.pdf

and improve our processes going forward to ensure that we are providing the American people with the most accurate information possible.

The transition to a reformed health insurance market will take sustained effort, persistence, and focus from all stakeholders. CMS is committed to continuing to deliver on the promise of the Affordable Care Act and improving health care access, cost, and quality for all Americans. I thank you for the opportunity to update you on our efforts, and look forward to answering any questions you may have.

Chairman ISSA. Thank you.

Before we go on, I would recognize the ranking member for a unanimous consent request.

Mr. CUMMINGS. Mr. Chairman, one of our Members had requested that we have an additional witness to come on the panel, and I would ask unanimous consent that—ask the chairman to allow that to happen.

Chairman ISSA. Okay. Are there any objections?

Mr. MEADOWS. I object. I object.

Chairman ISSA. Would you reserve for a moment?

Mr. MEADOWS. Sure.

Chairman ISSA. Let me ask the witnesses.

Ms. Tavenner, do you have any objections to having—I understand he is a waiter at a local restaurant who thoroughly loves Obamacare. He is actually an independent consultant. I apologize. They gave me a new title.

Do you have an objection to Mr. Ari Goldmann, an independent consultant, being on the panel with you?

Ms. TAVENNER. I have no objection.

Chairman ISSA. That is good. He likes your stuff.

Mr. Gruber, do you have a problem with an independent consultant being on the panel?

Mr. GRUBER. No, I do not.

Chairman ISSA. Then, I have no objections.

Does the gentleman continue to reserve?

Mr. MEADOWS. I withdraw my objection.

Chairman ISSA. Okay. Hearing no objections, while they seat Mr. Goldmann, I would ask the ranking member, since he was unavoidably detained, to do his opening statement.

And then we will go to you, Mr. Gruber.

Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Before I begin, I know today is your last hearing as chairman of the Oversight Committee, and I want to thank you. As you said a few moments ago, we have taken this journey together, and it has been a great journey.

I said during your hanging of your portrait right there——

Chairman ISSA. Thank you for saying that I was hung.

Mr. CUMMINGS. —that I believe that everybody who comes along your path comes along your path to make you better. And I will tell you, Mr. Chairman, you have made me a better person in so many, many ways.

And I want to thank you. I want to thank you for your service. I want to thank you for your dedication. I want to thank you for taking the time to get to understand these issues in a very, very intricate way.

And a lot of people have not been in the many meetings that we have sat in where you—I don't know how you do it, but you seem to be an expert on so many, many things. And I know it is because it is your passion. And so I want to—I thank you.

In a way, I wish we had last week's hearing on the DATA Act today because it was such a positive note for bipartisanship and it showed what we can do when we work together.

I also want to thank you for inviting our witness, Ari Goldmann, who is here to testify about his own personal experience obtaining health insurance after we passed the Affordable Care Act.

I would like to welcome you, Mr. Goldmann.

And so, Mr. Chairman, I know we may disagree today about the Affordable Care Act, but I hope we will do it in a respectful way based on substance and the evidence before the committee.

In 2010, Democrats in Congress passed the landmark Affordable Care Act to give millions of people across the country health insurance. We banned insurance companies from discriminating against people with pre-existing conditions, we established significant new measures to hold down healthcare costs, and we provided extra assistance to those who needed it.

Today, based on the evidence before us, the ACA is working. Millions of people are now covered through the exchanges and Medicaid expansion. And according to The New England Journal of Medicine, the rate of uninsured has dropped by over 4 percentage points since last year. That is a 26 percent reduction in the ranks of the uninsured in just 1 year.

The evidence also shows that the ACA is bending the cost curve. The growth of national healthcare spending decreased to 3.6 percent last year. That is the lowest rate on record since the 1960s. In addition, reforms of healthcare delivery methods have saved $12 billion by reducing the number of hospital-acquired conditions.

Despite these clear benefits, Republicans have spent the last 4 years doing everything in their power to repeal the Affordable Care Act, dilute it, undermine it, and oppose it. This has become one of their chief political goals. They have taken 53 votes to repeal or weaken the law, and last year they shut down the Government for 16 days in a failed attempt to delay its implementation.

In our committee today, we will hold our 29th hearing on the Affordable Care Act. That is a stunning number, more than 2 dozen hearings. But not one, not one, has helped to implement the ACA more effectively or efficiently. It pains me to imagine the good we could have accomplished had we devoted that same amount of time and resources to more constructive efforts. And so I mourn what could have been.

Unfortunately, this hearing is no different. As far as I can tell, we are here today to beat up on Jonathan Gruber for stupid, I mean, absolutely stupid, comments he made over the past few years and then drill and grill Administrator Tavenner about what appears to be an inadvertent mistake in reporting ACA enrollment numbers.

This may be good political theater, but it will not help a single American get health insurance. It will not help a single person get well. It will not help a single person get the care that they need.

Let me be clear. I am extremely frustrated with Dr. Gruber's statements. They were irresponsible, incredibly disrespectful, and did not reflect reality, and they were indeed insulting.

I was in Congress when this law was debated. And Dr. Gruber does not speak for me or the chairman of the other committees who worked tirelessly on this bill.

We debated this legislation for nearly a year before it was finally passed and signed by the President. We held 79 hearings and

markups in the House of Representatives alone. Never once did I believe or did anyone suggest that we were somehow hiding our goals from the American people.

But worst of all, Dr. Gruber's statements gave Republicans a public relations gift in their relentless political campaign to tear down the ACA and eliminate health care for millions of Americans.

Many Republicans now allege some kind of Democratic conspiracy, citing the praise for Dr. Gruber's work from President Obama and other Democrats, but that, too, is completely wrong.

Let me highlight some additional praise Dr. Gruber received for his work. Dr. Gruber received the following thanks for his contributions to healthcare legislation—and I quote: "Jonathan Gruber at MIT devoted hours and hours to an essential economic model." That statement was not from President Obama, but from the Republican nominee for President in 2012, Mitt Romney. He thanked Dr. Gruber personally at the signing ceremony for the Romneycare in Massachusetts in 2006.

A day earlier Mitt Romney wrote an op-ed in The Wall Street Journal entitled "Health Care for Everyone? We Found a Way." This is what he wrote—and I quote—"Jonathan Gruber of MIT built an economic metric model of the population and, with input from insurers, my in-house team crunched the numbers."

Governor Romney said this and said this, too, "Because health insurance will now be affordable and subsidized, we insist that everyone purchase health insurance from one of our private insurance companies. And so all Massachusetts citizens would have health insurance. It is a goal Democrats and Republicans share, and it has been achieved by a bipartisan effort through market reforms."

And, as I close, this is exactly what the ACC was modeled on and was supposed to be, but Governor Romney was wrong about one thing: that goal was not shared by Republicans in Washington.

For the last 4 years, House Republicans have been trying to repeal the ACA, but they never explain what they will replace it with, what they will replace it with. In a few weeks, Republicans will control both houses of Congress and they will be out of excuses.

Governing responsibly does not mean eliminating essential healthcare protections for our constituents, all of our constituents, with no alternative. It means promoting the health and economic security of millions of Americans who desperately need help.

And, with that, Mr. Chairman, I want to thank you for your courtesy. I want to thank you for your service to committee. And I yield back.

Chairman ISSA. I thank the gentleman.

I would remind all Members that the committee's jurisdiction does not include any changes to the Affordable Care Act, other than those involving transparency and reporting, and that the committee's jurisdiction and its 29 hearings have been related not to whether we like the Affordable Care Act or not, but, in fact, whether or not we are getting the transparency, the proper reporting required, for which this committee is known.

With that, I would have to ask Mr. Goldmann to please rise to also take the oath. And raise your right hand, please.

Do you solemnly swear or affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth? Please be seated.

Let the record reflect that our third witness has answered in the affirmative.

Dr. Gruber, it is now your turn. Thank you.

STATEMENT OF JONATHAN GRUBER, Ph.D.

Mr. GRUBER. Chairman Issa, Ranking Member Cummings, and distinguished Members of the committee, thank you for the opportunity to testify voluntarily today. I am pleased to be able to address some statements I have made regarding the Affordable Care Act and the reaction to and interpretations of those statements.

I am a professor of economics at MIT. I am not a politician nor political advisor. Over the past decade, I have used an economic micro-simulation model to help a number of States and the Federal Government assess the impact of healthcare reform on healthcare systems, Government budgets, and overall economies.

I have had the privilege of working for both Democratic and Republican administrations on healthcare reform efforts. I have worked extensively with Governor Romney's Administration and the Massachusetts legislature to model the impact of Governor Romney's landmark health reform legislation.

I later served as a technical consultant to the U.S. Department of Health and Human Services and provided similar support to both the administration and to Congress through economic micro-simulation modeling of the Affordable Care Act.

I did not draft Governor Romney's health plan, and I was not the architect of President Obama's healthcare plan.

After the passage of the ACA, I made a series of speeches endeavoring to explain the law's implications for the U.S. healthcare system from the perspective of a trained economist.

Over the past few weeks, a number of videos have emerged from these appearances. In excerpts of these videos, I am shown making a series of glib, thoughtless, and sometimes downright insulting comments.

I apologized for the first of these videos earlier, but the ongoing attention paid to these videos has made me realize that a fuller accounting is necessary.

I would like to begin by apologizing sincerely for the offending comments that I have made. In some cases, I made uninformed and glib comments about the political process behind healthcare reform. I am not an expert on politics, and my tone implied I was, which is wrong. In other cases, I simply made mean and insulting comments, which are uncalled for in any context.

I sincerely apologize for conjecturing with a tone of expertise and for doing so in such a disparaging fashion. It is never appropriate to make oneself seem more important or smarter by demeaning others. I knew better. I know better. I am embarrassed. And I am sorry.

In addition to apologizing for my unacceptable remarks, I would like to clarify some misconceptions about the content and context of my comments. Let me be very clear. I do not think that the Affordable Care Act was passed in a non-transparent fashion.

The issues I raised in my comments, such as redistribution of risk through insurance market reform and the structure of the Cadillac tax, were roundly debated before the law was passed. Reasonable people can disagree about the merits of these policies, but it is completely clear that these issues were debated thoroughly during the drafting and passage of the ACA.

I would also like to clarify some misperceptions about my January 2012 remarks concerning the availability of tax credits in States that did not set up their own health insurance exchanges. The portion of these remarks that has received so much attention lately omits a critical component of the context in which I was speaking.

The point I believe I was making was about the possibility that the Federal Government, for whatever reason, might not create a Federal exchange. If that were to occur, and only in that context, then the only way that States could guarantee that their citizens would receive tax credits would be to set up their own exchange.

I have a longstanding and well-documented belief that health reform legislation, in general, and the ACA, in particular, must include mechanisms for residents in all States to obtain tax credits.

Indeed, my micro-simulation model for the ACA expressly modeled for the citizens of all States to be eligible for tax credits, whether served directly by a state exchange or by Federal exchange.

I am not an elected official, nor am I a political advisor. I am an economist who ran a complex micro-simulation model to help Republican and Democratic politicians and their advisors understand the impact that their policies would have on healthcare systems.

The recent response to my comments at academic and other conferences exceeds both their relevance and my role in healthcare reform. I behaved badly and I will have to live with that, but my own inexcusable arrogance is not a flaw in the Affordable Care Act.

The ACA is a milestone accomplishment for our Nation that has already provided millions of Americans with health insurance. Our country's embarking on an exciting second open enrollment period that will provide new opportunities for these individuals and millions more to choose the insurance plan that works best for them.

While I will continue to reflect on the causes of my own insensitivity, I hope that our country can move past the distraction of my misguided comments and focus on the enormous opportunities this law provides.

Thank you.

[Prepared statement of Mr. Gruber follows:]

Written Testimony of Professor Jonathan Gruber before the Committee on Oversight and Government Reform, U.S. House of Representatives, December 9, 2014

Chairman Issa, Ranking Member Cummings, and Distinguished Members of the Committee, thank you for the opportunity to testify voluntarily today. I am pleased to be able to address some statements I have made regarding the Patient Protection and Affordable Care Act and the reactions to and interpretations of those statements.

I am a Professor of Economics at MIT. I am not a political advisor nor a politician. Over the past decade I have used a complex economic microsimulation model to help a number of states and the federal government assess the impact that various legislative options for health care reform might have on the state and federal health care systems, government budgets, and overall economies. I have had the privilege of working for both Democratic and Republican administrations on health care reform efforts. For example, I worked extensively with Governor Romney's Administration and the Massachusetts legislature to model the impact of Governor Romney's landmark health reform legislation. I later served as a technical consultant to the U.S. Department of Health and Human Services and provided similar support to both the Administration and Congress through economic microsimulation modeling of the Affordable Care Act.

I did not draft Governor Romney's health care plan, and I was not the "architect" of President Obama's health care plan. I ran microsimulation models to help those in the state and federal executive and legislative branches better assess the likely outcomes of various possible policy choices.

After the passage of the ACA, I made a series of speeches around the nation endeavoring to explain the law's implications for the U.S. health care system from the perspective of a trained economist. Many of these speeches were to technical audiences at economic and academic conferences.

Over the past weeks a number of videos have emerged from these appearances. In excerpts of these videos I am shown making a series of glib, thoughtless, and sometimes downright insulting comments. I apologized for the first of these videos earlier. But the ongoing attention paid to these videos has made me realize that a fuller accounting is necessary.

I would like to begin by apologizing sincerely for the offending comments that I made. In some cases I made uninformed and glib comments about the political process behind health care reform. I am not an expert on politics and my tone implied that I was, which is wrong. In other cases I simply made insulting and mean comments that are totally uncalled for in any situation. I sincerely apologize both for conjecturing with a tone of expertise and for doing so in such a disparaging fashion. It is never appropriate to try to

make oneself seem more important or smarter by demeaning others. I know better. I knew better. I am embarrassed, and I am sorry.

In addition to apologizing for my unacceptable remarks, I would like to clarify some misconceptions about the content and context of my comments. Let me be very clear: I do not think that the Affordable Care Act was passed in a non-transparent fashion. The issues I raised in my comments, such as redistribution of risk through insurance market reform and the structure of the Cadillac tax, were roundly debated throughout 2009 and early 2010 before the law was passed. Reasonable people can disagree about the merits of these policies, but it is completely clear that these issues were debated thoroughly during the drafting and passage of the ACA.

I also would like to clarify some misperceptions about my January 2012 remarks concerning the availability of tax credits in states that did not set up their own health insurance exchanges. The portion of these remarks that has received so much attention lately omits a critical component of the context in which I was speaking. The point I believe I was making was about the possibility that the federal government, for whatever reason, might not create a federal exchange. If that were to occur, and only in that context, then the only way that states could guarantee that their citizens would receive tax credits would be to set up their own exchanges. I have a long-standing and well-documented belief that health care reform legislation in general, and the ACA in particular, must include mechanisms for residents in all states to obtain tax credits. Indeed, my microsimulation model for the ACA expressly modeled for the citizens of all states to be eligible for tax credits, whether served directly by a state exchange or by a federal exchange.

I am not an elected official, nor am I a political advisor. I am an economist who ran a complex microsimulation model to help Democratic and Republican politicians and their advisors understand the impact that their policies would have on the health care system. The recent response to my comments at academic and other conferences exceeds both their relevance and my role in federal health care reform.

I behaved badly, and I will have to live with that, but my own inexcusable arrogance is not a flaw in the Affordable Care Act. The ACA is a milestone accomplishment for our nation that already has provided millions of Americans with health insurance. Our country is embarking on an exciting second open enrollment period that will provide new opportunities for these individuals, and millions more, to choose the insurance plan that works best for them. While I will continue to reflect on the causes of my own insensitivity, I hope that our country can move past the distraction of my misguided comments and focus on the enormous opportunities this law provides.

Chairman ISSA. Thank you.
Mr. Goldmann.

STATEMENT OF ARI GOLDMANN

Mr. GOLDMANN. Thank you, Members, especially Chairman Issa and Ranking Member Cummings, for inviting me to share my story with you today.

I am one of the millions of Americans who, thanks to the Affordable Care Act, have been able to pursue goals free from the financial and physical implications of staggeringly expensive health insurance or, in many cases, no coverage at all.

These reforms have helped ensure that many Americans won't have to weigh the crippling debt or something as simple as nutritious food for their children against access to even the most basic health care.

I hope that my words today serve as a reminder of why the ACA, though imperfect, has measurably improved the well-being of individuals and families across the country.

I grew up outside of Boston and stayed in New England for college. My 20s were a decade of exploration and change. In that decade, I had the freedom to switch careers twice, experience love and heartbreak, and revel in excitement and opportunity. At the same time, I watched friends become burdened with unforeseen medical emergencies and forego access to preventive care.

I am now 33 and have lived here in Washington, D.C., for 11 years. I am healthy. I have low cholesterol. I get plenty of exercise. I am doing pretty well. When I turned 26, I decided to abandon a nascent career in non-profit fund-raising, and this decision was bolstered by the unbridled optimism of a 20-something living in one of the most intellectually inspiring cities in the world.

I didn't consider that, because I have two very common and very manageable pre-existing conditions, I would be forced to navigate an intimidating and unfriendly health insurance marketplace.

As I formed a vision for my next career, I found great satisfaction in making a living working in the restaurant industry. Although I worked full-time then at a restaurant with more than 50 employees, I was not offered any benefits. Undeterred, I ventured out into the individual market and applied to several brand-name companies. And one after another, they turned me down.

Ultimately, one company offered me a plan at about $450 a month, and, disheartened from the prior rejections, I enrolled, even though they refused to cover any prescriptions or office visits related to my pre-existing conditions. I conducted a basic cost-benefit analysis and decided that I would rather be underinsured than not insured at all.

My 2 years with this insurer felt like an unending, morbid, exceedingly expensive joke. Claims were routinely rejected due to processing errors, usually with no explanation. Still, it was better than nothing. And then I received a notification that, as of January 2014, my plan would be discontinued.

So I will admit that I wasn't looking forward to participating or to going forward in the process of enrolling through the D.C. healthcare exchange, as many other people can agree with, prob-

ably. But despite all the technical glitches and dead ends being reported by the media, I applied.

I contacted a navigator at the Whitman-Walker clinic, who referred me to a broker, and he answered the many complex questions I had about each individual policy that I was considering.

With his help and at no cost to me, it took just under an hour to sign up for a silver-level PPO plan. And in terms of premiums alone, this reduced my costs by 60 percent, which means I am saving over $200 each month, and I am able to keep all of the providers with whom I have built trusting relationships with over the years.

All my pre-existing conditions are covered. And over the past year, I have had much lower day-to-day out-of-pocket costs to manage my conditions. I estimate that I have saved more than $5,000 in all, which, in addition to my part-time work as a waiter, has made my decision to pursue my career as an independent consultant more viable.

And I believe—and isn't that really quintessentially American? I mean, thanks to the ACA, I am able to be entrepreneurial and take control over my own future instead of finding and staying at an undesirable job because I can't afford to sacrifice my employee-sponsored health insurance. I no longer feel marginalized. I no longer need to resort to exorbitantly expensive, yet woefully inadequate, coverage.

And later this week—or—yeah—later this week, I have an appointment with a broker to look into my options for 2015, and I have the confidence that I will be able to shop for a plan without fear of rejection or exclusion for coverage. I can do the research to find a plan that will meet my needs.

So, finally, when my old plan was canceled, I thought I was going to get similar coverage at the same cost and I didn't expect it to be as good as it was. The unexpected thrill, I felt, after I enrolled was not only because I am covered, but also because I am participating in a part of history.

And at the end of day, I am an ordinary man with a pretty good education and from a healthy family. So if the Affordable—if the Affordable Care Act—excuse me—can help me, I believe it can help anyone.

Thank you very much for your time.

[Prepared statement of Mr. Goldmann follows:]

STATEMENT OF ARI GOLDMANN
HEARING BEFORE THE HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
December 9, 2014

Thank you Members, especially Chairman Issa and Ranking Member Cummings, for inviting me to share my story with you today. I am one of the millions of Americans who, thanks to the Affordable Care Act, have been able to pursue our goals free from the financial and physical implications of staggeringly expensive health insurance, or, in many cases, no coverage at all. These reforms have helped ensure that many Americans won't have to weigh crippling debt, or something as simple as nutritious food for their children, against access to even the most basic health care. I hope that my words today serve as a reminder of why the ACA, though imperfect, has measurably improved the wellbeing of individuals and families across the country.

I grew up outside of Boston and stayed in New England for college. My twenties were a decade of exploration and change, I had the freedom to switch careers twice, experience love and heartbreak, and revel in excitement and opportunity. At the same time, I watched friends become burdened with unforeseen medical emergencies and forgo access to preventive care.

I'm now 33 and have lived in Washington, DC for over eleven years. I'm healthy, have low cholesterol, and get plenty of exercise. When I turned 26, I decided to abandon my nascent career in nonprofit fundraising, a decision bolstered by the unbridled optimism of a twenty-something living in one of the most intellectually inspiring cities in the world. I didn't consider that, because I have two very common, and very manageable pre-existing conditions, I would be forced to navigate an intimidating and unfriendly health insurance marketplace. As I formed a vision for my next career I found great satisfaction in making a living working in the restaurant industry. Although I worked full-time at a restaurant with more than fifty employees, I was not offered any benefits. Undeterred, I ventured out to the individual market, and applied to several "brand-name" companies. One after

another, they turned me down. Ultimately, one company offered me a plan at around $450 per month. Disheartened from the prior rejections, I enrolled, even though they refused to cover any prescriptions or office visits related to my pre-existing conditions. I conducted a basic cost-benefit analysis, and decided that I would rather be under-insured than not covered at all.

My two years with this insurer felt like an unending, morbid, exceedingly expensive joke. Claims were routinely rejected due to processing errors, usually with no explanation. Still, It was better than nothing. Then I received notification that, as of January 2014, my plan would be discontinued.

I'll admit that I was not looking forward to the process of enrolling through DC's health exchange. But despite all the technical glitches and dead ends being reported in the media, I applied. I contacted a navigator at Whitman Walker Clinic, who referred me to a broker. He answered the many complex questions I had about each individual policy I was considering. With his help, and at no cost to me, it took me just under an hour to sign up for a silver-level PPO plan. In terms of premiums alone, my costs were reduced by 60%, which means I'm saving over $200 each month. I am able to keep all the providers with whom I've built trusting relationships over the years, all my pre-existing conditions are covered, and over the past year I've had much lower day-to-day out-of-pocket costs to manage my conditions. I've saved more than $5,000 in all, which has made my decision to pursue my career as an independent consultant more viable. Isn't that so quintessentially American? Thanks to the ACA, I'm able to be entrepreneurial and take control over my own future, instead of finding and staying at an undesirable job because I can't afford to sacrifice my employee-sponsored health insurance. I no longer feel marginalized – I no longer need to resort to exorbitantly expensive, yet woefully inadequate, coverage.

Later this week, I have an appointment with a broker to look into my options for 2015. I have the confidence that I will be able to shop for a plan without fear of

rejection or exclusion for coverage. I can do the research to find a plan that will meet my needs.

When my old plan was canceled, I thought I was going to get similar coverage at the same cost. I didn't expect it to be this good. The unexpected thrill I felt after I enrolled was not only because I'm covered, but also because I am participating in a part of history. At the end of the day, I'm an ordinary man with a good education and from a healthy family. If the Affordable Care Act can help me, it can help anyone.

Chairman ISSA. Thank you.

Mr. Goldmann, are you receiving a subsidy at all on that—that silver plan you chose?

Mr. GOLDMANN. No, I am not.

Chairman ISSA. Okay. Well—and I am glad you found part-time work even though, in the past, you have found full-time work.

Ms. Tavenner, you testified before the committee and you used the terminology "enrolled in the healthcare insurance market coverage."

Is that the appropriate normal way you have always referred to enrollment numbers?

Ms. TAVENNER. I don't know that I have an appropriate. I have called it "the marketplace." I have called it "health insurance coverage."

Chairman ISSA. Well, that language allowed you to claim 7.3 million.

Had you said "enrolled in healthcare plans," you would have had to reduce that by at least 400,000. Isn't that true?

Ms. TAVENNER. I think, had I known that we had double-counted the dental, I would have corrected that for the September hearing. As I said before, that was a mistake and——

Chairman ISSA. Well, no. I am not asking questions about the mistake.

You gave what would be considered by anyone to be false and misleading testimony because you were given data that included 400,000 dental plans.

CMS had previously released separate numbers—actually, far greater numbers for dental at the time and health care, and, as those numbers went down, they got combined and the language got changed to "enrolled in the health insurance marketplace coverage."

So the question is: Did you have anything to do with the use of that term? And were you aware—and it is a two-part question; each is a yes or no—were you aware that dental was included in your testimony?

Ms. TAVENNER. I was not aware that dental was included in my testimony.

Chairman ISSA. And were you in any way explained why the use of "enrolled in the health insurance marketplace coverage" was the term you read in your statement?

Ms. TAVENNER. No. But——

Chairman ISSA. Thank you.

Mr. Gruber, I have been accused that I am going to berate you or something, and I hope that you won't feel that way when I get done.

But the night before last I was at the Kennedy Center Honors, where they honored Tom Hanks, famously, Forrest Gump, the ultimate in successful stupid man.

Are you stupid?

Mr. GRUBER. I don't think so. No.

Chairman ISSA. Does MIT employ stupid people?

Mr. GRUBER. Not to my knowledge.

Chairman ISSA. Okay. So you are a smart man who said some—as the ranking member said, some really stupid things. And you said the same. Is that correct?

Mr. GRUBER. I—the comments I made were really inexcusable.

Chairman ISSA. Okay. And I will leave aside the political observations.

But you did say in your—in the video we played—and everyone else has seen, I think, parts of it—you did say that, in fact, if people knew the whole truth, they wouldn't have voted for this, that, in fact, the direction you were going, the reality—and, specifically, I want to talk—because Mr. Goldmann's a poster child for this. He has a silver plan that is relatively inexpensive. If it was subsidized, it would be even cheaper.

But the shifting of some people to pay more than they previously did—because, remember, health care went up in price. So for Mr. Goldmann to get a reduction, somebody else got not only an increase, but an increase to offset his decrease. That was what you were talking about.

So isn't it true that, in fact, between the taxes and increases for some, that is part of the plan, to reduce for people like Mr. Goldmann?

Mr. GRUBER. The—first of all, I made a critical mistake in trying to conjecture with a tone of expertise——

Chairman ISSA. Yeah.

But you are an expert on the analysis of the numbers and where the cost-shifting goes in your micro-economic analysis. And I am asking you as Dr. Gruber, a smart man, a smart man at a great institution that has collected over 400—or, actually, over $4 million in various fees and so on.

Your analysis—isn't it true that, in order for Mr. Goldmann to get his reduction—and he is very happy about it—that, in fact, it was cost-shifting, including those so-called Cadillac plans? Isn't that true?

Mr. GRUBER. The Affordable Care Act set up insurance exchanges which pooled risks for the healthy and the less healthy. On average, when you account for the tax credits individuals received, people are paying less for health insurance than they——

Chairman ISSA. I am a taxpayer, Mr. Gruber. Trust me, people are not paying less. People like me are paying more for those because taxes are, in fact, a cost that is paid.

Total cost did not go down. Cost-shifting occurred in your model. Isn't that true?

Mr. GRUBER. The amount that individuals have to pay for health insurance, on average, fell in my model.

Chairman ISSA. Well, but it didn't fall in reality.

Now, let me just ask one question. And this may be the tougher question for you. You said in these video comments that, essentially, you had to deceive in order to get this passed.

Your models, the 4 million-plus dollars that you and MIT received, including hundreds of thousands of dollars personally, to develop and to provide those models, if deception was part of the process by your own statements, why should we believe your analysis? Why should we not demand to go into the micro-economic

analysis and find out whether, in fact, the $4 million in services you delivered were accurate or whether the books were cooked?

Mr. GRUBER. First of all, the amount of money to which you refer has been greatly overstated. It refers to grants that were received by research institutions and others, which I received a small fraction.

Second of all, no one has ever questioned the quality or integrity of the modeling. The fact I made——

Chairman ISSA. Mr. Gruber, I am questioning it in light of your statements, and that is why I am asking.

Shouldn't we question or at least have independent analysis of the numbers you delivered before—actually, to Massachusetts, for that matter, too—but to the Federal Government based on your statements that, in fact, if people knew the truth, they wouldn't and that there was a deception in your own thing?

And it is—all I want—I want to go to the ranking member.

But is there any reason that you would not approve of the idea that there should be independent validation of the numbers you used in light of the statements that we have seen you made?

Mr. GRUBER. I think that the quality of my numbers should not be reflected by comments I made where I was conjecturing outside my area of expertise.

At the same time, my modeling has always been very transparent. There's—I have posted information about my model, and I am happy for you to ask questions about the model— answer questions about the model and how it works.

Chairman ISSA. Thank you.

I hope that this committee and the next Congress will insist that there be an independent analysis of whether, in fact, that model would withstand the scrutiny of an audit.

With that, I recognize the ranking member.

Mr. CUMMINGS. Well, thank you, Mr. Chairman.

Dr. Gruber, as I mentioned in my opening statement, I was very frustrated when—with your statements, and I have got to tell you they were insulting. They were especially harmful because they gave the opponents of the ACA a PR gift. Man, you did—you did a great job. You wrapped it up with a bow.

This has nothing to do with the substance of this issue. It is just something critics will link to the ACA in future debates.

Now, I have to say I listened very carefully to your testimony because I wanted to hear exactly what you were going to say. A lot of times witnesses who come before the committee spin and avoid apologizing; so, you deserve some credit at least for taking this head on and taking responsibility for your actions.

I know you believe in the ACA and you also worked with Governor Romney on his healthcare bill. Is that right?

Mr. GRUBER. Yes.

Mr. CUMMINGS. So my question is this: Sitting here today, what do you say to those people who are trying to eliminate the ACA and who are quoting your statements as a reason to repeal health care for millions of Americans and many of my constituents and people watching us right now on C–SPAN? Now, what do you say to them?

Mr. GRUBER. I would say that I made a series of inexcusable and offensive comments where I conjectured with a tone of expertise to try to make myself seem smarter by demeaning others and I apologize for that, but that my flaws as a private citizen, not a politician, not a political advisor—my flaws, as a private citizen, should not reflect on either the process by which the ACA was passed or the success of that law itself.

Mr. CUMMINGS. Now, Administrator Tavenner, you have been before our committee before. And I have complimented you on your efforts, and I do still believe that you are a great public servant.

On November 20, HHS reported that it had overstated the numbers of enrollees by about 380,000. The chairman talked about that in his opening statement and he just asked you about it. This was because HHS included people with dental coverage, too, and essentially double-counted them.

How could you—how could that happen? I mean, you knew everybody—they know everybody's got a microscope on the program. So I am just curious.

Ms. TAVENNER. So it is a great question.

It was an inexcusable mistake. And I think, in looking at payments made instead of unique individuals, we counted individuals who had both medical and dental.

I believe we have put processes in place to prevent that from happening again, but it should not have happened the first time.

Mr. CUMMINGS. But you understand that the mistake has the same effect as Dr. Gruber's statements. Same thing. It gives ACA opponents a PR gift that they can use on cable shows and elsewhere to attack the ACC, and it is an unforced political error.

So now I have to ask you for the record—because everybody's going to ask you the same thing. You are under oath. And just tell me: Did you intend to deceive this committee or the American people when you provided those enrollment numbers? Was that your intention?

Ms. TAVENNER. I did not.

Mr. CUMMINGS. And do you have any reason to believe that anyone on your staff tried to deceive the American people or was this error inadvertent?

Ms. TAVENNER. I do not believe anyone tried to deceive the American people, and I believe the error was inadvertent.

6.7 million is a very large number. We are pleased with that number. This was an inadvertent mistake, for which I apologize.

Mr. CUMMINGS. As a result of the—now, Mr. Goldmann, I want to thank you for being here today. And I am glad you are working, and I am glad you are pursuing your dreams. And that is a good thing.

As a result of the ACA, it is a fact that insurance companies can no longer discriminate against people like you, deny you coverage or charge exorbitant rates because of your pre-existing conditions.

How do you feel about that? And I think it is important for people to know what that means. You know, we hear a lot of times the negative stuff, particularly in this committee, but it is good to have somebody who has benefited from this. Can you tell us how that makes you feel.

Mr. GOLDMANN. Right. I—this isn't something I had thought about before—all this, before I really left an employer that gave me benefits because it wasn't something I—I thought was an issue. And I think I took that for granted, and I think a lot of people take that for granted.

The healthcare coverage I had growing up and as a young adult in my 20s was great. And then, when I decided to pursue something different, something of my own making, something very typically American, and I no longer had coverage, I—it came as a shock.

So to suddenly have that inability to have my own little pre-existing conditions that many people have not be covered was—was a very strange and unusual feeling to me, and it was not a good one.

So—so to be able to enroll through the ACA and to still pay my part, but to know that I am not being discriminated against based on something that millions of Americans have—it doesn't matter what they are particularly—it was a relief.

And I didn't realize how much of a relief it would be until I actually got enrolled with a good healthcare provider as opposed to someone—or a provider that provided inadequate benefits.

Mr. CUMMINGS. This is the last question: What was wrong with your insurance before you got this insurance here? You had previous insurance. Is that right? Did you have——

Mr. GOLDMANN. Yes. My preceding insurance.

Mr. CUMMINGS. Yes.

Mr. GOLDMANN. Yes. Well, the premiums were almost twice as high, which in itself, it is a—you know, it is a supply-demand issue, I assume. I am not an economist, unfortunately, although, I can make guesses.

But I will say that the coverage I had, despite—regardless of how much I was paying on a monthly premium, was insultingly inadequate and not just because of what it wouldn't cover, but because of how difficult it was to process claims and how difficult it was to get any sort of response from the company itself.

So, yes, prescriptions and doc—office visits related to my pre-existing conditions were uncovered, and that required a lot of out-of-pocket benefits. But, also, even the stuff that was covered was very difficult to get reimbursed for.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

And with the ranking member's indulgence, Ms. Tavenner, I failed to only ask one thing. Can your staff provide any of the information related to those—the preparation of those talking points that was in the subpoena? That was part of what was asked for and not delivered.

Ms. TAVENNER. So we will—I know that we supplied some information to you late yesterday evening. I will go back and work with the staff to see what else we can get you. We are trying to work with you.

Chairman ISSA. Well, the discovery asked for information related to the false statement that was made by you, certainly inadvertently. You have called it a mistake.

But we asked for the creation of it so we could see who created it, who put the numbers together. You know, it took a staffer 20 minutes to find the error once we got the passwords to unlock this. It wasn't hard to find.

So the question is—and I will be brief—can you ask your people, to the extent that it has already been pulled—and we believe, if we issue a subpoena, it has already been pulled. Our people worked with your people. They knew this is what we wanted—could we have it?

Because we have people on both sides of the dais who don't have those facts at what would be the last hearing of this year. So I appreciate that you want to get it to us in the future.

But it is crippling to a great extent to have a hearing in which the main subject of the hearing, which is, how did we get misled and who was involved in the process of creating those talking points—we don't have it.

So the question is: Can you instruct your people, to the extent that there has been any pulling of those documents, to get it over to us so that people down the dais can ask those questions? I know Mr. Gowdy likes working off of facts, not fiction.

Ms. TAVENNER. Yes, sir. We will work with you.

Chairman ISSA. Thank you.

Mr. CUMMINGS. Mr. Chairman.

Chairman ISSA. Yes. Mr. Cummings.

Mr. CUMMINGS. Just 30 seconds.

Mr. Chairman, one thing I failed to say—I wanted to—when I was complimenting you earlier——

Chairman ISSA. You are not taking any of that back, are you?

Mr. CUMMINGS. Oh, no, no, no, no.

I wanted to take a moment, Mr. Chairman, to express my deep appreciation and respect for your staff and for my staff.

I know a lot of people will be moving on to new jobs, but these are folks that work night and day trying to present the very best that they can to this committee and to the American people, and I want to take a moment to thank them for all that they have done. This is a key time in American history. And I appreciate it. Thank you.

Chairman ISSA. Well, thank you.

And because of your wise comments, I am going to pile on just in one sense, Mr. Cummings.

We do have the best staffs on the Hill. They do countless thousands of hours of deposition and transcribed interviews. They pore over more documents than any other committee of the Congress, and they are able to qualitatively search for and find in IG reports, in Freedom of Information reports, and, obviously, in working with whistleblowers, things that no other committee can find.

And I think that that is a genuine statement for both sides. There is no better set of committee staff than what we—we are honored to have. And I thank you for bringing that up.

We now go to the gentleman from Ohio, Mr. Turner.

Mr. TURNER. Thank you, Mr. Chairman.

Mr. Gruber, you have said that your statements were inexcusable and insulting. I certainly understand, when someone gets

caught saying something as inflammatory as what you have said, how you might want to recant it.

However, some of the things you said were substantive-based, and although they may be inexcusable and insulting in that they were said, in the end, they may be true. And I want to walk you through some of the statements that you made that were substantive in nature rather than the statements that you made about the American voter.

Now, you said that you did complex micro-simulation modeling. It sounds like a relatively basic model to me. You take from one and give to another. It is a basic equation of wealth redistribution, and that is called a tax. And you have made many statements about the Obamacare plan as being a tax, and I want to go through those.

Now, I want to remind you this is not the casual conversation that you have had in the conferences where you have insulted the American voter. This is actually a hearing where you took an oath.

You said, on March 16, 2011: The only way we could take it on was first by mislabeling it, calling it a tax on insurance plans rather than a tax on people, and we all know it is really a tax on people who hold those insurance plans. A tax.

On January 18, you said: If you are a State and you don't set up an exchange, that means your citizens don't get the tax credits, but your citizens will pay the taxes that support the bill. A tax.

October 30, 2012, you said: We just tax the insurance companies. They pass it on in higher prices that offset the tax breaks we get. It is very clear, you know. And that is when you went on and insulted the American voter as to the fact that they couldn't understand that basic equation.

And then, on October 17, you said: This bill was written in a tortured way to make sure CBO did not score the mandate as taxes. If CBO scored the mandate as taxes, the bill dies.

Now, I know, Mr. Gruber, that you believe that your statements were inexcusable and insulting, but they do appear to be true.

You are not hear recanting today your statements with respect to the tax aspect of Obamacare, are you?

Mr. GRUBER. I am here to today to say that any conjectures I made about political processes——

Mr. TURNER. This is not a conjecture, Mr. Gruber. I mean, conjecture is, "I believe it may have been," "Someone may have been thinking," "Perhaps they were," "Perhaps it was." This is your straight-up statements. These are not conjecture.

Is it your purpose today to recant Obamacare as a tax?

Mr. GRUBER. It is my purpose today to come forward and elaborate and straighten out the interpretation of a series of comments that I made and to apologize——

Mr. TURNER. Excellent. Let's do that, then. Let's clarify it.

Mr. Gruber, you made these statements, did you not?

Mr. GRUBER. If—I don't recall exactly, but——

Mr. TURNER. You don't recall. Now, one of them we actually saw on video. Do you recall that one?

Mr. GRUBER. Yeah.

Mr. TURNER. Well, these statements—we'll enter them for the record—and I can't imagine how you don't recall your own state-

ments, because the American voter has seen them over and over again as you've called them stupid. Do you deny making these statements, Mr. Gruber, even though you don't recall them? Do you deny calling Obamacare a tax?

Mr. GRUBER. If you're reading my actual quotes, then I don't deny it. I don't have——

Mr. TURNER. I am reading your actual quotes.

Mr. GRUBER. Then I don't deny it.

Mr. TURNER. Okay. So you're not here to recant it or to deny it.

Mr. GRUBER. I am here to explain that a number of those comments were made in a tone of expertise that I don't have when I was talking about political——

Mr. TURNER. Mr. Gruber, do you know what tax is? I mean, you do have, you now, expertise in economics. Do you know what a tax is?

Mr. GRUBER. Yes.

Mr. TURNER. Okay. So you would not deny today that in these statements that you made that Obamacare is a tax, would you?

Mr. GRUBER. Obamacare is a large piece of legislation with many parts.

Mr. TURNER. And one of those parts a tax, Mr. Gruber.

Mr. GRUBER. There are some taxes in Obamacare, yes.

Mr. TURNER. Well, the President, as you know, argued that Obamacare was not a tax until it went before the U.S. Supreme Court as to whether or not Obamacare was a tax. And then the administration argued that it is a tax in order to be able to save it from being declared unconstitutional.

So I would assume that you agree with the U.S. Supreme Court that Obamacare provisions include taxes. Right?

Mr. GRUBER. The U.S. Supreme Court ruled on a particular provision of Obamacare——

Mr. TURNER. You do not disagree with them, do you?

Mr. GRUBER. I'm sorry?

Mr. TURNER. I said, you don't disagree with them that there are elements of Obamacare that constitute a tax.

Mr. GRUBER. I don't agree with their conclusion about the mandate.

Mr. TURNER. Excellent. Interesting. Different than what you said at these hearings.

But now I have a question for you that I'd like you to think back. You said, I mean, this bill was written in a tortured way to make sure CBO did not score the individual mandate as taxes.

Did you ever speak to anyone in the administration who acknowledged that to you or that explained that to you or who assigned a problem with you with a construct of that we have to draft this in a tortured way so that we make sure CBO did not score the individual mandate as taxes. And you are under oath, Mr. Gruber. Did anybody in the administration have that conversation with you?

Mr. GRUBER. That was an inexcusable term used by——

Mr. TURNER. I'm not asking you about how you believe that—whether or not you should have said that or not. It's a factual statement you're making. Did anybody in the administration ever have that conversation with you?

Mr. GRUBER. I do not recall anyone using the word "tortured," no.

Mr. TURNER. Did they have the conversation with you that it had to be drafted in a way that the CBO did not score the individual mandate as taxes? Anyone in the administration acknowledge it, explain it, or assign aspects to you within that construct.

Mr. GRUBER. I don't know.

Mr. TURNER. You are under oath.

Mr. GRUBER. I honestly do not recall.

Mr. TURNER. Mr. Chairman, thank you.

Chairman ISSA. Thank you.

We now go to the gentlelady from New York, Ms. Maloney.

Mrs. MALONEY. Thank you. Thank you. I want to remind my colleagues that passage of the Affordable Care Act was, in fact, an open and extremely transparent process. We had here in the House over 79 hearings, almost 100 hours of hearings.

And, prior to the Affordable Care Act, we have to remember that there were roughly 48 million Americans, including 2.6 million New Yorkers, who were uninsured. And there is even more good news coming out of New York where insurance rates for individuals are more than 50 percent lower than they were before the State's marketplace plan began.

And I want to say that there have been many reports that have said that the ACC contributed to the slow growth rates in national health expenditures over the past few years. The recent report from the National Health Expenditure Report showed that spending grew by just 3.6 percent in 2013, and that was the lowest rate of growth since 1960.

So that is all good news for the American people.

Dr. Gruber, I'd like to ask you, do you support the Affordable Healthcare Plan? Do you believe that it is sound public policy that helps people?

Mr. GRUBER. Yes, I do.

Mrs. MALONEY. And, Administrator Tavenner, I represent a large number of hospitals. And I understand that, because of the Affordable Care Act, hospitals are projected to save $5.7 billion in uncompensated care costs this year alone.

How has the ACA helped to save hospitals money and incentivize effective patient care?

Ms. TAVENNER. I think the ACA has worked in a couple ways. Obviously, to increase the number of uninsured helps hospitals from the standpoint of their bad debt and other—particularly in rural America, where they are very reliant on the number of insured and small-volume markets, particularly. So I think that's the first area.

The second area is we've made a point of tying payment to quality. So, as you know, we are paying related to whether it is hospital-acquired conditions, readmissions. We're actually having hospitals report their quality instead of paying purely for volume or for procedure.

So I think those are two of the ways that it's helped. And I think hospitals in general are reporting, particularly on the for-profit side, better earnings as a result of some of these changes.

Mrs. MALONEY. Well, many people have commented on the fact that we have the lowest rate of growth in healthcare costs since 1960. Can you elaborate on how the ACA is slowing down these costs? How is that happening? What is contributing to it in the past few years?

Ms. TAVENNER. If you look at, going back to the hospital issue, we have certainly seen it in terms of number of admissions and readmissions to hospitals. The hospitals have—growth rate has been flat almost to the point of being negative. On the outpatient side, we've seen it in some of the growth rates around physicians, physician visits. I think in almost every area, except pharmaceutical, we've seen a slowing in what has been the normal health expenditure rate.

Mrs. MALONEY. And could you comment on the Affordable Care Act's payment and delivery reforms and give an explanation? Many people attribute that as a factor in lowering costs.

Ms. TAVENNER. Yes. I think the biggest point that we have been able to do, starting first with hospitals and now we've expanded it to physician and other Part B settings, whether it's skilled nursing facilities or home health or otherwise, has been to move from a per-procedure or a volume-oriented payment to a payment that's tied to quality and outcome measures. I think that has been the biggest change.

Mrs. MALONEY. Are the Affordable Care Act reforms an important contributing factor in improvements that have been reported in adverse drug events, falls, other complications, as well as a fall of 8 percent in readmission rates for Medicare patients?

Ms. TAVENNER. Yes, it has been. Certainly, there is more work to do and we'll continue to do work through the Innovation Center and through the Medicare area and Medicaid as well.

Mrs. MALONEY. Do you believe that these reforms in Medicare to cut costs and improve quality are having a spill-over effect throughout the entire healthcare system? And, if so, how?

Ms. TAVENNER. Yes. In fact, we actually work closely with—we try to align Medicare, Medicaid, and the private insurance market. And we work closely with issuers to make sure that physicians and hospitals are working from one set of quality criteria. So we are trying to work together.

Mrs. MALONEY. Well, I think this is all good news for the American consumer and for healthcare in our country.

Ms. TAVENNER. Thank you.

Chairman ISSA. With that, we go to the gentleman from Florida, Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman. Thank you also for your service great job on this committee and it is a tough task.

Ms. Tavenner, when we started all of this we had I thought—I heard between 44 and 45 million people that were uninsured. That was just a general figure I heard. Is that what you would estimate?

Ms. TAVENNER. I don't have that number in front of me.

Mr. MICA. Well, okay. You should have the number, particularly in your position. But we'll just say 44. I'll take the lower number.

Ms. TAVENNER. All right.

Mr. MICA. Now, you came and you gave us some statistics last May: 7.3 million signed up. And then that was revised. And you

apologized today for the error that you—at least you claim it. That's 6.9 million people, approximately.

There are somewhere between 4 and 5 million people who had insurance before we had Obamacare that lost their insurance coverage. That's the estimate I have heard. Would you agree with that?

Ms. TAVENNER. I don't know that number.

Mr. MICA. Okay. Well, again, I think you should because this is important.

The whole thing is, how many people are we covering? If we have 44 million and you had 4 or 5 million people that were insured—I'm one of the people. I—one reason you probably don't have more admissions is my deductible is three times as much. My premiums have gone up. The premiums I would say for most Americans listening or participating have gone up. Unless you're involved in some other healthcare system, your premiums have gone up. We've seen an exception. I have family who have had preexisting condition, and actually, I have seen what they are doing; they are gaming the system. They get the service, and then they drop the care.

So that's—that's also gone down. Gone down as far as admissions. One reason for less admissions and less spending.

Dr. Gruber, you're one of the architects of this plan.

Mr. GRUBER. I was an economic——

Mr. MICA. Modeling? You did the modeling? You were a contractor?

Mr. GRUBER. Yes.

Mr. MICA. One of, I understand, about 60 contractors. What did you—what was your payment for your contract work with the HHS?

Mr. GRUBER. I was paid somewhat less than $400,000.

Mr. MICA. $400,000.

And I heard that was are a sole-source contract, too. Nice way to go. Was that a sole source?

Mr. GRUBER. I don't exactly know.

Mr. MICA. Well, did you compete, or did you have—you got a sole-source contract, I'm told. Okay. I'll leave it at that. You got a sole-source contract, according to the information I have. Nice way to go.

The other thing is then you went out to about the eight States. Did you have contracts with a number of States afterwards?

Mr. GRUBER. Yes, I worked with a number of States afterward.

Mr. MICA. And I heard you got between 200,000 and 400,000 a pop from them.

My estimate that I have been told by staff is you took down about $2.5 million in this.

Mr. GRUBER. The number——

Mr. MICA. All the money from healthcare from your involvement, again, about eight States. Am I right?

Mr. GRUBER. I don't recall the exact number of States.

Mr. MICA. You can't recall. Well, again, I think it would be helpful if you could supply the committee the amount of money, and I'm told it's over $2.5 million.

You're just one of the vendors. Some of them had contracts for more than a billion dollars.

But the whole thing gets back to people that we have that are still uninsured. We have, according to the documents I got, 41 million people still don't have health care. Would you agree with that number?

Ms. TAVENNER. I don't know which document you're referring to.

Mr. MICA. The latest—the document that we had presented to us says 41 million Americans still don't have health care. So we've covered somewhere between 3 and 4 million at billions of dollars of costs, raise most people's premiums.

Ms. TAVENNER. I think if you look at it, outside sources, they would tell you that the uninsured rate for adults has got down 26 percent.

Mr. MICA. We have over 40 million people without health insurance. This isn't a success in my estimation. I'd like to get and divide the billions of dollars we've spent on this program, the consultants who took advantage of it and enriched themselves, and we still have 40-some million people.

And we can address preexisting conditions, Mr. Goldmann, and, Ms. Tavenner, Dr. Gruber. We can also increase the age to 26 for coverage, some of the things that were done—and positive things that I think needed to be done.

But do we need the bureaucracy? Do we need the people who have fed off the public trough in billions of dollars?

One of the contractors that I looked at in a previous hearing had gotten a contract for over a billion dollars, and people supposedly came to work on verifying information and never—never worked. So people were paid not to work.

People were paid to help design the system and then profited and took the money away. To me, that's not a very good story.

Yield back the balance.

Chairman ISSA. I thank the gentleman.

Mr. Gruber, when you signed your Truth In Testimony form, you used—used an Exhibit B and you didn't use our form we provided. As a result, we don't have that revenue, which is—the State revenue is essentially Federal revenue. We provided grants.

So would you agree to supplement your Exhibit B so that we would have on your Truth In Testimony, your State revenue that would have also—you would have also received since ultimately it's Affordable-Care-Act related.

Mr. GRUBER. I'm sure my counsel will be happy to take that up with you.

Chairman ISSA. Actually, I was asking would you agree to provide it?

Mr. GRUBER. As I said, I'm sure that's something you can discuss with my counsel.

Chairman ISSA. So you're not agreeing to provide it.

Mr. GRUBER. I'm not agreeing or disagreeing; I'm saying that's something that I'm not expert on——

Chairman ISSA. Would you confer with your counsel, please? It's a requirement before you testify. And as we reviewed your Exhibit B, because you didn't use our form and go down it, we don't have all of your income. Since that's become a factor here, would you please—we'll take a moment. We'll take just a short break. Provide

with your counsel to see whether you can affirmatively answer that.

Mr. GRUBER. My counsel has informed me that my disclosure is in compliance with the House Committee Rules. And if there's any additional questions, he'd be happy to answer them.

Chairman ISSA. Okay. We'll——

Mr. MICA. Mr. Chairman, could I request, then, that the witness provide the committee with the amount of money received from the Federal Government and any other healthcare payments that he received since the beginning——

Chairman ISSA. Apologize. This is a technical rule of the committee, folks. The gentleman asked a question.

Mr. MICA. It is a simple request. Can he provide us that?

Mr. GRUBER. Once again, I—the committee is welcome to work with my counsel on that.

Mr. JORDAN. Mr. Chairman?

Chairman ISSA. Mr. Jordan.

Mr. JORDAN. Why doesn't he just tell us? How much money did you get from the State taxpayers and the Federal taxpayers? He's under oath. Why doesn't he tell us how much he got paid by the taxpayers?

Ms. NORTON. Does he have the time?

Mr. JORDAN. We don't have to wait for him to send something to us. He should just be able to tell us, how much did the taxpayers pay him?

Mr. MICA. Again, we have a witness under oath.

Chairman ISSA. Okay. I'm going to go on to other questioning, and we will see what we can get as a further determination.

But it is—it is at this point, I am being advised, that this—this is not an accurate and full disclosure. So we do disagree with your counsel's interpretation.

Mr. CUMMINGS. Mr. Chairman.

Chairman ISSA. Mr. Cummings. Of course.

Mr. CUMMINGS. Just one thing. Maybe, Mr. Chairman, during the course of this hearing, you can confer with counsel at some point.

Chairman ISSA. That's what I want to do. I want to go on with the hearing, and we'll try to do this behind the scenes. Because I don't want to delay the hearing for what has proven to be—and, Mr. Mica, I will seek additional time for you if we can get the information.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. Ms. Norton is recognized for 5 minutes.

Ms. NORTON. I want to thank you, Mr. Chairman, again, for your friendship, for your service, and for the respect you have shown for the American citizens who live in the District of Columbia who demand to be treated as free and equal Americans, and you have always done that. Appreciate your work on this committee, very difficult committee, and I sympathize.

Dr. Gruber, I accept your apology. I'm not going to question you further. Your statements invite acts of demagoguery. You will hear enough of those. I decline to participate.

Ms. Tavenner, the $400,000 difference, $400,000 difference, is trumpeted as if it were words hiding those smaller amounts when

the Affordable Healthcare Act greatly exceeded our expectations in the numbers that would sign up.

So all I can say is if the administration was going to fudge it, I certainly hope they would not have been so amateurish. And I think the American people will understand how one could confuse people who signed up for dental care as you're just looking at people who signed up and people who signed up, period. Because those were not the distinctions we were looking for at the time.

Mr. Goldmann, you are a constituent of mine. I appreciate that you stepped forward. I do want to say to you the chairman said something about cost-sharing in his preface to questioning you. But you had testified that you were not being subsidized.

Mr. GOLDMANN. That's correct.

Ms. NORTON. If that is the case, you are like millions of other young people who got lower-cost insurance simply because you are young and not because any costs were shifted to you. That is the very nature of insurance.

Now, I would like to ask, I note, Ms. Tavenner, that this hearing is taking place when we are early in the new enrollment system—enrollment period, I'm sorry— and I thank you for coming at such a busy time.

You had a deputy, the principal deputy administrator—I'm sorry—not your deputy, but the principal deputy administrator is quoted as saying, "The vast majority of shoppers had a positive experience with healthcare.gov."

Is that your understanding? If so, that needs to be out here, given the faux pas of the first few months.

Ms. TAVENNER. Yes, ma'am. Our second enrollment period has been much smoother, obviously. But we have been able to talk with some consumers. We have also been able to meet weekly with issuers to ask them what they are seeing from a consumer perspective as well. And so far, the enrollment process has been easy, by folks' terms. I'm sure it's not perfect. We still have room for improvements.

Ms. NORTON. So you are doing the kinds of customer—that you can quantify, customer experience that you can quantify as to what the experience has been so you will be able to say that at the end of this period.

Ms. TAVENNER. We are. It's a little early, because, obviously, we are just 3 weeks in. But we are doing surveys, both through the call center and surveys through healthcare.gov——

Ms. NORTON. That will be very important because you had such a poor start.

Ms. TAVENNER. We will share that information.

Ms. NORTON. Now, I understand that you can now handle quarter of a million concurrent users. Is that the case?

Ms. TAVENNER. Yes. In our testing, we—that is what we aspire to, and we were able to do end-to-end testing to handle that type of volume, yes.

Ms. NORTON. I have some numbers here that open enrollment in 2014, more than 1.5 billion Americans submitted applications for coverage. And that 765,135 individuals selected a plan.

How does that compare, if you have any figures, with the first few weeks of open enrollment in 2013?

Ms. TAVENNER. Well, as you might remember, in the first few weeks, we were dealing with a Web site that was far from ideal, so our numbers were very low.

We are pleased with the numbers in the first 3 weeks. But I think we know by 1 year's experience, that individuals will wait until deadlines to sign up. So we are looking for——

Ms. NORTON. And what is that deadline, Ms. Tavenner?

Ms. TAVENNER. The first deadline is December 15. So this coming weekend we think we will be high volume. And then, again, February 15 when open enrollment closes for 2015.

Ms. NORTON. I would like, in light of how easy it is to make—to make errors, that you will then be called on, in September, you testified before this committee and you pledged to address at that time 22 technical recommendations that the GAO had made to improve of the security of the Web site, and that is always a concern.

Were these 22 recommendations addressed before the beginning of open enrollment this year?

Ms. TAVENNER. Yes, they were. We completed our work on all 22 of those recommendations. And then there were six other categories that we have completed the work in that area. Probably the only thing that is not totally complete is the operating agreement with the—with OPM and with the Peace Corps. We have a contractual agreement, but we were going through a full contracting process, and that's underway

Chairman ISSA. I think the gentlelady's time has expired. We now go to Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman.

The ranking member said that these are just mistakes; they are just unforced errors. I think the American people would say something completely different. I would say, no, these aren't mistakes, unforced errors. This is intentional deception, and it's nothing new. "If you like your plan, you can keep your plan." "If you like your doctor, you can keep your Doctor." "Premiums are going to go down." "Premiums are going to go down $2,500 on average." "The Web site will work." "The Web site's secured." CMS, Ms. Tavenner, tells us they have 7.3million enrollees; they forgot to count 400,000 dental plans in that number.

And then we get to Mr. Gruber. Mr. Gruber testified before Congress about Obamacare and didn't disclose that he was being paid by the Obama administration. That's deception at its highest form. And then, of course, we have the videos, the now famous videos where Mr. Gruber used taxpayer dollars to deceive taxpayers. And then when Obamacare became law, he made fun of them and insulted them.

By the way, Mr. Gruber, back to the question we had a little discussion on earlier: How much were you paid, you and your institution, by the Federal taxpayer and by the State taxpayer, regarding your lectures on Obamacare?

Mr. GRUBER. I have disclosed for the committee. As I understand, my counsel, I'm required Federal payments——

Mr. JORDAN. I'm not asking what you disclosed. I'm asking you a question. Give me a dollar amount. How much were you paid? The American taxpayer would like to know how much they paid you to deceive them and then got made fun of by the very dollars

that they paid you to make fun of. They'd like to know that. So how much were you paid?

Mr. GRUBER. As I said, the committee can take that up with my counsel.

Mr. JORDAN. So you're not going to answer the question. You're under oath. We're asking you a simple question. You come to the committee; we ask a question; you're supposed to answer the question. How much were you paid by the Federal taxpayer and the State taxpayer?

Mr. GRUBER. As I said, the committee can take that up with my counsel. Would be happy to provide whatever——

Mr. JORDAN. All right. I've got one other question.

Chairman ISSA. Would the gentleman suspend for a moment?

Mr. JORDAN. If you keep my time on.

Chairman ISSA. Yes. I want to advise everyone that counsel had said that they are not available to clear up the errors and omissions in the gentleman's truth filing. It does require—our form does require grants, contracts. In other words, we cover all revenue. We only received about $100,000, which is far less than the gentleman's testimony, in disclosures, which were three grants. As a result, the gentleman's disclosure is not complete.

So I would admonish the—Dr. Gruber, your choice really is answer questions fully here and then supplement, or we will seek to bring you back with the full disclosure in order to get all the other numbers. It's really your choice. Your counsel can advise you, but we find your—by your own testimony, we find your submission deficient.

And your counsel is ill advised to say that it is sufficient because it only includes grants and you have contracts. You have admitted under oath that you have contracts.

So those are not listed. And you are deficient. Again, I want to—this is our last hearing if I don't have to recess and come back again. I would like to not have to recess and come back again. So, please, do not make this drag on longer. If you can give answers to your best recollection and we will accept an amendment, if that is the case, an addendum at a later date.

But the gentleman is entitled to have all questions, to the best of your knowledge, answered. You took an oath saying you would tell the truth, the whole truth, not the truth and only what your counsel says is going to be discussed. It is all questions, all answers.

And if Mr. Cummings were sitting in this chair or anyone else, we could expect no less.

Mr. Cummings.

Mr. CUMMINGS. Mr. Chairman, I think his counsel is talking to him. Why don't we give him a second?

Mr. LYNCH. Mr. Chairman, just on that question, I have a PolitiFact document here, and they have a fact-checker thing that has, you know, all kinds of numbers. They went into this in depth as to what the gentleman was paid. And I was wondering if we just enter this in as part of the record.

Chairman ISSA. We will certainly be happy to enter in, without objection.

Mr. LYNCH. I thank you.

Chairman ISSA. The gentleman from Ohio may continue. I ask unanimous consent he have additional 30 seconds.

Without objection.

Mr. JORDAN. I think I have a question on the table to Mr. Gruber; I'm waiting for his answer.

Mr. GRUBER. I was informed that I should report all Federal moneys received through grants or contracts for this fiscal year and the previous 2 fiscal year years. I did that. I was received no Federal contracts——

Mr. JORDAN. I don't care what you were informed, Mr. Gruber, I care about what I'm asking you. And what I'm asking you is, how much money did the taxpayers, State or Federal, pay you to have you then lie to them? That's what I want to know.

Mr. GRUBER. Over this fiscal year and the previous fiscal year——

Mr. JORDAN. No, no, no, no, no. Total. I mean, look, look, this has been a 5-year ordeal with this law. We want know to know how much you got from the taxpayer and then made fun of them after you got money and lied to them.

Mr. GRUBER. I don't recall the total.

Mr. JORDAN. We want that information as quick as we can.

Let me switch gears.

Mr. Gruber, in a strange way, I kind of appreciate what you said in the videos because it seems to me for the first time someone came clean and told the truth. You told people you were actually deceiving us. So here's my one question I want to get to.

Politico reported that Steve Ratner called you "the man" when it came to Obamacare. The Washington Post said you were the key architect of Obamacare. The New York Times said the White House lent you to Capitol Hill to help Congress draft Obamacare.

They say, Go on up there and help those poor folks on Capitol Hill get it right. You're the expert. Go up and help those Congressmen who don't know what they are doing.

President said he had, "stolen ideas from you to draft Obamacare." You visited the White House 21 times. You met with the President—your own words—you met with the President in the Oval Office.

So I have one question. A few weeks ago, when the video surfaced, what was your reaction when the President of the United States said you were just some adviser? Remember, you're the man. You're the architect. Been to the White House 21 times. You go to Capitol Hill to help those poor saps get it right. President stole from your ideas. You're the key guy. And yet when the videos surface, the President of the United States throws you under the bus and says you're just some random adviser. What was your reaction to that, Mr. Gruber?

Mr. GRUBER. My reaction was that my job was to be an adviser. And that's what I was.

Mr. JORDAN. Ms. Tavenner, you're currently enrolling people in the Federal exchanges. How many people have you enrolled thus far in this enrollment period?

Ms. TAVENNER. I don't have that number before me. But I can get you that number.

Mr. JORDAN. You don't have that number. Well, even if you did, we might believe it, based on past experience.

So let me ask you this. Are you familiar with the lawsuit that—the court case King v. Burwell?

Ms. TAVENNER. I am familiar with the case.

Mr. JORDAN. Okay. If the ruling goes against and says what Mr. Gruber said in some of those videos, that, in fact, those States have not set up a State exchange can't give subsidies to their enrollees, have you been explaining to people signing up for Obamacare that, look, this all may change in a matter of months? Have you been letting them know that they might have to pay a lot more on their premiums, in fact have a tax liability they don't know that they have today?

Ms. TAVENNER. Congressman Jordan, nothing has changed for consumers. They can still come in, they should come in——

Mr. JORDAN. No. Are you telling people things may change? We've got a court case, pretty big case. Fundamental question: Are you telling them there might be a change?

Ms. TAVENNER. This is not a closed case. Pretty much plain language——

Mr. JORDAN. I didn't say that. I say it might be. Are you giving them a heads up that, in fact, things may change in a big way in a few months?

Ms. TAVENNER. I'm not going to speculate about the case.

Mr. JORDAN. I'm not asking you to speculate. I'm asking, are you telling enrollees that things may change in a few months?

Ms. TAVENNER. Nothing has changed for consumers, and I'm telling them to come in and enroll——

Mr. JORDAN. So they could get a shock and you're not preparing them for the fourfold increase in premiums and the tax liability they may have?

Ms. TAVENNER. I have told you, employers—consumers should come in, they should sign up, they should enroll——

Mr. JORDAN. Mr. Chairman, if I could.

Ms. Tavenner, one last question.

Chairman ISSA. Quickly.

Mr. JORDAN. Do you think it's responsible to not tell the millions of enrollees who are in States that have not set up a State exchange, do you think it's at all responsible not to tell them that things may change dramatically and they'd have a tax liability and their premiums could increase as much as fourfold?

Chairman ISSA. The gentleman's time has expired. The gentlelady may answer.

Ms. TAVENNER. I'm sorry?

Chairman ISSA. You may answer. Time has expired; you may answer.

Ms. TAVENNER. Thank you.

And I have told you this is not a closed case. And I am not going to speculate. The law is pretty clear.

Chairman ISSA. I will take that as a "no," you are not telling them, because of the statements you just made relative to your opinion of the case. Is that right?

Ms. TAVENNER. I have said nothing has changed for consumers. They should sign up, come in and enroll.

Ms. NORTON. Mr. Chairman, you know, if you're going to get into the court case, no one can say that that would be retroactive.

Chairman ISSA. No, Eleanor. I'm not trying to get into it. The gentleman was entitled to a "no, we're not telling people." And I wanted to make it clear that when she said why she wasn't telling them that she wasn't telling them. And I think she made that clear, as to why she decided not to inform them.

Ms. NORTON. I think that was a responsible thing to do. We don't know—in fact, I doubt that it would be retroactive.

Chairman ISSA. I thank the gentlelady.

The time belongs to the gentleman from Massachusetts, Mr. Lynch.

Mr. LYNCH. Thank you.

Chairman ISSA. I'm sorry. Wait a second. I apologize.

The gentlelady from Washington, D.C., has already gone. So—thank you. Mr. Lynch.

Mr. LYNCH. Is it Mr. Clay or Mr. Lynch?

Chairman ISSA. Mr. Clay was not noted. But if you'd like him to go first, I certainly would take him.

Mr. LYNCH. That's okay.

Chairman ISSA. He's a delightful gentleman who has been waiting to go first for a long time. He looks needy.

Mr. LYNCH. He's going to wait.

Chairman ISSA. Okay. The gentleman is recognized.

Mr. LYNCH. I appreciate that. Thank you.

I want to thank the witnesses for attending.

In my former life, I actually negotiated healthcare plans through collective bargaining. I was president of the ironworkers union, Mr. Gruber. And we're having a lot of problems in Massachusetts, in our home State, with some provisions of the Affordable Care Act, especially the so-called Cadillac tax.

Now, you and I know that for a very long time, health care—until the Affordable Care Act, health care was not taxed. So when I sat down with good employers, good employers who cared about their employees, oftentimes they were more willing to give their employees an increase in their health benefits instead of putting it in their wages because wages were taxed to the payroll tax and health care was not.

So, now, as a result of negotiating for 75 years on that basis, you've got a lot of the unions across this country that have built up multi-employer health benefit plans for health care for their employees.

And because these employees have, instead of taking money in their wages, they've taken money in their benefit plans, we've got most of the healthcare plans these multi-employer union healthcare plans are subject to this Cadillac tax today, even though it doesn't come into effect until 2018.

So now what I'm seeing is that employers are running away from their healthcare obligations because now they're going to be taxed a 40-percent tax on everything over and above the limits that have been established under the ACA.

So I've got formerly good employers who now are saying, wait a minute, I'm going to get killed by this Cadillac tax. Number one, they are abandoning their responsibilities to these plans; they are

trying to get out. They are trying to buy their way out. They are just reorganizing. They are—in some cases, they are cutting their companies in half so they can try to get below 50 employees so that they are not covered. And new companies are not coming into these multi-employer plans.

So now I've got the unions, a lot of them who were in favor of this bill, now asking me to repeal it. Vote to repeal it. They are coming to me. And I am a union member. I am a former union president. And I've got these unions saying, repeal this thing.

Fortunately for me, I voted against it, to begin with. I voted against the Affordable Care Act because, unlike some people, I actually sat down and read it. And it was—it was one of the most complex bills that I have ever read, and I had a full staff helping me with questions on that.

So I think that this has presented a lot of problems for people who thought they were going to benefit from this plan. And how do I—how do I fix this?

How do I fix this so that previously good employers who are trying to do the right thing by their employees will continue to do that?

Because these construction workers, they don't work 52 weeks a year. They get laid off in between jobs. They have bad weather, they get—they have broken time. So they needed this format to provide for their families to get health insurance. And now these good employers are running away from their healthcare obligations because they see this tax coming down the road in 2018, and a lot of them are refusing to re-up on their collective bargaining agreements. They are walking away.

And how do we help these employees? Because now they are being told, go to the exchange. We don't do that anymore. We're out of the healthcare business.

How do we help those folks?

Mr. GRUBER. Well, Congressman Lynch, I'm not an expert on collective bargaining agreements. And I can't——

Mr. LYNCH. I guess.

Mr. GRUBER. —comment further on that.

What I can say is that the way the Cadillac tax was designed, there's no reason that these employers can't provide affordable and comprehensive insurance under the provisions of the Cadillac tax.

Mr. LYNCH. It's 40—for every dollar over the limit, they are paying $1.40.

Mr. GRUBER. Once again, given where the limit's set, there's no reason they can't provide affordable and comprehensive insurance to their employees under the Cadillac tax.

Mr. LYNCH. But wait a minute. They are competing with other employers on a bid. Just so you know how this works, if we are bidding on a construction project, and you have 49 employees and I have 150, my bid includes $13 an hour for health care. Your bill—your bid is zero. How do I win the bid if I am putting, for every man hour on that job, I'm putting $13 an hour on my bid and you are putting zero on yours, how do I win? I'm out of business.

Mr. GRUBER. There's been a longstanding problem——

Mr. LYNCH. You say I can afford it? How do I win that bid? If my bid, for every man-hour on that job, I have to put $13 an hour

on my bid, and you can put zero and send your people to the exchange or you're not—you're not obligated to account for healthcare.

Mr. WALBERG. [Presiding.] The gentleman's time has expired.

Mr. Gruber can answer.

Mr. GRUBER. There's been a longstanding problem of competition between employers that do and don't offer health insurance. The Affordable Care Act actually tries to address that through a free rider assessment on large employers that don't provide insurance and tries to level the playing field in that way.

Mr. LYNCH. Well, it doesn't do it. Thank you.

Mr. WALBERG. Thank the gentleman.

Now I recognize gentleman from Utah, Mr. Chaffetz.

Mr. CHAFFETZ. Thank the chairman.

Mr. Gruber, you also did some work for the Congressional Budget Office. Correct? The CBO?

Mr. GRUBER. I was on a CBO advisory council.

Mr. CHAFFETZ. When did that start?

Mr. GRUBER. I don't exactly remember. It was probably——

Mr. CHAFFETZ. 2007. Correct?

Mr. GRUBER. Mid 2000s, yes.

Mr. CHAFFETZ. And when did you stop working for the CBO?

Mr. GRUBER. I did not—I was on the advisory council until, I think, through 2008. I'm not entirely sure.

Mr. CHAFFETZ. You mean 2011? Is that correct?

Mr. GRUBER. No. I did not go to meetings of the CBO advisory council——

Mr. CHAFFETZ. Were you on the advisory council until 2011?

Mr. GRUBER. I honestly don't know when they took me off it, but I did not attend any meetings of that advisory council——

Mr. CHAFFETZ. Were you on the CBO panel in 2010?

Mr. GRUBER. I did not attend any meetings of the CBO panel in 2010.

Mr. CHAFFETZ. But you were part of that organization.

Did you have any communications with the CBO?

Mr. GRUBER. Yes.

Mr. CHAFFETZ. So you didn't attend any meetings, but you did have communication.

How many times did you attend the—how many times since President Obama took office did you go to the White House?

Mr. GRUBER. I don't recall exactly.

Mr. CHAFFETZ. Was it more than 20?

Mr. GRUBER. No. It was not.

Mr. CHAFFETZ. I believe it was more than 20.

How many times do you think it was?

Going to the White House is a significant event. You probably remember it.

Mr. GRUBER. I made a number of visits to the White House, primarily to the Executive Office Building to meet with members of President Obama's staff.

Mr. CHAFFETZ. Did you ever meet with the President?

Mr. GRUBER. I met with President Obama once during discussion of the Affordable Care Act.

Mr. CHAFFETZ. How long was that meeting?

Mr. GRUBER. Is was a meeting that lasted maybe an hour and a half with about 20 people. I spoke for about 5 minutes.

Mr. CHAFFETZ. Was Mr. Elmendorf there?

Mr. GRUBER. Yes, he was.

Mr. CHAFFETZ. What was your capacity in that meeting?

Mr. GRUBER. It was a meeting of about six economic experts to talk to the President and his staff about options for healthcare cost control.

Mr. JORDAN. Were you there as a CBO member or were you there as an administration member?

Mr. GRUBER. I was there as neither; I was there as an economic expert.

Mr. JORDAN. Well, somebody invited you there. You weren't—somebody was paying you. Correct?

Mr. GRUBER. No one paid me to be at that meeting. I was invited to be at that meeting by the White House.

Mr. JORDAN. We'll explore that a little bit more.

Mr. Gruber, will you provide copies of all the work product you provided to the Federal Government related to the Affordable Care Act, healthcare.gov, or any other healthcare reform proposals?

Mr. GRUBER. I—if that's a request of the committee, they can take that up with my counsel.

Mr. CHAFFETZ. No, no, we're asking you, not your counsel. Counsel works for you. So we're asking you, under oath, will you provide this information to this committee?

Mr. GRUBER. Once again, if the committee can take it up with my counsel——

Mr. CHAFFETZ. No, no, no, no, no, Mr. Gruber. We're asking you. You've been paid by the American taxpayers. Will you or will you not provide that information to this committee?

Mr. GRUBER. Once again, the committee can take it up with my counsel.

Mr. CHAFFETZ. Mr. Chairman, this is something we have got to get to the bottom of. I think Members on both sides of this aisle should demand that those documents, paid for by the American taxpayers, be part of the public record.

What are you hiding? Why won't you give those to us? Why are we not entitled to those?

Mr. GRUBER. I'm not an expert on the rules of what's disclosable and what's not. But my counsel is, and he'd be happy to talk to the committee about it.

Mr. CHAFFETZ. Why will you not give us those documents?

Mr. GRUBER. I have not concluded one way or another on the documents——

Mr. CHAFFETZ. Who owns those documents? Who paid for them?

Mr. GRUBER. I'm not sure.

Mr. CHAFFETZ. You don't know who paid for those documents? Were you paid by the American taxpayer?

Mr. GRUBER. I had a contract, a technical contract with HHS to do micro-simulation modeling.

Mr. CHAFFETZ. Was there any work product of that? Did you actually come up with documents, have discussions?

Mr. GRUBER. Yes. I had a large number of discussions.

Mr. CHAFFETZ. Will you provide copies of all the work product you provided to the State governments related to the Affordable Care Act State-based exchanges or any other healthcare reform proposals?

Mr. GRUBER. Once again, the committee can take that up with my counsel.

Mr. CHAFFETZ. Will you provide copies of your communication, including emails, memoranda, presentations, or any other discussions or conversations you had with Federal or State officials or employees related to the Affordable Care Act exchanges or other healthcare reform proposals?

Mr. GRUBER. Once again, that committee can take that with up counsel——

Mr. CHAFFETZ. I need a "yes" or "no." I'm not interesting in talking to your counsel, I'm interested in talking to you right now, under oath, having been paid by the American taxpayer.

Will you or will you not provide that information?

Mr. GRUBER. You can take that up with my counsel.

Mr. CHAFFETZ. Why do you believe you're entitled to not give it to us?

Mr. GRUBER. I don't know the rules of how you produce documents, things like that. I'm not a lawyer, I'm just——

Mr. CHAFFETZ. Do you have documents?

Mr. GRUBER. Do I own documents?

Mr. CHAFFETZ. Do you have documents?

Mr. GRUBER. Yeah, I have documents.

Mr. CHAFFETZ. And you're not willing to give them to us.

Mr. GRUBER. I have all sorts of documents. I have a piece of paper in front of me. I don't understand——

Mr. CHAFFETZ. Documents that relate to the questions that I just asked you, Mr. Gruber.

Mr. GRUBER. I have——

Mr. CHAFFETZ. Do you not understand the question?

Mr. GRUBER. I have—I performed grant work for the Federal Government. There was work product from that work. I do not understand the rules under which that work product is supposed to be provided or not because I'm not a lawyer, and you can take that up with my counsel.

Mr. CHAFFETZ. This is terribly frustrating, Mr. Chairman. We will, I hope, get some cooperation on both sides of the aisle.

Yield back.

Mr. WALBERG. I thank the gentleman.

And, Mr. Gruber, it does appear that you have progressed in your ability to be political. You answer questions better than any politician sitting at this dais today. And it is frustrating, and I would contend that your attorney is not giving you adequate representation at this time.

This committee has the right to have information that has been requested. And you have progressed from not talking simply off the cuff and making stupid statements to now being entirely political, to the point that you are hindering us in carrying out our responsibility.

Mr. MEADOWS. Mr. Chairman?

Mr. WALBERG. I now recognize the gentleman from——

Mr. MEADOWS. Mr. Chairman?

I would ask the chairman if this committee should consider a subpoena to compel the witness to provide this kind of information if he's not going to do it on a voluntary basis.

Mr. WALBERG. I would recommend the gentleman take that up with the committee chair whose portrait hangs behind us.

I certainly would concur with you. But I'm not going to step in the place of the full committee chair at this point.

I thank the gentleman.

I now recognize the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Dr. Gruber, maybe this is a good object lesson for all academics in the consequences of sort of mouthing off and showing one's superior knowledge, especially with respect to this committee.

I have long felt, watching this committee in operation the last 4 years, that we ought to post over the mantle on the entrance in here, you know, "Enter into this portal as a witness at your own peril."

All of a sudden, now we're talking about subpoenas and lawyers and documents, and how often did you go to the White House? It has a familiar refrain in terms of how, unfortunately, witnesses have been handled, unless of course they are friendly witnesses who don't like the Affordable Care Act or believe the IRS has planted, you know, electrodes in their brain.

And so you are getting the special treatment. And you opened the door, unfortunately, because of remarks, which you have apologized for in your testimony. Is that not correct?

Mr. GRUBER. I apologize for the really inexcusable remarks that I made in those videos.

Mr. CONNOLLY. Thank you.

The incoming chairman of this committee asked you how often you've been to the White House.

How often do you go to the Romney administration offices of any kind when you were advising the Romney administration on the—on what became really the model for Obamacare?

Mr. GRUBER. I don't recall exactly. Dozens of times.

Mr. CONNOLLY. Dozens of times. Did you ever meet with Governor Romney?

Mr. GRUBER. I had one meeting with Governor Romney.

Mr. CONNOLLY. Just like you had one with Obama.

Mr. GRUBER. Yes.

Mr. CONNOLLY. So did that make you an intimate of the Romney administration and the architect of Romneycare in Massachusetts?

Mr. GRUBER. I was an economic adviser to Governor Romney, just as I was to President Obama.

Mr. CONNOLLY. Thank you. And do you have documents from those years that we might want to subpoena——

Let me withdraw the last part.

Do you have documents from the Romney period?

Mr. GRUBER. Probably.

Mr. CONNOLLY. Well, I would hope, Mr. Chairman, that if we're going to have a broad subpoena, suggested by my friend from North Carolina, that it be indeed brought and that we encompass all of the Romney documents Dr. Gruber was involved in. Because

I certainly want to see whether this is a pattern. Shouldn't be limited just to President Obama. Because, after all, there is an antecedent; not just an antecedent, Romneycare was the model for Obamacare.

Is that not true, Dr. Gruber?

Mr. GRUBER. I believe it's true.

Mr. CONNOLLY. I mean, for example, the tax consequences, is it not true that right now in Massachusetts, you know, you can be fined if you don't comply with Romneycare, and it's all run through the tax administration in the Commonwealth of Massachusetts?

Mr. GRUBER. It is true that if you don't have health insurance and don't meet certain exemptions in Massachusetts, you have to pay a tax penalty.

Mr. CONNOLLY. Right. And, by the way, what happened to the uninsured percentage in Massachusetts? Did it go up? Did a lot of people lose their healthcare, as predicted by the critics?

Mr. GRUBER. The rate of insured fell by about two-thirds to 3 percent.

Mr. CONNOLLY. Three percent. How many other States have a 3-percent uninsured rate?

Mr. GRUBER. Massachusetts is by far the lowest in the Nation.

Mr. CONNOLLY. Lowest in the Nation.

Now, there were also predictions that the fines were so relatively modest that employers would be tripping over each other to divest themselves of employee-provided insurance plans and just go on to the State exchange. Did that happen in Massachusetts?

Mr. GRUBER. No, it did not. Employer-sponsored insurance actually rose by 10 percent in Massachusetts after we passed Romneycare.

Mr. CONNOLLY. Can you explain the interpretation of your statement—and I'm going to read your statement: In the law, it says that the States don't provide them, the Federal back stop will. The Federal Government has been sort of slow in putting out its backstop, I think partly because they want to sort of squeeze the States to do it. I think what's important to remember politically is if you are a State and you don't set up an exchange, that means your citizens don't get their tax credits.

Opponents of the Affordable Care Act are using these remarks to further the argument that the law does not authorize tax credits for States that did not step up their own exchanges.

Is that a correct interpretation of the law and of your statement?

Mr. GRUBER. I don't believe it's a correct interpretation of either the law or of my statement. As I said my opening remarks, my statement, while poorly worded and much too glib, but I believe the point I was making was that at the time I gave that statement, which was 2012, it was not clear how effective the Federal exchange would be. It was not even clear who would be in the White House to implement said Federal exchange.

As a result, States might be concerned the Federal exchange would not be implemented, and they would have to set up their own exchange.

Mr. CONNOLLY. Do you agree, Dr. Gruber, that, as written, the law makes tax credits available in every State, regardless of whether the State or the Federal Government runs the exchange?

Mr. GRUBER. In every—in every opportunity I've had to model or interpret the law, I've always made that assumption.

Mr. CONNOLLY. Yes.

Mr. Chairman, my time is up. I'd like unanimous consent to enter into the record a letter from Doug Elmendorf, the head of CBO, to Chairman Issa, dated December 6; and an article by Tom Harkin, Ron Wyden, Sandy Levin, George Miller, and Henry Waxman, on the Affordable Care Act and what opponents are cherry-picking in terms of facts.

Mr. WALBERG. Without objection.

Mr. CONNOLLY. I thank the chair.

Mr. WALBERG. I thank the gentleman.

Recognize myself for 5 minutes of questioning.

It is—at least to me, it's apparent today in what we have heard, what's gone on here, that Americans now know that government transparency under this administration simply means what you see is not what you get. And that's concerning to me.

Ms. Tavenner, do you believe Obamacare was crafted in a way that was transparent to the American taxpayer?

Ms. TAVENNER. I certainly believe that the work that I've been part of for the last 5 years has been transparent.

Mr. WALBERG. Was Obamacare crafted in a way to be transparent?

Ms. TAVENNER. I was not here during the crafting of Obamacare.

Mr. WALBERG. Ms. Tavenner, would you say the administration was transparent in its implementation of Obamacare, then? You've been here for that.

Ms. TAVENNER. Sir, I think we have tried to be transparent. We have tried to provide documents, including the documents that we sent yesterday. To date, we have already provided 135,000 pages of documents and provided more than a dozen transcribed interviews. So I think we have tried to be transparent.

Mr. WALBERG. But not completely.

Ms. TAVENNER. Wherever we can, we have tried to be——

Mr. WALBERG. Wherever we can. Okay.

Another term that could be used in this hearing, "whenever we can," "I don't recall," "probably." Those are reoccurring terms.

Mr. Gruber, the Obama administration promised the American people 37 times that if you like your plan, you can keep your plan.

When you were working on the law, did you believe, Mr. Gruber, did you believe that no one would lose a plan they liked due to Obamacare?

Mr. GRUBER. I believed that the law would not affect the vast majority of Americans.

Mr. WALBERG. The vast majority. But did you believe that no one, as the President said, would lose a plan they liked?

Mr. GRUBER. As I said, I believed it would not affect the vast majority of Americans. But it is true that some people might have to upgrade their plans because their plans were not comprehensive as defined under the law.

Mr. WALBERG. So they couldn't keep their plan even if they liked it.

Mr. GRUBER. What the law says is there's minimum standards to be met.

Mr. WALBERG. Why did the President make this representation if his experts, including you, knew it was not true that some, as you've said, would not be able to keep their plan, they would have to upgrade or they'd have to change it?

Mr. GRUBER. I'm not a political adviser, and I have no answer to that question.

Mr. WALBERG. You acknowledged in a 2013 article in the New Yorker that not everyone who liked their plans could keep their plans, Mr. Gruber. When you knew that the administration's representations to the American people were false, such as in this instance, did you ever voice any concern? Why or why not?

Mr. GRUBER. I interpreted the administration's comments as saying that for the vast majority of Americans, this law would not affect the productive health insurance relationships they have. And so I did not see a problem with the administration's statement.

Mr. WALBERG. But you're an economist with a model that you've described as entirely accurate. You're a learned professor. And we don't take that away from you at all. And yet the President 37 times said, If you like your plan you can keep your plan.

I'm here today to say that in my constituency of almost 800,000 people, Julie Boonstra, leukemia patient who had a plan she liked couldn't keep that plan. And she's not stupid. She couldn't keep that plan.

Mark and Kate, a young pastor and wife at a local church, now expecting, as of yesterday cannot keep the plan they had and can't find a plan that's adequate for them to replace it.

Dustin, a hardworking young man in my district, spent almost the entire weekend trying to opt on to Obamacare from a plan that he lost, he couldn't keep. And, as of yesterday morning, I watched him try to get a plan through to the Web site, through talking with people connected with the Web site. He still couldn't get it. He had a plan he liked. He's not stupid. He couldn't keep it.

Numerous constituents have contacted me saying that while they may have found a plan under Obamacare, not necessarily a plan that they liked or they could keep, but found a plan, like Mr. Goldmann, that was reasonable in cost, yet when they got to the point of having to pay their deductibles, their copays, their out-of-pocket expenses or the prescription drug costs, they couldn't afford it.

And I would suggest that again transparency here is not what you see is what you get.

My time has expired.

I now recognize Mr. Cartwright for his 5 minutes.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

And I thank the witnesses for appearing today in yet another instance of the gnashing of teeth over the Affordable Care Act.

Administrator Tavenner, you were not there at CMS for the crafting of Obamacare. I was not in the Congress, and many of my colleagues here on the dais were not in the Congress for the voting on the ACA.

But I believe what the American public wants of us is to make the best of things, to take this law, to improve it, to make it work for everybody in the United States, and that's why it pains me to

have to sit through these hearings while we criticize those who may have said something that understated or overstated the facts.

To be sure, there are people who are traveling through this world and through their lives unburdened by excessive concern for the truth.

And maybe, Mr. Gruber, at times in your life, you've been one of them. But there is—you know, there is—there's a chance for repentance and renewal in life, and I hope you will take that chance, Mr. Gruber.

But, Ms. Tavenner, I want to pick up on something that Mr. Lynch was talking about. And he really didn't give you much time to respond because we only get 5 minutes and it took him the balance of his 5 minutes to explain a concern, and that was about the Cadillac tax. And I'm hearing about that at home as well. And I simply—this is a yes or no question, Ms. Tavenner.

Will you undertake to review the Cadillac tax and perhaps rethink it and engage those with whom you work to rethink it and maybe even go back to the drawing board about the Cadillac tax in an effort, as I said, to take this law and improve it and make it work for all Americans?

Ms. TAVENNER. I think the President has been clear and that he would be willing to work with Congress to make improvements to the law.

Mr. CARTWRIGHT. Well, I thank you for that.

I also want to talk about costs a little bit. In an unguarded moment, the chairman of this committee listed a number of statements that he considered to be untrue or falsehoods. Some of them I agree with.

But among them he listed the idea that healthcare spending in this Nation has had the lowest increase in 50 years. I was surprised to hear him list that among statements he considered to be falsehoods.

Would you comment on that, Ms. Tavenner.

Ms. TAVENNER. I would say that, based on the healthcare expenditure report last week that our Office of Actuary did, that that statement was not true. It is the lowest trend in healthcare spending that we've seen. It continues a trend that we've seen for the last several years.

This year was one of the lowest for 2013 and the lowest that the healthcare expenditure report has on record since 1960. So I think healthcare expenditure is at an all-time low. There's still an increase year over year, but expenditure and the slope of that growth has greatly slowed.

Mr. CARTWRIGHT. Now, there's not a whole lot refreshing to talk about when we talk about the ACA and recriminations over it, but that—that's one of them, isn't it?

Ms. TAVENNER. That's one of them. I think 6.7 million Americans signed up in the marketplace is another. Over 9 million new to Medicaid and CHIP. These are all good things.

Mr. CARTWRIGHT. Now, in conjunction with that, you know, I've been an employer through the 1990s and the 2000 decade. We saw—and we provided health care for our employees.

And we saw increases that were in the double digits, 10, 15, even 20, percent, even higher in some years, for the premiums we were

paying to cover our employees. It was awful. I was dismayed by those numbers, and it was something that hurt every year to do.

What's the—what's the average increase we're looking at this year in premiums under the ACA, Ms. Tavenner?

Ms. TAVENNER. Under the ACA, while it certainly can vary by region, we are looking at single-digit—in the low single digits for increases.

In the employer-sponsored insurance, separate and apart from the marketplace, 3 percent this year, which is—again, follows an overall extremely low trend.

Certainly there have been changes in co-pays and deductibles along with that, but it still is a much lower growth than we've seen in years past.

Mr. CARTWRIGHT. Again——

Ms. TAVENNER. And I share your concern for the last few years.

Mr. CARTWRIGHT. —more refreshing news from you.

Thank you for appearing today, Ms. Tavenner, and all the witnesses.

I yield back, Mr. Chairman.

Chairman ISSA. [Presiding.] Thank you. The gentleman yields back.

I now ask unanimous consent that our colleague from South Carolina, Mr. Rice, be allowed to participate in today's hearing.

Without objection, so ordered.

We now go to the gentleman from North Carolina, Mr. McHenry.

Mr. MCHENRY. Well, Dr. Gruber, you know, as everyone knows and as the American people know, when the President said, "If you like your plan, you can keep it," turns out it was the lie of the year. Right?

I mean, this is a very significant thing. And my constituents in North Carolina and—actually, North Carolinians—according to the North Carolina Department of Insurance, 473,000 North Carolinians lost their health insurance because of Obamacare.

So this is perplexing. Right? You had a moment of clarity and honesty where you said, you know, it was a lack of transparency that helped pass Obamacare. And I concur, and I appreciate your honesty.

I think it's horrific, though, that you participated in some level on obscuring the truth from the American people in order to pass this bill. Now, you apologized for that, and I thank you for that.

And the American people hear you loud and clear. And as a—sort of as a matter of morality, for you to apologize is really—I know it's a tough thing to do publicly, but I thank you for doing that.

So, you know, when I think about my constituents, though, did you think that there will be such a large number of folks that would lose their health insurance?

Mr. GRUBER. I don't know the exact number in North Carolina, but I——

Mr. MCHENRY. Well, it's 473,000, according to the Department of Insurance and the Raleigh News & Observer.

Mr. GRUBER. What I was focused on was the net increase in newly insured we've had under—have under the law, which has been quite substantial.

Mr. MCHENRY. Okay. So it's not relevant to your calculation that there will be people that would lose their health insurance?

Mr. GRUBER. That was part of the calculation.

Mr. MCHENRY. It was?

So there—there is churn, would you say?

Mr. GRUBER. There's always been churn in this market.

Mr. MCHENRY. Sure.

Did you think it would be such a large number that would lose their plans, though?

Mr. GRUBER. I don't recall the exact numbers I modeled, but we did model some individuals would lose their existing plans and move to new forms of coverage.

Mr. MCHENRY. Well, you—I think you anticipated it. And you're obviously very well prepared. I think you anticipated this question.

Is it similar or dissimilar to the number that you calculated?

Mr. GRUBER. I don't know of a national estimate of how many people have lost health insurance. So I don't know how it compares to what I projected.

Mr. MCHENRY. So was there a discussion at senior levels in the White House and HHS about this potential loss of people's health insurance plans?

Mr. GRUBER. I don't recall whether they were when I was—when I was there. I can't speak what happened when I wasn't.

Mr. MCHENRY. So was there—but there was no moment of moral clarity, of honesty, that you came to publicly that we now know about and most Americans know about? There was no discussion at the time that maybe we should put the brakes on this, that we're going to have a lot of people lose their health insurance plan—their preferred health insurance plan?

Mr. GRUBER. There were—I was present for discussion—as I said, I provided numbers and I was present for discussion of those numbers and interpretation of what they meant in terms of how the law would affect individuals.

Mr. MCHENRY. Did anyone say, "Well, pause for a moment. The President's been out saying, 'If you like your health insurance plan, you can keep it.' Gosh, maybe we should tell him that that's not, in fact, the case. Maybe he should change his wording a little bit"?

Mr. GRUBER. I was not in any discussion of presidential communication or messaging.

Mr. MCHENRY. Okay. But in the meetings where you went through these numbers and you said to the administration—and, look, you've got plenty of experience on this—you said to this administration—because you're in the employ of this administration—you said there will be people that lose their plans. Right?

Now, you said there are also going to be people that get other plans. Right? But you said there will be people that will lose their plans. Did they—did you—was this not registered? Did—did this fall on deaf ears?

Mr. GRUBER. All I know is what my modeling showed and what I conveyed.

Mr. MCHENRY. And you conveyed that there would be, in fact, people that lose their preferred health insurance plan?

Mr. GRUBER. I conveyed that there would be churn in the market and some people would move to different insurance plans, yes.

Mr. MCHENRY. So, as I said before, my interpretation of "churn" is that some lose and some gain.

So when you have the President going out saying clearly, "If you like your plan, you can keep it," it was, in fact, a lie, based off your numbers, based on the data you provided this administration. Is that correct?

Mr. GRUBER. I interpreted the President's statement as referring to the fact that the vast majority of Americans would be able to maintain their health insurance arrangements under the Affordable Care Act.

Mr. MCHENRY. Okay. So you also said that, you know, the only way to pass this type of health insurance is to actually pay lip service to fundamental cost control, right, that you actually need to talk about cost control in order to pass this type of health insurance change? So was it, in fact, just lip service?

Mr. GRUBER. Fundamental cost control is very, very hard in health care. The Affordable Care Act does not solve the problem of high and rising healthcare costs——

Mr. MCHENRY. But it did——

Mr. GRUBER. —in America.

Mr. MCHENRY. It did pay lip service, though?

Mr. GRUBER. No. It did more than lip service. The Affordable Care Act is, by far, the most ambitious piece of legislation in our Nation's history in terms of moving forward on cost control.

Mr. MCHENRY. Okay. Okay. And so has it outperformed your model or underperformed your model?

Mr. GRUBER. My model, as with the Congressional Budget Office model, over the budget period did not——

Mr. MCHENRY. No. I'm saying so far.

Mr. GRUBER. So far, the law, in terms of health insurance coverage and other things, is matched fairly well with what the model predicted.

Mr. MCHENRY. Okay. So that lip service was important, in fact, to pass it?

Mr. GRUBER. I don't understand the question.

Mr. MCHENRY. Okay. Well, you said, in order to pass it, you have to pay lip service to fundamental cost control.

Mr. GRUBER. The—as I've said, fundamental cost control is very difficult——

Mr. MCHENRY. It is.

Mr. GRUBER. —but the Affordable Care Act takes all the first steps that are necessary to try to move us down that path.

Mr. MCHENRY. Okay. My time has expired. Thank you.

Chairman ISSA. I thank the gentleman.

I ask unanimous consent to have the actual numbers as they've been revised placed in the record relative to the Affordable Care Act. Without objection, so ordered.

Chairman ISSA. The gentleman from Vermont, we are pleased to have you join us.

Mr. WELCH. Thank you.

Chairman ISSA. And you're recognized for 5 minutes.

Mr. WELCH. Thank you very much, Mr. Chairman.

A couple of things.

Number one, Mr. Gruber, you've apologized for the intemperate, you said, insulting remarks. It's unfortunate. This whole debate about health care is so fundamentally important to this country. It's been divisive in Congress.

We had a partisan vote and strongly different points of view about it. And, unfortunately, the remarks you made provided clear ammunition for opponents to use that to indict the entire bill.

But when you start commenting about what you expect might be a legal outcome, do you have any training as a lawyer?

Mr. GRUBER. No, I do not.

Mr. WELCH. When you comment on the quality of mind of the American people, which I think all of us here have a great deal of respect for the people we represent, you would, I take it, apologize for any insulting remarks you made.

Mr. GRUBER. It was inexcusable that I tried to appear smarter by insulting others.

Mr. WELCH. All right. And the other thing.

I listen to my colleagues here, and they talk about folks who had a bad experience with the healthcare bill. And some people in—some people have had good experience. Some people have had bad experience. But it really is profoundly important to the American people that they have security about health care.

And is it your view—I'm now going back to your area of expertise—that, broadly speaking, the American healthcare system has been improved as a result of the passage of the Affordable Care Act?

Mr. GRUBER. Yes.

Mr. WELCH. Just be specific as to a number of items that are better now than before the Affordable Care Act was passed.

Mr. GRUBER. The Affordable Care Act has lowered the rate of uninsurance. About 10 million people have gained health insurance, according to the latest estimates.

The Affordable Care Act has ended the fact that individuals face pre-existing conditions and the inability and the financial insecurity that comes from having to buy insurance on their own.

And the Affordable Care Act has contributed to historically slow rate of healthcare cost growth.

Mr. WELCH. And is it also your opinion that the Affordable Care Act shares many things in common with what was called Romneycare in Massachusetts?

Mr. GRUBER. Yes, it is.

Mr. WELCH. And you worked on the—you worked on the Massachusetts version with the Romney Administration. Is that correct?

Mr. GRUBER. Yes, it is.

Mr. WELCH. And I think I heard you say that the uninsured rate in Massachusetts is about 3 to 4 percent.

Mr. GRUBER. It's fallen to—before the Affordable Care Act, it fell to about 3 percent. It may be lower today.

Mr. WELCH. And my understanding in the passage of the Massachusetts bill is that there actually was a bipartisan vote that supported that legislation. Is that correct?

Mr. GRUBER. Yes.

Mr. WELCH. Which we did not—that eluded us here, unfortunately, in this Congress.

Now, my view is that there's a lot of things we still have to fix in our healthcare system. I've never had the view that any single bill is going to be the magic fix, that it has to be an ongoing process.

And I'd ask you—and the cost issue on health care is the one that I think needs even more attention. But, first, I'd ask you and Ms. Tavenner: What has happened to the growth of healthcare spending since the passage of the Affordable Care Act?

Ms. Tavenner?

Ms. TAVENNER. I think, as we've discussed earlier, it's at historic lows. It's 3.7 percent, I believe, for 2013, which is the lowest on record since 1960.

Mr. WELCH. And does that apply across the board, whether a person is in the healthcare—in the Obamacare or on their own private or employer-sponsored healthcare?

Chairman ISSA. Ms. Tavenner, would you please put the microphone closer to you.

Ms. TAVENNER. I'm sorry.

It is across the board.

Mr. WELCH. All right. And, Mr. Gruber—or Dr. Gruber, what would you cite as important elements in the Affordable Care Act that has helped slow the rate of growth in overall healthcare spending?

Mr. GRUBER. The Affordable Care Act took a number of steps in a wide variety of directions to try to slow spending, most notably, I think, as Administrator Tavenner mentioned, change in the way that healthcare providers are reimbursed, penalties on readmissions for hospitals—we've seen an enormous reduction, which has lowered costs—and really just led to some very innovative thinking on how we can fix our broken fee-for-service medical system.

Mr. WELCH. And my observation is that, in Vermont, where we've had an ongoing discussion about health care and still are in the midst of that, we've got healthcare providers—our hospitals and our doctors—that are really focused on trying to figure out better ways to treat, to curb infections, to change the billing process, but they're on the front lines.

And what are some of the things that we can do to help them be successful in providing better health care at lower cost?

Mr. GRUBER. I think the most important thing is to continue to learn from the ongoing experiments that are going on in our Nation's healthcare system to try to understand what's working to deliver this low rate of healthcare cost spending.

Mr. WELCH. Ms. Tavenner?

Ms. TAVENNER. I would agree with that.

I would also say—and we have tried to do this through the Innovation Center—some upfront help in how to work with electronic health records and how to build an infrastructure that goes from fee-for-service to actually assuming risk and looking at it on a——

Mr. WELCH. And accountable care organizations are a part of that?

Ms. TAVENNER. Yes.

Mr. WELCH. All right. Thank you.

I see my time is up. Thank you. I yield.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Oklahoma, Mr. Lankford.

Mr. LANKFORD. Good morning, y'all.

So I want to go through several transparency issues.

Ms. Tavenner, what was the plan for States that are not self-sufficient in their oversight and their running of their exchanges by January the 1st? The law states, by January 1, 2015, they have to be self-sufficient.

Ms. TAVENNER. I think currently—I assume you're talking about the smaller States than——

Mr. LANKFORD. Yes.

Ms. TAVENNER. Currently, they are sufficient—self-sufficient and are obviously carrying through for 2015. We are in ongoing discussions with them.

Mr. LANKFORD. How are you defining "self-sufficient"?

Ms. TAVENNER. So, as you are aware, the funding ends—the 1311 funding will end at the end of this year. Most of them are dependent on their user fee and some other sources of revenue, and that will carry them through 2015. But we will be having ongoing discussions with some of the smaller States.

Mr. LANKFORD. The State of Vermont has had some conversations about the cost overruns that they're experiencing this year on the exchange, and they're pursuing Federal grants to help make that gap for this year.

Rhode Island had—even this week there was an editorial that came out in the Providence Journal suggesting to the Governor to punt this and to go back to the Federal oversight because of the cost overruns there.

So there is some buzz and some conversation about States and what they're going to do in 2015.

My question is—the law requires that they be self-sufficient by that point. And so my—a two-fold question on it.

One is, for the States that come back to you and say, "We need a grant. We need additional dollars. We need some additional help in 2015," will they get Federal dollars, contrary to the law saying they must be self-sufficient?

Ms. TAVENNER. There will not be Federal dollars. Any Federal dollars awarded have to be awarded by the end of 2014. So there is not additional——

Mr. LANKFORD. Could they get a larger portion given to them at the end of 2014 with the implication, "This is to help your shortfall this year and to help you for next year"?

Ms. TAVENNER. It's very specific what the grants can be used for. So I'll be glad to get you that information.

Mr. LANKFORD. Would it be used for 2015 spending?

Ms. TAVENNER. So that is very specific. So I'll have to get you that information. I can't answer that right now.

Mr. LANKFORD. Well, I'm just saying the law says they have to be self-sufficient by January the 1st——

Ms. TAVENNER. Right.

Mr. LANKFORD. —2015.

Ms. TAVENNER. And there——

Mr. LANKFORD. If the grant is given to them and those dollars can be used after January the 1st, 2015——

Ms. TAVENNER. I'm happy to——

Mr. LANKFORD. —that's contrary to the law.

Ms. TAVENNER. I'm happy to get you that information.

Mr. LANKFORD. I'm just—I'm just asking—I'm just asking—I'm not trying to be contrary now.

Ms. TAVENNER. Yeah.

Mr. LANKFORD. I'm just asking a question.

Is there any money being given to them that they will use after January the 1st, 2015?

Ms. TAVENNER. I'm not trying to be contrary either. I just have to get you specific information about each State. So I can't answer that in a general question. So I'll get you that information.

Mr. LANKFORD. Okay. Well, just a blanket response on it would be, "We're definitely going to follow the law on it. We're not going to—we're not going to give them extra funds this year that they'll really use next year, contrary to the statute."

Ms. TAVENNER. I am happy to get you specific information.

Mr. LANKFORD. Okay. Well, I—we'll look forward that that and we'll definitely—we'll assume that we're going to follow the law on that as it has been written out.

The question that goes along with that as well, again, going back to the transparency part of this—we have the numbers for this month, the 6.7 million that have the enrollment.

Will we get monthly effectuated enrollments from here on out? This is—we're a year into it. Will there be consistent snapshots a month at a time?

Ms. TAVENNER. So there—and I think this is what led to our mistake. So if you will indulge me for a minute, let me try to explain.

Effectuated enrollment are actually those individuals who have paid.

Mr. LANKFORD. That's right.

Ms. TAVENNER. Okay? So what we gave, the information, the 6.7, that was current. We will be able to run another effectuated enrollment toward the end of the year, which will cover 2014. So, yes, we can get you that information.

Mr. LANKFORD. Will we just get monthly snapshots from here on out——

Ms. TAVENNER. Well, there's really only 1 more month left.

Mr. LANKFORD. Right. But I meant just after that.

But the open enrollment period goes all the way through into early next year as well.

Ms. TAVENNER. So that's 2014. So let me close 2014. And last night we sent Chairman Issa a large data dump.

Mr. LANKFORD. A lot, including questions that you and I had talked about in September of last year that I got the answer for at 6:30 last night.

Ms. TAVENNER. Yeah.

Mr. LANKFORD. I appreciate that.

Ms. TAVENNER. We try. We may be slow, but we try.

The second thing has to do with 2015. And so the first time we would be able to actually look at effectuated enrollment in 2015 would probably be mid-February or late February.

Because, remember, payments are not made until sometime in January. Those payments have to be trued up. We have to check

them for accuracy, not double-count dental again. So you will probably be looking at that in the spring.

Mr. LANKFORD. So you're getting numbers on that consistently as well. We would just like to be able to get actual numbers on that.

So is that every month we'll get those after that? Will it be every 2 months? When will we get snapshot totals?

Ms. TAVENNER. So I——

Mr. LANKFORD. Because we've got to get into a rhythm. Just plan selections—I went on the Web site, put it in the shopping cart. It's not enough.

Ms. TAVENNER. Right. And this is where I think we will do regular intervals. We should be able to provide it to you monthly.

Mr. LANKFORD. And what was the estimate that we hoped to have by this point in the original rollout of the Affordable Care Act for effectuated enrollments for this month?

Ms. TAVENNER. You know, that's interesting. I don't know that we ever had a publicly stated goal for enrollment for 2014.

Mr. LANKFORD. CBO did, obviously.

Ms. TAVENNER. CBO had 7 million originally, and then they revised that downward to 6 million sometime in the spring of 2014. But I don't think we ever had a public goal. We're delighted with 6.7.

Mr. LANKFORD. The CBO number, I think, originally for the end of this year was 13 million. Is that correct?

Ms. TAVENNER. No. I don't think that's correct.

Mr. LANKFORD. Well——

Ms. TAVENNER. I'd have to look at that.

Mr. LANKFORD. 10? 12? What's the guesstimate?

Ms. TAVENNER. So—you mean for the end of 2015.

Mr. LANKFORD. 2014 or 2015.

Ms. TAVENNER. Yes.

Mr. LANKFORD. What's the enrollment?

Ms. TAVENNER. The end of 2014, I believe, was the 7 million that was revised down to 6 million, if I remember correctly. For the end of 2015, by this time next year, I think it was 13 million.

Mr. LANKFORD. Okay. Then—if the chairman will indulge me one last question line.

Just another transparency number, and that is the Medicaid numbers. I'm trying to get accurate numbers based on the expansion that occurred.

The new expanded definition of Medicaid in States that took that expansion, will we be able to get a listing of the difference between people that enrolled in Medicaid, just enrolling in Medicaid, and those who became eligible based on the expansion?

Ms. TAVENNER. Yes. We're actually working on that report even as we speak.

Mr. LANKFORD. Okay. When do you think we would get that number?

Ms. TAVENNER. Soon.

Mr. LANKFORD. Can you define "soon." I asked you questions in September, and I got them last night at 6:30. So help me define "soon."

Chairman ISSA. I might note that Congress will be going sine die soon.

Mr. LANKFORD. Yeah.

Ms. TAVENNER. Right. I don't think we'll meet that definition of "soon."

Chairman ISSA. So the Senator will be getting a report next year.

Ms. TAVENNER. Yes.

Mr. LANKFORD. So help me understand "soon" just so I can get a ballpark on——

Ms. TAVENNER. So I—really, it's in the process. So——

Mr. LANKFORD. In geological terms of "soon" or in more of a——

Ms. TAVENNER. In geological terms of "soon."

I think it would be early 2015.

Mr. LANKFORD. How about a month?

Ms. TAVENNER. How about a month. We'll try——

Mr. LANKFORD. That would be great.

Ms. TAVENNER. —for a month.

Mr. LANKFORD. Thank you.

I yield back.

Chairman ISSA. I thank the gentleman.

And early on in my chairmanship I probably should have gotten into the difference between geological, Biblical, calendar "soons," and I could have—I could have done so much to speed things up.

We now go to the gentlelady from New Mexico.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman.

And I also want to thank you for tackling a very difficult challenge often in this committee.

And while I—I have concerns about rollout from—that are—I think have been extended, actually, or not addressed as effectively as it could be from last year. I think we're all in a better place, given that this is a much smoother rollout.

But I want to hit, if I can, three things.

One, the Affordable Care Act deals with cost not just by making some transformations to a fee-for-service environment, but just by having more people covered and lowering uninsured and uncompensated care costs. You know, we have that shift, which is great, but it didn't do enough, in my opinion, to deal with quality or cost.

So we're going to have to continue to get people insured, and we're going to have to continue to deal with real cost issues and real structure issues in the way in which we reimburse providers and incentivize patients.

Given that, our State, New Mexico, had one of the lowest—or highest uninsured populations in the country pre-Affordable Care Act. And we are doing better, but we could do much, much better.

And, in fact, given our large Hispanic population, which continues to be a real challenge across the country, can—Ms. Tavenner, can you talk to me a little bit about what you're doing better about outreach and transparency and communication, education.

Because that—the Hispanic demographic, as I understand it, was the lowest. We didn't penetrate that population in terms of increasing coverage. So what are you doing to specifically address that?

Ms. TAVENNER. Right. I think, for starters, this is something—you're correct. We identified at the end of the open enrollment period last year that this was an area we had not penetrated as deeply as we wanted.

So we created a work group, and we've gone about it several ways. We've created advocacy groups. We've worked with navigators and assisters to make sure that they are trained not only——

Ms. LUJAN GRISHAM. Be specific about that advocacy work. Talk to me about specifically how that would translate to somebody in New Mexico having a better chance for being enrolled.

Ms. TAVENNER. So let me start with the navigators and assisters in New Mexico. We have done more to ensure that—as we made the awards this year, that we were dealing with bilingual staff in all areas because that's something—and not just a presence, but a significant presence.

We have been working through—and I can—I can get you information specific to your State, but we have been working with advocacy groups inside the State to work—many times——

Ms. LUJAN GRISHAM. I would really encourage you to do that. And I appreciate that you're trying to answer. And I want to make sure that, with my limited time, I get as much out as possible. I have a suggestion for you.

Ms. TAVENNER. Okay.

Ms. LUJAN GRISHAM. I attended many of the enrollment efforts last year, and you're touching an individual consumer six times in New Mexico. You lost them after the—if you have them in the room, get them enrolled. And that's a huge problem.

And you're minimizing, I think, the experience that our consumer here today presented—I really appreciate your presence here—that it can and does work. Now we need to make sure that people have that opportunity.

The second thing is I really wanted—as you're getting more people covered, I want us to start exploring—and I'm asking for the administration to work more closely with members of Congress.

Because while—we are seeing access and the exclusion of pre-existing conditions—having that be a barrier to providing coverage and premiums that are lower, lower in my State, certainly, but out-of-pocket costs and deductibles are higher, which means that you still don't get folks that are accessing the healthcare system even if they have coverage.

And while I think most folks still are not understanding that the Affordable Care Act really minimally does anything to insurance companies when we set the floor about who they have to cover, but they make decisions about their provider networks and they make decisions about what they're going to pay docs and they make decisions about what hospitals are going to be in their network and they create that environment and—we're going to have to do more to get them to lower total costs and to create much more expansive provider networks. And I'm encouraging you to be very assertive in that role and work with members of Congress to get that done.

And with the limited seconds left, on the—the last part is, like my colleague, Senator Lankford, since August and September, we've been waiting for you to respond to New Mexico about behavior health access. While that's not particularly related just to this hearing in the ACA, it is a transparency issue. And we are looking for numbers.

And my understanding is that now another provider has dropped all behavior health coverage in the southern part of the State. And

I'm—I'm really encouraging you that, while you wait for 3 months to respond, that's 3 months where New Mexicans don't get healthcare coverage in Medicaid. And I'm encouraging you to take a stronger, more productive role to stop the damage in New Mexico.

Ms. TAVENNER. Thank you. We'll do.

Chairman ISSA. I thank the gentlelady.

We now go to the gentleman from Arizona, Dr. Gosar.

Mr. GOSAR. Thank you, Mr. Chairman.

Dr. Gruber, in your testimony, you stated, "I'm not a political advisor nor a politician." I like that statement. I'm a dentist by trade impersonating a politician. So I want to commend you on that.

But there's something very similar about you and me, as you're very astute to detail, like me. Right?

Mr. GRUBER. I like to think I pay attention to detail. Yes.

Mr. GOSAR. Yeah.

Because the beauty is in the detail. Right?

Mr. GRUBER. Often that is the case.

Mr. GOSAR. Yeah.

So did you lie about any of your comments when you publicly were—some of the aspects that we saw on television? Were those outright lies or were they just not politically pleasant?

Mr. GRUBER. They were not lies.

Mr. GOSAR. They were not lies.

So they were truthful in regards to a stalwart evaluation of a process. Right?

Mr. GRUBER. They were, once again, my inexcusably trying to conjecture about a process about which——

Mr. GOSAR. No. But I want to go back to this.

Mr. GRUBER. —I have no expertise to——

Mr. GOSAR. You weren't lying. You were very truthful about the process.

Mr. GRUBER. I was, once again, trying to conjecture on——

Mr. GOSAR. It may—it may not be politically savvy or, you know, like, as we say, red meat, but what you were doing is you were very honest in regards to the process.

Mr. GRUBER. Once again, I was making statements about which I really didn't have the expertise to make—to make. I was just speaking out of turn.

Mr. GOSAR. Oh. I don't know about expertise. Let's go down that.

We just talked about the beauty is in the detail. You're very astute about the economic aspects. You had your inclinations and models with Romneycare. You actually had these models with Obamacare. So you're very astute in regards to this.

I mean, being from MIT, I mean, that's one of the most prestigious acclaimed environments in the world. Right?

Mr. GRUBER. I believe so. Yes.

Mr. GOSAR. And when you're proud of a product, you really are vested in that product. So you're going to be very watchful as it takes place, as it changes, as it morphs, and maybe as it has contradictions. Right?

Mr. GRUBER. I was very proud and invested in the modeling and the numbers I produced. Yes.

Mr. GOSAR. Yes. So I'm going to go back to it.

So you were very honest in your evaluation of what transpired. We saw the real Jonathan Gruber in there. I mean, I watched you last night for almost 4 hours on all the different aspects. I read body language extremely well. So you were in your element when you were talking about the critiques of this healthcare law.

So let me ask you something. So who helped you with your testimony today? And who signed off on your testimony today?

Mr. GRUBER. No one signed off on my testimony. It's my own testimony. I did receive assistance from my counsel.

Mr. GOSAR. Did you also have assistance from HHS? The administration? The minority staff committee?

Mr. GRUBER. No, I did not.

Mr. GOSAR. Okay. Now, were you coached in any way what to say?

Mr. GRUBER. I—the words that are written I said are my own. As I said, I did work with my counsel in preparing them.

Mr. GOSAR. Okay. So when we had numbers of my colleagues asking you in regards to numbers, you're pretty astute with numbers. Right? You know those numbers?

Mr. GRUBER. Once again, the numbers that I produced in terms of my micro-simulation modeling I'm very confident in.

Mr. GOSAR. Ms. Tavenner, you're also pretty good with numbers, aren't you?

I mean, I've been watching the bantering back and forth. And when the other side asks you a question, you're very prepared with numbers, but when we ask you a question, you're very inappropriately responsible to numbers.

But you're very good with numbers because you hear them all day long; do you not?

Ms. TAVENNER. I do hear numbers.

Mr. GOSAR. You do. I agree. I agree.

So, you know, this preponderance of looking at the falling rate of dollars being spent on health care—I want to go back to the microcosm called dentistry.

Did anybody even think about this? I mean, what kind of access—and the gentlelady from New Mexico talked about access. Did that ever come into your aspect, that the deductibles are so high in the dental aspect that no one's using them? Did that ever occur to you?

Ms. TAVENNER. You know, if you look at what we did around the dental proposed in final rule last year, we actually tried to make some accommodation there to handle the deductible, to improve it, if you will.

Mr. GOSAR. Well, that's nice, I mean, you know, changing around some of those aspects. But, you know, from my standpoint, when people don't actually get care, you're actually creating a bigger problem.

You know, the gentleman from Maryland is aware of the Deamonte Driver aspect. When people can't pay for it, it reduces access. Children go walking around without getting health care, and all of a sudden we have that child that dies.

You're aware of that situation?

Ms. TAVENNER. Yes. I'm aware of the situation that occurred.

Mr. GOSAR. So, once again, it becomes that fluff part, you know, because I heard people on the other side over here saying this was the most transparent process. Really? It didn't involve anybody on this side.

And I'm very well aware of having, you know, a bipartisan type of application to health care. Because health care's a personal sport. The patient has to be involved. And it's not a Republican or Democratic issue, but it became a very Democratic issue.

They used reconciliation and a lot of gimmicks to pass it. We were deceitful in everything that we've done, I mean, everything. Instead of acknowledging the problems and being truthful on it, we heard tortured language, you know, from the gentleman to your left.

This was outright the wrong way to go. So from that standpoint, it sickens me to actually hear what I heard today from both you and from Mr. Gruber. It's sad, you know, that we're playing with people's health care when they deserve something better.

And, frankly, not having the facts is disdainful. Congress has a right to those facts. We've seen this perpetually with this administration from Fast and Furious to Benghazi, to here, to the IRS. It's disdainful. Equal branches of Government should have that opportunity, and the American people deserve better from both of you.

Thank you.

Chairman ISSA. Thank you.

Was there an answer? Okay.

We now go to the gentleman from Pennsylvania, Mr. Meehan.

Mr. MEEHAN. Thank you, Mr. Chairman.

Mr. Chairman, I want to express my appreciation to you and the ranking member for your leadership of this committee over the course of the years.

I want to thank the folks for being here today.

I mean, I know there's a lot of characterizations of testimony and what things have gone on. We go back and forth on this committee. I mean, I know in the end—and I think you would agree—in the end, our—the people we represent, the American consumers, aren't—I find to be actually quite intelligent with their efforts to try to become good consumers of healthcare information.

And these aren't "gotcha" questions, but we don't get a chance to have you before us much, Ms. Tavenner. And what I'm seeing out there right now is patients who are—they are the holders of their electronic health records, but they're bouncing around from system to system.

I mean, they are frustrated. Their costs are rising. They aren't getting the access to the doctors they had before. They're paying more out of cost, which I think is one of the factors that's driving some of the containment of health care. But at the same time, what's happening is I think people aren't getting health care. They're going to be paying more for it down the road.

But my problem is: How are we working on assuring that these systems of electronic health records can communicate through the larger structure? It seems if you're in a health system, you can do okay. They'll send records down to your doc and, you know, pre—with this whole idea of the medical home, but if you have a surgeon

outside of another network, it doesn't seem the systems are communicating with each other. Everybody's saying, "Use my system."

What are we doing? How are you working to try to break through those adhesions so we can get to a point where we can allow consumers to be much better in helping them guide their health care and negotiate through the systems, whomever the health care provider is?

Ms. TAVENNER. I think what you're talking about with the issue of interoperability is one of our remaining challenges.

You're right. We have strong systems within a system. Physicians and hospitals tend to work together well, but when we are moving across systems, that's still a challenge.

And that's part of—as we look at Stage 3 of meaningful use, one of the big pieces that we are going to stress is this whole issue of interoperability.

We have some pilots now. We have some examples. But the question is: How do we get that to the mainstream——

Mr. MEEHAN. Do you have—I mean, can you give me some sense right now? Because that does appear to be and I think it's going to continue to be if we don't find a way.

Because, look, people move. They're here today. My elderly will be down—they may go away for 2 or 3 months in the wintertime now to different physicians.

Ms. TAVENNER. So I see it happening in two ways. One obviously is with payment strategy because that tends to work. The second is with our certification requirements.

So we'll be working with the Department, with HHS and CMS—because this is kind of a two-group effort—to make sure that we put in our certifications and other requirements, those measures that will push interoperability. Because I agree with you. It's critical.

Mr. MEEHAN. And from the perspective of the patients, then, are we doing more to be able—or how are you helping us to be able to understand what they're going to face in premiums or out-of-pocket costs or provider quality, in particular? How are you moving to be allowing the patient to become a better consumer?

Ms. TAVENNER. So that is—again, we spent a lot of 2014 just helping people sign up, and now the second part is how do you educate those individuals who've signed up.

So we have started work that we're doing. It started within CMS. We're now putting it more broadly out to the consumer.

It's called From Coverage to Care, so helping people understand what deductibles are, what co-payments are, how they—one thing that's greatly misunderstood is that individuals don't pay co-pays and deductibles for preventive care and for other types of procedures that are preventive in nature.

Mr. MEEHAN. Well, certain kinds. But, I mean, there's a lot of care——

Ms. TAVENNER. Yes.

Mr. MEEHAN. —that they——

Ms. TAVENNER. Yes, there is.

Ms. MEEHAN. —do. And, unfortunately, that's often when they're——

Ms. TAVENNER. Right.

Mr. MEEHAN. —going to see the physician.

Ms. TAVENNER. So that's how we'll start. And we'll work with issuers, we'll work with advocates, to get the education out there to help people understand it. It's pretty complicated.

Mr. MEEHAN. Well, it is complicated, and particularly for the consumers themselves. There's a lot more. I don't agree with the way the system's set up, but that is really fundamentally for working where we've got to make significant, significant improvements. And I hope you continue to focus on that——

Ms. TAVENNER. We are focusing——

Mr. MEEHAN. —as a prospective direction.

Ms. TAVENNER. —on consumers. I agree with you.

Mr. MEEHAN. Thank you.

Chairman ISSA. Would the gentleman yield?

Mr. MEEHAN. Yes.

Chairman ISSA. I'm going to ask unanimous consent that the publication, "Data-Mined: Numbers You Can Use," be placed in the record. Without objection, so ordered.

Chairman ISSA. Ms. Tavenner, I just want to make sure I get this right.

According to this article, healthcare costs are up, as you said, about 3—you know, a little under 4 percent. But in order to get that figure, utilization is down.

So the total amount of services dropped off and the costs per services went up, meaning if you need services, they went up a lot more than 3 percent.

The cost of service, of total expenditure, didn't go up as much because people are essentially not buying as much. Isn't that true?

Ms. TAVENNER. I don't believe that's true.

Chairman ISSA. Do you know that it's not true or are you just saying that you just don't want to believe that? Maybe your staff can tell you that, in fact, this is pretty well authenticated.

Ms. TAVENNER. Well, I'd have to see the article. I haven't seen the article.

Chairman ISSA. So you don't know if, in fact, healthcare costs are up and utilization of services are down, particularly because people have higher out-of-pocket expenditures?

Ms. TAVENNER. Well, I——

Chairman ISSA. You don't know that, do you?

Ms. TAVENNER. If you'd let me finish my sentence, what we're seeing on the in-patient side is that in-patient admissions are down, which may mean more appropriate use of services, not necessarily that it's bad.

Chairman ISSA. Okay. So you know that services are—quantity of services are down, and your conjecture is that it might be a good thing?

Ms. TAVENNER. I think it can be a good thing. Yes.

Chairman ISSA. Thank you. I'll accept that that's your conjecture.

We now go to Mr. Gowdy for his 5 minutes.

Mr. GOWDY. Thank you, Mr.——

Chairman ISSA. Oh. I'm sorry.

Is the gentleman— he yielded to me.

Okay. Mr. Gowdy. Oh. Mr. Amash has returned.

I apologize, Mr. Gowdy.

Mr. Amash is recognized for 5 minutes.

Mr. AMASH. Thank you, Mr. Chairman.

Thank you, Mr. Gowdy.

I have a question for Dr. Gruber concerning tax credits.

Dr. Gruber, at a conference in 2012, you said, "If you're a state and you don't set up an exchange, that means your citizens don't get their tax credits."

That statement was consistent with other public statements you made, all of which expressed your belief that, if a State refused to set up an Obamacare exchange, the citizens of that State could not qualify for Obamacare tax credits, yet the administration has ordered the distribution of billions of dollars to persons who live in States that don't have state-run Obamacare exchanges.

This executive action seems to conflict with your numerous past statements about how Obamacare works. There's a lawsuit before the Supreme Court on this issue.

In your testimony this morning, you claimed that you misspoke repeatedly in your prior public statements. You say that, "The point I believe I was making was about the possibility that the Federal Government, for whatever reason, might not create a Federal exchange."

You further explained this morning, in response to Mr. Connolly's question, that you think the administration can choose whether or not to create Federal exchanges in States that refuse to set up those exchanges. So if a State refuses to set up an Obamacare exchange and the Federal Government refuses to set up an Obamacare exchange, then citizens of that State can't receive Obamacare tax credits.

Dr. Gruber, your new explanation of your previous public statements makes little sense.

The law requires the Federal Government to create Obamacare exchanges in States that refuse to create the exchanges for themselves. Therefore, every State must have an Obamacare exchange either set up by the State or the Federal Government. If that's the case, then every State must have an Obamacare exchange.

What did you mean when you repeatedly said that the citizens of some States may not qualify for Obamacare tax credits? Isn't it the case, as you said previously, that people who live in States without a state-run exchange consist receive Obamacare tax credits?

Mr. GRUBER. Once again, when I made those comments, I believe what I was saying was reflecting uncertainty about the implementation of a Federal exchange by January 1st, 2014.

Mr. AMASH. Are you suggesting that the law doesn't require the Federal Government to set up an exchange in States that don't have exchanges?

Mr. GRUBER. I don't recall exactly what the law says. What I'm saying is there were certainly——

Mr. AMASH. I'm sorry.

You ran the economic model on Obamacare and you don't know what the law says?

Mr. GRUBER. In every single economic model I ran, I always assumed that exchanges—credits would be available regardless of

whether the exchange is run by a State or the Federal Government.

My comments in January of 2012 were reflecting the uncertainty about whether those Federal exchanges might be ready by January 2014.

Mr. AMASH. So you were paid hundreds of thousands of dollars to run an economic model on Obamacare and, yet, you were making statements that didn't reflect the actual language of Obamacare?

Mr. GRUBER. I made a series of statements which were really just inexcusable.

Mr. AMASH. All right. Thank you.

Chairman ISSA. Would the gentleman yield?

Mr. AMASH. I yield back.

Chairman ISSA. Would the gentleman yield?

Mr. AMASH. Yes.

Chairman ISSA. I just want to make sure I understand.

We famously heard that you have to pass it to find out what's in it. So following up on Mr. Amash, at the time of its passage, were you aware that the language would have allowed your model not to actually be executed, in other words, that States were not going—if they chose not to—if even one State chose not to provide, the language explicitly was preventing that reimbursement and, thus, you'd have a different result? Were you ever given that information so you could run a revised model?

Mr. GRUBER. I was always modeling the availability of tax credits under the assumption they'd be available in all States.

Chairman ISSA. Okay. So you always modeled something that was different than the law and—but let me just go and do one quick thing while I've got the time.

You're an author, and I've purchased one of your books. In that book, it's, "Dr. Jonathan Gruber is a Professor of Economics at the Massachusetts Institute of Technology and Director of the Healthcare Program at the National Bureau of Economic Research. He was a key architect of Massachusetts' ambitious healthcare reform effort and consulted extensively with Obama Administration and Congress during the development of the Affordable Care Act. The Washington Post called him possibly the Democratic (party's) most influential healthcare expert."

Do you recognize that as being in your book?

Mr. GRUBER. Yes, I do.

Chairman ISSA. Okay. And then it—so if you—if you're an author, you put it in your book and you recognize it, do you stand by it?

Mr. GRUBER. Absolutely.

Chairman ISSA. So you are, in fact, a key architect of the act in Massachusetts under Governor Romney and that you did—you did contribute extensively to the administration and to Congress?

Mr. GRUBER. I contributed an enormous amount of modeling and economic support to the administration and Congress. Yes.

Chairman ISSA. You can—it says "and consulted extensively with the Obama Administration and Congress during the development of the Affordable Care Act." That's——

Mr. GRUBER. That's provided——

Chairman ISSA. And you quoted The Washington Post.

And you stand by all of that.

Mr. GRUBER. I—I cannot stand by the Washington Post's opinion of my role in the Democratic party, but I can certainly stand by the fact that I provided an enormous numbers of hours in——

Chairman ISSA. Well, you put it in your book. Right?

Mr. GRUBER. I was quoting—it was a flattering quote to me and I put it in my book, but it's their definition, not mine.

Chairman ISSA. So you want to stand by something you put in a book, including the "consulted extensively with the Obama Administration and Congress," but now you want to distance yourself from The Washington Post?

Mr. GRUBER. I'm just saying it wasn't my words. I put them in quotes because they're Washington Post's words.

Mr. SMITH. Oh. Oh, okay. So we'll—we'll let The Washington Post's credibility speak for itself. I thank you.

We now go to Mr. Gowdy.

Mr. GOWDY. Professor Gruber, what did you mean when you said, "They proposed it and that passed because the American people are too stupid to understand the difference"?

Mr. GRUBER. When I said that, I was at an academic conference, being glib and, quite frankly, trying to make myself seem smart by insulting others.

Mr. GOWDY. Are you offering the venue as a defense for—for saying it or for meaning it?

Mr. GRUBER. I'm offering it as a defense for using inappropriate and hurtful, inexcusable language to——

Mr. GOWDY. Well, what did you mean by "too stupid to understand the difference"?

Mr. GRUBER. Congressman, I didn't mean anything about it—by it.

Mr. GOWDY. Well, you said it. You had to have meant it.

Mr. GRUBER. I was, once again, being glib and trying to make myself seem smarter by reflecting——

Mr. GOWDY. Well, what did you mean when you said it was "a very basic exploitation of the lack of economic understanding of the American voter"? What did you mean by that?

Mr. GRUBER. Once again, it's another example of my inexcusable arrogance in trying to insult others to make myself seem smarter.

Mr. GOWDY. Well, what did you mean when you said, "The American people don't care about the uninsured"?

Mr. GRUBER. Once again, that was an overstatement of trying to conjecture on political topics on which I'm not an expert.

Mr. GOWDY. Well, you know what, Professor Gruber? I have listened to you all morning talk about your lack of political acumen and that you're not a politician; so, therefore, you don't know not to call people stupid. Most of the people watching this morning aren't politicians and they don't call people stupid.

And I can't help but note, Professor Gruber, in another one of your quotes, which I'll read to you, "That was politically infeasible"—do you remember saying that?

Mr. GRUBER. Yes.

Mr. GOWDY. So you do like to factor in the politics from time to time, don't you? And I also happen to note, Professor Gruber, that,

usually, you insult the American voter, not the American public. So you do factor in politics, don't you?

Mr. GRUBER. I have tried—a number of occasions pretended that I know more about politics than I did.

Mr. GOWDY. Do you think not being a politician is a defense? Is that your defense this morning?

I mean, I know initially you said that you offered these comments at a conference—I think you meant conferences, plural, but you said conference—when you went on a very obscure television show and initially apologized for what you said were inappropriate comments.

And now today your defense is that you're not a politician. Is that the best you can come up with?

Mr. GRUBER. The best I can come up with is to really just apologize for an inexcusable and——

Mr. GOWDY. Well, but I want to know—I mean, the pervasiveness of your quotes is so much that it has to be more than that. It has to be more than just an episodic mistake that you made.

Well, here. Let me keep going. See if this helps you any.

What did you mean when you said you wished that you had been able to be transparent, but you'd rather have the law than not?

Mr. GRUBER. Once again, it was my trying to conjecture about a political process in which I'm not an expert.

Mr. GOWDY. Well, what did you mean when you said it was written in a tortured way to make sure the CBO didn't score the mandate as a tax?

Mr. GRUBER. Once again, it was using inappropriate language to try to sound impressive about something to my colleagues.

Mr. GOWDY. Do you see a trend developing here, Professor Gruber?

Mr. GRUBER. I don't understand the question.

Mr. GOWDY. It's a lot of stupid quotes you've made. That's the trend.

Mr. GRUBER. A lot of——

Mr. GOWDY. Do you see them?

Mr. GRUBER. —inexcusable quotes. Yes.

Mr. GOWDY. Right.

And, again, your defense is that you're not a politician. The lack of transparency is a huge political advantage.

Well, what is a non-politician doing talking about political advantages?

Mr. GRUBER. A non-politician is talking about political advantages to try to make himself seem smarter by conjecturing about something he doesn't really know about.

Mr. GOWDY. So you're a professor at MIT and you're worried about not looking smart enough?

Mr. GRUBER. Yes.

Mr. GOWDY. Okay. Well, you succeeded, if that was your goal.

Now, I want to ask you: Are you sorry—when did you realize that these comments were inappropriate? Because it took you about a year to apologize.

So I'm trying to figure out if you realized sooner that they were inappropriate or—or was it just the morning before you went on

MSNBC that you realized that it was inappropriate. When did you realize that these comments are indefensible and inappropriate?

Mr. GRUBER. I honestly didn't remember making them.

Mr. GOWDY. You didn't remember calling your fellow citizens stupid and you didn't remember saying that you're the only person who cares about the uninsured and that the rest of your fellow citizen don't give a damn about the uninsured? You don't remember saying that?

Mr. GRUBER. I don't. Because they were really glib and thoughtless comments that I made.

Mr. GOWDY. Well, Professor Gruber, let me just tell you what it looks like from this vantage point, is that you thought that they were really pithy and really funny until the video showed up. And then—even then it took you a little while to apologize.

And what I'm struggling with is whether your apology is because you said it or because you meant it. Which are you apologizing for, because you said it or because you meant it?

Mr. GRUBER. I didn't mean it. I'm apologizing——

Mr. GOWDY. All of these quotes that I just read to you, you didn't mean a single one of them, not a one?

Mr. GRUBER. What I've—what I said, Congressman, is that I was using glib, thoughtless, and really inexcusable language to try to——

Mr. GOWDY. Well, you used them a lot. You used them a lot, Professor Gruber, which tends to undercut the notion that you were sorry for an episodic misstatement. I just read to you about ten.

Do you see why people might possibly think the apology is a little disingenuous, maybe?

I yield back, Mr. Chairman.

Chairman ISSA. Will the gentleman yield me just 10 seconds?

Following up——

Mr. GOWDY. Certainly.

Chairman ISSA. —on Mr. Gowdy, when you made these repeated comments, these glib, inappropriate comments, in an intellectual community with lots of other like-minded people, did anybody come up to you and tell you that what you were saying was inappropriate?

Mr. GRUBER. Not that I can recall. No.

Chairman ISSA. I guess what you said was popular in that community.

We now go to the gentleman from Texas, Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much.

Dr. Gruber, you have the dubious distinction of having generated more buzz in the district that I represent than anybody but Eric Holder when coming up before this committee.

And so I apologize if some of my questions are disjointed. Several of them come from Twitter, from folks who wanted me to ask you a question.

One I got was, "Why won't he answer the question?" But I'm going to translate that more into—put my lawyer hat on and reask that.

With respect to questions about the money that you made consulting on Obamacare from the both Federal and state government, you've constantly lawyered up or not answered the questions or not

recalled. I want to be perfectly clear. This committee has government-wide jurisdiction. We are the taxpayer watchdogs.

I am asking you right now flat out to provide a detailed list of every penny of taxpayer money that you have made from the Government consulting on Obamacare, be it from the Federal Government, be it from the State on a federally funded grant, or from a State.

I am asking you to provide that within 30 days, and I would look forward to you providing it to the committee. And we'll work with Mr. Chaffetz, the incoming chairman, to subpoena that if it's not supplied voluntarily.

So let me go on to some—a couple of questions.

Do feel bad about taking all this money from Obamacare from people you call stupid?

Mr. GRUBER. The money that I received for my economic consulting work was compensation for the quality work I did in economics and modeling. And so I think it was appropriate.

Mr. FARENTHOLD. Okay. Do you—you worked—you had 21 meetings at the White House. You met once in the President's office. You talked to him.

Based on what—the information you provided, things you heard in this meeting, your—these meetings, and your general understanding, do you believe that the administration was truthful and transparent in the things they said working up to the passage of Obamacare, like, if you like your healthcare, you could keep it?

Mr. GRUBER. I believe that the discussion of the Affordable Care Act was fully transparent, and there was enormous discussion of many—of all of the aspects of the law.

Mr. FARENTHOLD. Do you feel like—well, now, you testified earlier that you knew there was going to be some churn.

Do you feel like you were complacent in presenting the Affordable Care Act in a dishonest or untruthful manner? And is that something you would like to apologize for as well?

Mr. GRUBER. The numbers that I presented as part of my economic modeling to the administration and Congress were all to the—my best of economic—my economic modeling ability.

Mr. FARENTHOLD. But you knew some of the things that the administration were saying, some of the things in the debate, were not true.

Why didn't you raise a red flag? Wouldn't that make you complacent?

Mr. GRUBER. I'm—I'm not a political advisor. It's not my job to discuss what the President's saying or not saying.

Mr. FARENTHOLD. Let me—just another question from Twitter.

Did your insurance get more expensive? Are you paying more for it? Is your—did your deductible go up?

Mr. GRUBER. Health insurance costs in America have gone up every year for the past 50 years.

Mr. FARENTHOLD. Did yours go up substantially more when you fell under the Affordable Care Act than it had in past years?

Mr. GRUBER. No, it did not.

Mr. FARENTHOLD. Mine sure did.

Let me see. Where else do I want to go?

When you were talking to Mr. McHenry, you said that the Affordable Care Act did not solve the problem of rising health insurance costs. You went on to say that it was a first step. What are the next steps?

Mr. GRUBER. The next step really, in my view, is to learn from the first steps that are implemented by the Affordable Care Act, to learn what's working, what's not, and to try to build on that towards stronger cost controls in the long run.

Mr. FARENTHOLD. So if you were to sit down and write a new—Affordable Care Act 2.0, what would be the top two or three things you would want to include in it?

Mr. GRUBER. Right now the number one thing I would say is that we need some time to see what is happening with what we did in Affordable Care Act 1.0, to learn from that, and then to not be in a rush, but, rather, to sit down, having learned from that, and take the next necessary steps.

Mr. FARENTHOLD. Would you consider the ultimate solution to rising healthcare costs to be a single payer or government-run system—a completely government-run system?

Mr. GRUBER. I don't think there is a single ultimate system to rising healthcare costs.

Mr. FARENTHOLD. All right. And you've also been thrown under the bus by the President as just another—another advisor. I think I would be insulted by that, based on the—certainly by the Washington Post article that, you know, said how—how key you were to that.

Mr. FARENTHOLD. You want to come clean and just tell us if you told them any of things that they were saying were untrue and who you told stop them? Kind of loops back into my—my complacency question. Could you have stopped some of those untruthful statements? And why didn't you? And would you like to apologize for not doing that?

Mr. GRUBER. I am not a political adviser.

Mr. FARENTHOLD. All right. Well, I'll yield back. Thank you, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from the Massachusetts Institute of Technology, Mr. Massie—and Kentucky for that matter, too.

Mr. MASSIE. Yes, Kentucky. It's been a bad few couple of months to be from MIT, thanks to one our witnesses.

I've reviewed your extensive and impressive curriculum vitae. It's 17 pages long. And would it be accurate to say that you chose economics, particularly the field of economic models, to inform public policy as a—as part of your career?

Mr. GRUBER. Certainly one of the things I find appealing about economics is how it can make informed public policy.

Mr. MASSIE. So you're in an a position of trust. You've been to the White House many times. You've met with the President. Could you tell us again what you met with the President about?

Mr. GRUBER. I had one meeting with the President. There were six experts and about 15 other members of the administration.

Mr. MASSIE. And you were an expert on the—how to control the costs.

Mr. GRUBER. Yes. The actual costs and also to discuss healthcare reform in Massachusetts and how it worked.

Mr. MASSIE. Was an Independent Payment Advisory Board part of the that discussion or is that something that you would be an expert on?

Mr. GRUBER. I don't believe the Independent Payment Advisory Board existed at that meeting.

Mr. MASSIE. Okay. But you're very well aware of it and advise politicians on that.

Mr. GRUBER. I'm aware of the Independent Payment Advisory Board, yes.

Mr. MASSIE. So given this position of trust and the fact that you take taxpayer money, I have a question for you.

Have you had any ethics training at MIT or Harvard?

Mr. GRUBER. As a condition for receiving Federal grants, we have to take a human subjects test on ethical issues.

Mr. MASSIE. And MIT has an ethics policy; correct?

Mr. GRUBER. Yes.

Mr. MASSIE. So this is a little bit philosophical, what I'm going to ask you now. But you're a doctorate of philosophy, so to speak.

Under what circumstances is it ethical to deceive someone for their own benefit?

Mr. GRUBER. I'm not aware of circumstances in which that's true.

Mr. MASSIE. Could you imagine maybe an adult could withhold information from children for their own benefit?

Mr. GRUBER. Yes.

Mr. MASSIE. Would there be ethical—now, so if you understand that, you understand why my constituents are so offended by your proposition that it's okay to deceive or obfuscate for somebody's benefit. Compounding the insult that you delivered to them is the fact that they pay your salary.

So do you understand fully why it was so insulting? You patronized them. You were condescending.

Mr. GRUBER. I was, I agree.

Mr. MASSIE. And my colleagues on the Democrat side of the aisle are upset with you simply because you committed candor. You said what you thought. You said what they were all thinking when they wrote Obamacare, that they knew what was best for my constituents.

I submit to you my constituents are not your children they have the right of self-determination.

So this gets me to another instance where you committed candor.

In 1997, you coauthored a paper entitled "Abortion Legalization and Child Living Circumstances: Who is the Marginal Child?"

On page 20, you conclude that abortion legalization appears to be associated with an improvement in the average living circumstances and birth outcomes among a birth cohort.

And on page 26, you state that your research indicates that the legalization of abortion saved the government $14 billion in welfare payments through 1994.

Is providing more access to abortion, is that a worthy social outcome to achieve cost savings for the government?

Mr. GRUBER. That is not what my paper was about. It wasn't a philosophical paper. It was about empirical facts.

Mr. MASSIE. Tell me what you meant by this sentence: By 1992, all cohorts under the age 18 were born under legalized abortion, and we estimate steady State savings of $1.6 billion per year from positive selection.

What did you mean by "positive selection"? Because in this paper, you're talking about providing more access to abortions to a socioeconomic strata of our constituents.

Mr. GRUBER. What the paper did was look at——

Mr. MASSIE. What did you mean by "positive selection" in abortions?

Mr. GRUBER. In that paper, we were studying the characteristics of children who were born before and after abortion was legalized. By comparing those characteristics, you can infer the characteristics of the kids who were not born.

Mr. MASSIE. So what you inferred I find chilling. What you inferred is that if we reduce the number of people or children born, life will be better for the rest of us still living. Specifically, you seem to suggest that if we eliminate or reduce the number of poor people that are born, this will make life better for all Americans.

And this gets me to my final point, which is, the Independent Payment Advisory Board. My constituents fear that this is, in fact, a method by which Obamacare will ration healthcare for the elderly and, therefore, implement cost savings for Medicare.

So my question to you is, does your philosophy on abortion, that it can save money and improve outcomes, have any implications in the realm of end-of-life care?

You argue that abortions of poor children raise the average living circumstances in your paper for the rest of us and save the government money.

So, Dr. Gruber, if there are fewer elderly people, particularly poor elderly people, wouldn't that save a ton of money, too? As an economist, wouldn't you think that would save them money, too? And do you understand the dangerous implications of going down this path?

Mr. GRUBER. I have no philosophy of abortion. I have no philosophy of end-of-life care. My job as an economist is to deliver the empirical facts so that you all can make the necessary——

Mr. MASSIE. What would your facts be on the elderly?

Mr. GRUBER. I don't understand the question.

Mr. MASSIE. The end-of-life care. Do you advocate that the Federal Government should ration that?

Mr. GRUBER. No, I do not.

Mr. MASSIE. As an economist, would it save money?

Mr. GRUBER. I do not advocate the Federal Government should ration end-of-life care.

Mr. MASSIE. Thank you. I yield back.

Chairman ISSA. I thank the gentleman.

We now go to the very patient Mr. Meadows.

Mr. MEADOWS. Thank you, Mr. Chairman. And it has been a privilege to serve under your leadership, truly an honor.

Dr. Gruber, I'm going to come to you because you have made over 20 statements this morning that you are not political. And yet I think the American people that are viewing this this morning,

they would see your testimony is political. It is contrived. It is orchestrated and, honestly, not transparent.

You have prepared for this testimony this morning with your counsel. Is that correct?

Mr. GRUBER. Yes.

Mr. MEADOWS. How many hours does it take to be transparent and honest of preparation? How many hours of preparation does it take to be honest and transparent with the American people?

Mr. GRUBER. I don't understand the question.

Mr. MEADOWS. Why would you have to practice your testimony in order to give an honest, transparent answer to the questions posed to you today?

Why would you have to practice? Because you have practiced because you said the exact same thing, "glib," those words, you know, they are not heartfelt. You've practiced that, haven't you?

Mr. GRUBER. I have practiced, but I disagree that they are not heartfelt.

Mr. MEADOWS. Okay. So let me ask you about your economic model. Because you said it was accurate. So how many in your economic model, how many Americans would lose their health care, could not keep their plan, as the President promised, under your economic model?

Mr. GRUBER. I don't recall the exact number.

Mr. MEADOWS. So you can recall all these other figures, but you can't recall that one?

Mr. GRUBER. No, I can't——

Mr. MEADOWS. Okay. Can you get that to us?

Mr. GRUBER. Once again——

Mr. MEADOWS. Oh, you don't want to get that to us.

Mr. GRUBER. Once again, that depends on——

Mr. MEADOWS. Can you get us the number in your economic model of those that were not going to be able to keep their health care? Simple yes or no.

Mr. GRUBER. I don't know.

Mr. MEADOWS. So you don't have it in your model.

Mr. GRUBER. I don't know whether I can or not. You'll have to take that up with my counsel.

Mr. MEADOWS. Mr. Chairman, I see this witness as being very reluctant to give honest answers. And it is very troubling, not just to me but to the American people.

Ms. Tavenner, I'm going to go to you, because the administration didn't want you to sit beside Mr. Gruber because they were afraid that his lack of transparency would be contagious, I guess, or you would be viewed in a different model.

I'm troubled because I asked you some questions at the last time you appeared before this committee. And I asked you at that particular time about a rollout. And we went back and forth, and why did you not delay it?

And your response to me, it says from Ms.—Well, I didn't think it was possible the way the FFM was configured to do that, nor did I think it was necessary.

Do you stand by that today?

Ms. TAVENNER. I stand by the fact that I felt we were in good position to roll out last October.

Mr. MEADOWS. Okay. I'm in—and I'd ask if you could put up the slide, if the staff could put up the slide.

I'm in possession of an email stream from your second in command and Mr. Todd Parks that goes back and forth. This email stream was less than 48 hours before rollout. It was on September the 29th. And in that, it says, Just so we're clear, Ms. Tavenner decided in January that we were go going to go no matter what. It goes on even further to say, Hence the really cruel, uncaring march that has occurred since January when she threatened me with demotion or forced retirement if I didn't take it on.

Are you familiar with this email?

Ms. TAVENNER. I was not copied on that email. I have since seen that email.

Mr. MEADOWS. All right. So your number two person—because in the email stream, if you've read all the stream, it was indicating that you weren't ready and yet it didn't really matter.

Ms. TAVENNER. I don't happen to agree with that.

Mr. MEADOWS. So it does matter.

So, in that same email stream, We were putting together hardware—we were installing hardware less than 48 hours before a rollout, so we wouldn't have a crash on the rollout day.

Did you not see that as troubling, that we were installing, with less than 48 hours to go, we were installing hardware that wouldn't be tested?

Ms. TAVENNER. We were installing hardware to increase capacity.

Mr. MEADOWS. Right. I got the numbers.

And so but you don't see that that's troubling when you're rolling something out that you wouldn't be ready when you're going to put in a piece of hardware just less than 48 hours.

Ms. TAVENNER. We had tested and we were increasing our capacity to handle more volume.

Mr. MEADOWS. And so this Ms. Snyder, is she with you today, or she was forced to retire?

Ms. TAVENNER. She was not forced to retire. In fact, I—during the time——

Mr. MEADOWS. Did she retire?

Ms. TAVENNER. She has retired. Her choice.

Mr. MEADOWS. She just was not forced to retire.

Ms. TAVENNER. She wasn't forced to retire.

Mr. MEADOWS. Let me close by this. I sent your staff the information with regards to almost 4 million people that if they do not re-enroll will get hit with the tax bill, some 10 to 12 months from now if they do not—because their benchmark plan has changed.

Are you notifying those almost 4 million people that they may get a tax bill if they do not re-enroll? Individually.

Ms. TAVENNER. We are individually notifying folks about——

Mr. MEADOWS. That is funny. Because I have 17 counties I represent and not a single one of them have gotten individually notified that they are going to get a tax bill.

Ms. TAVENNER. So they are individually notified—I did not get a chance to finish my sentence.

Mr. MEADOWS. I'm sorry.

Ms. TAVENNER. They have been individually notified that they need to come back in to return to the marketplace to update their information and make sure that, A, their information is current, and, B, that they're selecting the plan.

Mr. MEADOWS. That is a general marketing thing. You already responded to that.

Ms. TAVENNER. No, it's not a general marketing. It's an individual letter and phone calls to folks.

Mr. MEADOWS. But, individually, you know who is not—who is going to get a tax bill—you know that today—if they do not re-enroll. So why do we not notify them that if they automatically renew, they will get a tax bill?

Ms. TAVENNER. Well, first of all, I don't know that that's necessarily true.

Mr. MEADOWS. Well, talk to Dr. Gruber. Because it is a part of the plan that your premium, the rebate you get, whether your income changes or not, is based on selecting the benchmark silver plan. If the benchmark plan changes—and I would think that you would know that you're over this—if the benchmark changes, then indeed what the amount of money that you get back will be incorrect.

Ms. TAVENNER. So the benchmark is just one thing that changes, right? There's lots of other things that could change that would change your tax liability or your tax surplus.

Mr. MEADOWS. I understand that. But what I am saying is someone who makes the same amount of money, stays on the same plan, got a rebate this last 11 or 12 months, they will get a tax bill unbeknownst to them by doing nothing.

Ms. TAVENNER. I think that you're assuming—I assume you're talking about 2016, not 2015.

Mr. MEADOWS. So this open enrollment period right now.

Ms. TAVENNER. That's not true.

Mr. MEADOWS. Why is it? Because I'm all ears. I want to tell the folks.

Ms. TAVENNER. First of all, the individuals who signed up in 2014, if they have a tax liability or tax credit, that will be in April of 2015.

Mr. MEADOWS. I understand that.

Ms. TAVENNER. Individuals that you're talking about now who are signing up for 2015, if they were to have a tax liability at all, it would be in April of 2016.

Mr. MEADOWS. That's correct. That's what I'm saying. They're going to get a tax bill if they do automatically renew, by February, if they don't——

Ms. TAVENNER. Not necessarily. It depends on what's going on with the individual.

Mr. MEADOWS. So they could change their plan after February.

Ms. TAVENNER. They cannot change their plan after February. But whether or not they have a tax liability is going to depend on each individual. Which is why what you are trying to say is a part of what we are stressing to individuals: Come back, update your information, look at a plan, shop, select.

But every—when they did their original plan, they also understood that they are to update income, changes in family circumstances. There's lots of things that can affect.

Mr. MEADOWS. I understand that.

Ms. TAVENNER. That's all I'm saying.

Mr. MEADOWS. But what I am saying is the benchmark plan in the counties I represent will change because it's a different carrier. If they do not go in and select the new plan, their——

Ms. TAVENNER. First of all, if they don't select a new plan, we don't move them to a new carrier.

Mr. MEADOWS. Right. They will be automatically renewed.

I appreciate the patience of the chair.

Chairman ISSA. I appreciate the gentleman from North Carolina. I think the gentleman made the point that every American has to, independent—because he's not—he or she is not getting this information from CMS—they have to independently ask whether or not they are getting into a tax booby trap, into a tax land mine by just automatically renewing. And I think the gentleman's point is good.

I'm afraid Ms. Tavenner doesn't want to admit that some people are simply not going to know. And she said, rightfully so, well, it's their responsibility.

Well, it was never somebody's responsibility to know that they might be getting into a tax consequence before the Affordable Care Act. They now need to know that.

We now go to the gentleman from Michigan, Mr. Bentivolio.

Ms. TAVENNER. Could I answer that? Because I think——

Chairman ISSA. No, ma'am, you may not. There was no question there. Honest. I was simply talking.

Ms. TAVENNER. There's a piece of it missing.

Chairman ISSA. I was talking to the gentleman—we'll give you plenty of time. We're not going to end this thing until you've had all your say, ma'am.

The gentleman from Michigan.

Mr. BENTIVOLIO. Thank you very much, Mr. Chairman.

Mr. Gruber, Ph.D. from MIT. Correct?

Mr. GRUBER. No. My Ph.D. is from Harvard University.

Mr. BENTIVOLIO. Harvard. Another prestigious school as well. And you teach at MIT?

Mr. GRUBER. Yes, I do.

Mr. BENTIVOLIO. Very prestigious school.

Myself, I graduated from a small college. My dad was a factory worker. I had to work my way through college. But I understand, very prestigious and congratulations.

But I want to go back. Earlier, there were some people on the—you as well as Members of Congress stating that this was a very transparent, this bill. And yet from the very beginning, if I remember correctly, a lady got out up in front of the floor of the Congress, and she said you got to pass it before you can see what's in it. Do you remember who that was.

Mr. GRUBER. I believe that's a quote attributed to Nancy Pelosi.

Mr. BENTIVOLIO. Correct. Thank you.

And yet it was 2,700 pages, original act. And if you read that 2,700 pages, you're going to see a lot that says "to be determined" in that bill. So the bill wasn't really complete.

So how can you have a bill, pass a bill before you can see what's in it, and call that transparent? Because I didn't get to see it—well, I wasn't here, but other Members of Congress really couldn't see that.

And then we find out now that, while we were told that you can keep your insurance and you like it, and we know that's a lie. You can keep your doctor, and we know that's a lie. And you can keep your hospital, and that's a lie. Lies on top of lies.

And it is not really about health care either. It's a tax. Premiums will be lower. And yet they are higher. Another lie.

So let's backtrack. You apologized today for some comments you made in the video. Correct?

Mr. GRUBER. Yes.

Mr. BENTIVOLIO. And several times here you said you apologize for insulting others to make yourself look smarter or better than others. That's paraphrasing, but that's pretty much what you said. Is that correct?

Mr. GRUBER. Yes.

Mr. BENTIVOLIO. You want to repeat what you actually said? Go ahead.

Mr. GRUBER. No. What you said is a good paraphrase.

Mr. BENTIVOLIO. Pretty good. So let's be clear. You did not apologize for helping the administration deceive the American people on this healthcare act or for telling America the truth in your video comments about how it was a fraud upon the American people. Is that correct, sir?

Mr. GRUBER. I think the Affordable Care Act was passed in a highly transparent fashion with hundreds of hours of debate.

Mr. BENTIVOLIO. But every single thing they promised was a lie. How can you call that transparent? You didn't say, Well, what we're about to do for you is not going to really do you any good, you're not going to be—you're not going to keep your doctor, you're not going to keep your hospital, your premiums are going to go up. Why didn't you say that? You were the architect, one of the architects. You created the model. Is that model flawed?

Mr. GRUBER. I did economic microsimulation modeling that I believe——

Mr. BENTIVOLIO. Simulation. So you actually created the model to justify their conclusions.

Seems about what you did—I mean, you're a lot smarter than I did.

Now here's an opportunity for you to come clean. Lies on top of lies. This is what you have done. You have been a coconspirator in defrauding the American people, and you admitted it in two videos and comments that I saw on TV. And I saw some here today.

In helping this administration deceive our citizens you received grants and contracts from the government, for either the Federal Government or the States. Was it closer to $2.5 million or $2.8 million you received over the course of implementing this Obamacare?

Mr. GRUBER. I don't recall the exact figures.

Mr. BENTIVOLIO. You're an economist. You know the quotes. You said in the book you wrote, you know how to balance a checkbook, you know how to read a balance sheet. Was it $2.5 or $2.8 million or more? Plus or minus $100,000.

Mr. GRUBER. Once again, I don't recall the exact amount.

Mr. BENTIVOLIO. You know what? It's about, lies, half truths, and distortions.

Why are you continuing to help this administration deceive the American public?

With that, Mr. Chairman, I yield back.

Chairman ISSA. If I could have the time for just these 40 seconds. And I thank the gentleman.

You keep saying you don't recall. Do you not recall any numbers at all? I haven't seen a number you can recall since you gave us that approximately $400,000 in your opening statement.

You're an economist. You work with numbers. Why is it that every question that comes from this side of the dais we get a "don't recall," Mr. Gruber?

Mr. GRUBER. The $400,000 is the number I recall very well because it's been may very public. The other contracts and other things I received from States and the Federal Government are numbers I don't have at my fingertips but numbers that, you know, the committee can discuss with my counsel about what's appropriate to reveal.

Chairman ISSA. You know, you're making it very obvious that we're not only goingto have to discuss with your counsel, we're going to have to serve a subpoena. We're going to have to demand these numbers. Because you're not even giving us a fair estimate of the approximately $4 million that you said—you said in your earlier statement, well, this is excess and it didn't all come to me.

But you haven't answered one question about grants and contracts. I never knew anyone in business who got even a small amount of something that didn't know about the grant or the contract gross value and then what they got from it. And it's amazing that you haven't given us one number since that chosen amount. And that is a little disturbing.

And I will caution you one last time as these individuals ask their questions that the goal was to get completed here today with sworn statements about numbers, to the best of your recollection—approximate was good enough. But, you know, the fact that every answer is, Well, discuss with my lawyer, puts this committee in a position where it is very clear we're going to have to do more discovery. And likely you're going to be back here again under the new chairmanship.

So, Mr. Bentivolio, did you have one last question?

Mr. BENTIVOLIO. Thank you very much, Mr. Chairman. Just one last question.

I understand, according to Supreme Court, this is a tax. Correct? It's a tax.

Mr. GRUBER. As I said earlier, I don't believe the individual mandate is a tax.

Mr. BENTIVOLIO. Okay. But it's a tax for failing to engage in commerce. Because if I don't engage in Obamacare, go on the Web site, I'm going to be taxed or fined. Correct?

Mr. GRUBER. The individual mandate assesses a penalty on you if you don't provide health insurance unless you meet certain exemption criteria.

Mr. BENTIVOLIO. I'd like to find some other examples of somebody being taxed for failing to engage in commerce. It's kind of like me going into my local grocery store, walking around and not buying anything, and a Federal agent is outside the grocery store saying, Hey, we're going to tax you because you didn't buy anything in that store.

Thank you very much, Mr. Chairman.

Chairman ISSA. I thank the gentleman.

We now go to the gentleman from Florida, Mr. DeSantis.

Mr. DESANTIS. Professor Gruber, would you deny—it's been reported that you have received $3, $4 even $5 million with your contracts from the various State governments. Many of them $400,000, $500,000 a pop.

Are you saying you have no recollection of that? And do you deny those reports?

Mr. GRUBER. What I'm stating is the amounts that been reported are greatly in excess of what I received in particular through Federal grants. But I don't know the exact——

Mr. DESANTIS. Is it in the millions, though?

Mr. GRUBER. Once again, I don't know the exact amounts.

Mr. DESANTIS. Look, you really further undermine your credibility. I would think you would be able to give us a ballpark. I mean, it's going to be subpoenaed. We'll go through the exercise. The American people will eventually get the truth.

This idea of you denying that you're the architect of Obamacare. I'm just wondering, you know, you've been lauded in the press in the past as the architect. There's an article in the New York Times 2012 dubs you "Mr. Mandate." There's a quote from it that said, "After Mr. Gruber helped the administration put together the basic principles of the proposal, the White House lent him to Capitol Hill to help congressional staff members draft the specifics of the legislation."

So that's more than just providing some numbers.

And so the question is if what you're saying is true today, that you're not really the architect of the law in any real sense, did you tell any of those reporters that they were inflating your role back in 2009, 2010, 2011, and 2012?

Mr. GRUBER. Yes, I did tell the reporters they were.

Mr. DESANTIS. And were there any corrections ever made to the record?

Mr. GRUBER. I don't know.

Mr. DESANTIS. Okay. Because this is pretty consistent media treatment.

Now, you testified that the comments about eligibility for tax credits if the State didn't create an exchange, that you made that comment because you weren't sure the Federal Government would actually set up an exchange. And that was in Falls Church, Virginia, January 2012.

And that's your explanation for that. Correct?

Mr. GRUBER. As I said at the time, I don't recall exactly what I meant when I made that statement. Looking back at the video and thinking about how I could have made that statement, I believe that's what I had in mind.

Mr. DESANTIS. Because, it's interesting, if you go further on in your comments, you say, "The Federal Government has been sort of slow in putting out its backstop. I think"—meaning you think—"partly because they want to sort of squeeze the States to do it."

So that was the comment that you made. And so even under that construction, you're saying that the Federal Government is deliberately slowing the creation of the exchange so that more States will do it, ergo, there must be a consequence for the States if they do not do that.

So I don't think your explanation here today really resolves that. I think you still have made comments from your perspective in terms of what you want to do politically are still problematic.

With some of the other comments you were making with this lack of transparency, I just want to be clear. What you were trying to say, I think, is that the bill is convoluted. You agree it's a very confusing statute. Correct?

Mr. GRUBER. It's a very complicated piece of legislation.

Mr. DESANTIS. And the reason why it had to be written that way is, if you were straightforward about imposing costs on one American and then giving benefits to other Americans, that would have run into political difficulty.

And so the costs are still being shifted to other Americans, but they're being shifted under Obamacare indirectly in a way that essentially masks what's happening.

Is that—is that basically the deal?

Mr. GRUBER. That is a very broad statement. I generally don't agree with what you just said.

Mr. DESANTIS. So you don't believe that Obamacare's convoluted nature serves to mask the true costs to individual policyholders?

Mr. GRUBER. No, I do not.

Mr. DESANTIS. So when people are paying more for their premiums—and you did a report to Wisconsin in 2011, and you estimated, even though you had said in 2009 that premiums would go down across the board under Obamacare, your report to Wisconsin in 2011 said actually individual market premiums will go up on average 30 percent relative to what they would have been had Obamacare not been passed.

Mr. GRUBER. The report I did for Congress was interpreting CBO numbers, not my own, which discussed the fact that premiums would rise——

Mr. DESANTIS. But the report to the State of Wisconsin said that they were going to rise. Correct?

Mr. GRUBER. After tax credits, they fell on average. That's what my report showed in Wisconsin.

Mr. DESANTIS. You said the average premium. Most Americans don't get tax credits, though. So the average premium increased in Wisconsin. Correct?

Mr. GRUBER. That was referring to individual market in which most—most Wisconsinites will get tax credits.

Mr. DESANTIS. But many of them won't.

So thank you. I yield back.

Chairman ISSA. Thank you.

We now go to Mr. Collins for his round of questioning.

Mr. COLLINS. Thank you, Mr. Chairman. I appreciate the time and the opportunity to be here.

Mr. Gruber, words cannot express today basically I, frankly, didn't think it could get worse. Congratulations. You got worse. Coming in here with the attitude that you've had and I talk to my attorney about money I've earned.

Did you actually file a tax return last year? Did you actually have to qualify your income?

Frankly, I and the American people—I am good to know one thing that—and my implication of voters who did not like the Obamacare plan, did not vote for it, were probably not the stupid ones. And so my district, which voted against the President almost 80 percent, is full of what you would consider nonstupid people. I'm done with you.

Ms. Tavenner, got a couple of questions. And I'm going to go fairly quickly here. Let's run through these.

How much money was paid to insurers under the Affordable Care Act program known as to the cost-sharing reduction program in fiscal year 2014?

Ms. TAVENNER. I don't have that information——

Mr. COLLINS. Were you not briefed?

Ms. TAVENNER. On the cost-sharing payment?

Mr. COLLINS. How much money was paid in 2014?

Ms. TAVENNER. I have not been briefed on that, no.

Mr. COLLINS. You do not have reports that could get you that information?

Ms. TAVENNER. I can get you that information.

Mr. COLLINS. Are you in charge of this program?

Ms. TAVENNER. I am in charge of this program.

Mr. COLLINS. And you do not know how much is paid out?

Ms. TAVENNER. I do not have that with me today.

Mr. COLLINS. Do you have someone that can find that information while they are handing you notes from behind?

It is amazing to me you run a program that is this large that you can't answer questions. You and Mr. Gruber don't need to sit beside each other because it is wearing off.

Number two, how much money is paid to insurers under the cost sharing program reduction—Cost Sharing Reduction Program in fiscal year 2015 to date?

Ms. TAVENNER. I don't have that information.

Mr. COLLINS. Are you not briefed with this? Did you not get a spreadsheet, a monthly spreadsheet?

Ms. TAVENNER. I will be glad to get you that information.

Mr. COLLINS. Not my question. Answer my question. Do you get a briefing on this?

Ms. TAVENNER. Do I get a briefing——

Mr. COLLINS. Do you get a briefing that resembles something of this effect where they are actually asking for it on a regular basis?

Ms. TAVENNER. I do get briefed.

Mr. COLLINS. Okay. Do you listen during those briefings?

Ms. TAVENNER. I try to listen. I have a lot of information to listen to——

Mr. COLLINS. So do I. So do I. But when you're also subpoenaed—brought here to a hearing——

Ms. TAVENNER. I was not subpoenaed.

Mr. COLLINS. You came in voluntarily. Thank you for that.

Ms. TAVENNER. Thank you.

Mr. COLLINS. But the problem we have here is there seems to be when we get here, we only want to answer the questions we want to answer; -not questions that are part of your regular job.

Let's continue on. The Wall Street Journal recently reported that insurers participating in the 2015 ACA exchanges insisted that their contracts contain a clause permitting termination of contracts if the cost-sharing payments or refundable tax credit payments cease.

Number one, is this report accurate?

Ms. TAVENNER. There is information in the contract, and I'll be glad to get you that.

Mr. COLLINS. So that would be yes?

Ms. TAVENNER. I believe I said, yes.

Mr. COLLINS. No, you didn't.

Who negotiated these contracts with the insurers?

Ms. TAVENNER. It's done by staff and attorneys within CMS.

Mr. COLLINS. I didn't hear your mic on.

Ms. TAVENNER. It is done by staff and attorneys within CMS.

Mr. COLLINS. Do you approve those?

Ms. TAVENNER. I do not approve individual contracts, no.

Mr. COLLINS. Will you provide for this committee the names of those who negotiated these contracts with the attorneys?

Ms. TAVENNER. I would be glad to get you information.

Mr. COLLINS. And I'm—and I'm going to just ask the question not to honestly be funny here, but I do, given the glacier pace of response on other things, and also the fact that you when testify before Energy and Commerce, they are still waiting for numbers from you, do we need to go ahead and subpoena this information now?

Ms. TAVENNER. I believe I've gotten you information as you've requested it.

Mr. COLLINS. You never—I've never requested information from you, Ms. Tavenner. I'm looking at your history.

Ms. TAVENNER. This committee.

Mr. COLLINS. So let me ask the question point blank. Will you get it in a timely manner, not glacial pace, not biblical; within the next few days?

Ms. TAVENNER. I will get you the information as soon as I can.

Mr. COLLINS. Do I need to subpoena them?

Ms. TAVENNER. You have not needed to subpoena me in the past.

Mr. COLLINS. We just have to wait forever.

When were these contracts negotiated?

Ms. TAVENNER. These contracts were negotiated over the summer. I have to get you the specific dates.

Mr. COLLINS. Okay. Please include that in your information.

Did every insurer participating in the 2015 ACA exchanges receive such a clause in their contract?

Ms. TAVENNER. I believe the contracts were consistent, but I'll get you that information.

Mr. COLLINS. Okay. Will you provide a copy of all these contracts?

Ms. TAVENNER. I will work with you. I will have to talk with our counsel. But unless there's a reason not to, yes, we will get you contracts.

Mr. COLLINS. And without being editorialize here, why would there not be a reason to provide these contracts?

Ms. TAVENNER. I don't know that there is. I said I would work with you.

Mr. COLLINS. Okay. Again, we're having—is it—maybe it's a disconnect between here and there. And, honestly, I'm not trying to be argumentative at this point.

But you actually do work for the government. You do work for an agency that is under jurisdiction of this committee, under this oversight provision of transparency and everything else.

Why would you even have to hesitate on providing contracts that are public moneys were spent on to this committee?

Ms. TAVENNER. I don't think I would. I just ask that I would be able to ask that question.

Mr. COLLINS. To who? You run the department.

Ms. TAVENNER. Counsel. I'm not an attorney.

Mr. COLLINS. Well, that's not a bad or good thing. My question is, you run the department.

Ms. TAVENNER. I run CMS, yes.

Mr. COLLINS. How many attorneys do you have working for you besides the ones that came with you?

Ms. TAVENNER. I don't have any attorneys here with me.

Mr. COLLINS. Okay. Maybe there's our problem.

All right. But, again, I'm not sure why we can't answer that question.

Let me reverse back. We know when we've determined that you do get briefings on insurers asking for Federal Government to pay for them under cost-sharing reduction. CMS asked insurers to submit on a monthly basis pre-populated Excel spreadsheets that contain this information. Correct?

Ms. TAVENNER. That is correct.

Mr. COLLINS. Thank you. The amount the insurers asked the Federal Government to pay them under cost-sharing reductions is an individual line item on the spreadsheets. Is that correct?

Ms. TAVENNER. I believe that is correct.

Mr. COLLINS. Thank you. Wait. I had one question here.

There is an issue here—and I want to go back to a question. It says who made—I want to know who made the decision not to request appropriations for cost-sharing reductions program for fiscal year 2015.

Ms. TAVENNER. That is not within my purview. I can't answer that question.

Mr. COLLINS. Do you not have to adjust and spend the money out of—that was supposedly appropriated for this program?

Ms. TAVENNER. I do not—that is done through our financial department. I'll be happy to get you that——

Mr. COLLINS. Can you provide any—so would your financial department have participated in a decision not to ask for appropriations in 2015?

Ms. TAVENNER. I don't have that. I'll be glad to get you that information.

Mr. COLLINS. Okay. So, again, you—under your leadership, this is a department that is basically going rogue and doing their contracts that don't report back to you or budget items.

Ms. TAVENNER. I will be happy to get you that information.

Mr. COLLINS. That must hard to say every time. When I know you—you understand this. It must be that difficult.

Who did participate, and will you provide those names?

Ms. TAVENNER. I have told you I will get you that information.

Mr. COLLINS. Is there anyone outside that we need to ask? Was this OMB? Treasury? White House? Anyone else who would have determined not to ask for appropriations for this program in fiscal year 2015?

Ms. TAVENNER. Once again, I will go back and try to get you the information——

Mr. COLLINS. So you have no idea when these meetings even took place. Would that be a fair statement?

Ms. TAVENNER. I cannot answer your question. I will try to get you that information.

Chairman ISSA. Gentleman's time has expired.

We now go to the gentlelady from Wyoming, Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. And thank you for your leadership these past couple of years. Appreciate your hard work on this committee.

Dr. Gruber, did you participate in the scoring aspect of the Affordable Care Act?

Mr. GRUBER. I provided economic microsimulation results to the administration and Congress to help understand the costs and coverage effects of the law, but I did not provide any official scoring.

Mrs. LUMMIS. You have stated that the ACA was written in a way, a tortured way, so CBO would not score it as a tax.

Now, how did the administration use your information to write the ACA in a tortured way so CBO would not score it as a tax?

Mr. GRUBER. Once again, I apologize for my inopportune, just inappropriate terminology. But I——

Mrs. LUMMIS. Well, but they didn't score it as a tax. Right?

Mr. GRUBER. The administration—I did not draft legislation——

Mrs. LUMMIS. How did you do it? How did you get CBO to not score it as a tax, knowing that at some point you might have to get the U.S. Supreme Court to say it was a tax? How did you do it?

Mr. GRUBER. I don't run CBO. I didn't draft the legislation.

Mrs. LUMMIS. What does CBO stand for?

Mr. GRUBER. Congressional Budget Office.

Mrs. LUMMIS. And what is scoring?

Mr. GRUBER. It's the method by which the Congressional Budget Office estimates the effects of legislation on things like the Federal budget.

Mrs. LUMMIS. You have said, in 2012 remarks at Noblis, that you wrote part of Obamacare yourself. What parts did you write yourself?

Mr. GRUBER. If I said that, that was, once again, an effort to seem more important than I was. I drafted——

Mrs. LUMMIS. Why would you say you wrote part of Obamacare yourself, and you're the numbers guy. They used your modeling.

And they knew they might have to convince the U.S. Supreme Court that it was a tax and convince the Congressional Budget Office, for scoring purposes, that it was not a tax. How did you do that?

Mr. GRUBER. Ma'am, once again, I did not write any part of the Affordable Care Act.

Mrs. LUMMIS. Why did you say in 2012 explicitly that you wrote part of Obamacare yourself?

Mr. GRUBER. I was speaking glibly——

Mrs. LUMMIS. How many nonpoliticians know what CBO is? How many nonpoliticians know what scoring is? How many nonpoliticians would know that you have to get by CBO scoring in order to get the Affordable Care Act to say that it's going to lower costs?

You are a politician. Everything that has led up to your testimony today is inconsistent with your testimony today, which is to say all of your prior statements were a lie. Is that true? Were all of your prior statements a lie? Or were they just glib?

Mr. GRUBER. They were not a lie.

Mrs. LUMMIS. I want to change subjects and visit with Ms. Tavenner about something that you began to discuss with Dr. Gosar. And that is, is there a decline in participation? Is that what has yielded smaller increases in the costs of healthcare?

Ms. TAVENNER. I don't have an answer to that. And I think we'd have to wait for someone. It's too early to know.

Mrs. LUMMIS. Is there a way to analyze the information to get that fact, to determine it?

Ms. TAVENNER. I think if you look at the Medicare Trustee's report, I think if you look National Health Expenditure, it will show you trends.

Mrs. LUMMIS. Okay. I'm hopeful to get those trends.

I'm going to give you a little story. I'm on Obamacare. My husband was on Obamacare with me. And we were told that we were enrolled in Obamacare. And then when we filed claims, we were told we were not enrolled in Obamacare. And then we got it straightened out, and he filed claims and we were told once again that we were not on Obamacare.

Well, come to find out my husband was having chest pains at the time that he was told we were not enrolled in Obamacare. And come to find out he didn't have all of the tests that he was advised by his physician to have.

So, on October 24th, a week before election, my husband went to sleep and never woke up. He had a massive heart attack in his sleep at age 65, -a perfectly by all appearances healthy plan.

Come to find out in a conversation with his physician after he died, he chose not to have one of the tests, the last test his doctor told him to have. This happened to coincide with the time that we were told that we were not covered by Obamacare.

I'm not telling you that my husband died because of Obamacare. He died because he had a massive heart attack in his sleep. But I am telling you that during the course of time that he was having tests by a physician and was told we were not covered by Obamacare, that he then decided not to have the last test the doctor asked him to have.

Let me suggest that there may be a decline in participation and that it may not be to the benefit of the American people.

I want to suggest that, regardless of what happened to me personally, that there have been so many glitches in the passage and implementation of Obamacare that have real-life consequences on people's lives. And the so-called glibness that has been referenced today have direct consequences for real American people.

So get over your damn glibness.

I yield back.

Ms. TAVENNER. First of all, I'm sorry.

Chairman ISSA. I thank the gentlelady.

Ms. TAVENNER. Could I answer?

Chairman ISSA. I don't think she had a question for you.

Mrs. Lummis, Do you have a pending question?

Mrs. LUMMIS. Mr. Chairman, I really do yield back.

Chairman ISSA. The gentlelady yields back.

We go to Dr. DesJarlais of Tennessee.

Mr. DESJARLAIS. Thank you, Mr. Chairman.

Mr. Gruber, I wanted to talk to you a little bit in my time here today about your understanding of the State and Federal exchange premium assistance as we've talked about that today, and you've referenced it several times.

But let me first just make sure I understood what you told Mrs. Lummis a second ago about all your comments. I know you've been here today. You've been very humble. You've been eating crow. You don't like the way you said things. You've been walking those back. But she asked if all those all those statements were a lie, and you just said they were not lies. Is that what you said?

Mr. GRUBER. They were glib and thoughtless and really inexcusable.

Mr. DESJARLAIS. But, in terms of content, you weren't lying. You don't like the way you said it, but what you said you had some basis for.

Mr. GRUBER. The comments that I made were just my conjecturing outside my area of expertise.

Mr. DESJARLAIS. Well, Mr. Gowdy talked about that. And you did that an awful lot. I don't think you were necessarily out of your area of expertise. In fact, I think you nailed most of what you said. Just politically maybe you weren't being a good politician, you weren't good in the way you said them.

But I, just for one, applaud you for coming forth with those statements and telling people that, you know, this was a difficult law to pass, wasn't it? When you were up here advising people, trying to get the healthcare law passed. It was a difficult sell, wasn't it?

Mr. GRUBER. It was a very challenging political fight.

Mr. DESJARLAIS. One, because the American people were very afraid of a government takeover of healthcare. They didn't want socialized medicine.

But, now, some people did want that, they wanted a single-payer system, didn't they?

Mr. GRUBER. I believe some Americans do support a single-payer system.

Mr. DESJARLAIS. Okay. But, optically, that was tough for a lot of people up here to sell to the American people. Because people are

opposed to the healthcare law, and that's why there were not a single Republican can vote; in fact, they really had to wrangle a lot Democrats to get their vote. There was all kinds of deals that basically put a lot of Democrats out of office.

But, I mean, that's beside the point.

What I want to get to was your understanding of the State and Federal exchanges. Because when they started talking Federal exchanges, that sounded to the people a lot like a Federal takeover of healthcare. So State-run exchanges were a lot more palatable. It was a lot better optically. So that's what was pushed. In fact, that's what was written in the law, wasn't it? That the States would set up exchanges and they would offer premium subsidies.

Mr. GRUBER. I don't have the exact wording of the law in front of me. But I believe the law said, as was referenced earlier, that the State should set up exchanges and, if not, there would be a Federal backstop.

Mr. DESJARLAIS. Okay. So you know—realize, then, that a Federal backstop was always in play. I mean, the States had the option. But, if not, the Feds had to set up an exchange.

Mr. GRUBER. That's the way the law was written.

Mr. DESJARLAIS. Okay. So your comment on January 12 of 2012, you said, if you're a State and you don't set up an exchange, that means your citizens don't get their tax credits.

Mr. GRUBER. Once again, that was my trying to be glib and trying to summarize a subtle point——

Mr. DESJARLAIS. Were you being glib? I mean, you were concerned about the Federal exchanges. Why?

Mr. GRUBER. I was concerned about the Federal exchanges because it was a very complicated task to get them set up, and we weren't sure who would be President when the time came to stand them up.

Mr. DESJARLAIS. Okay. So who was going to be President. So it was political. It was a tough sell, once again. People didn't want it, but there was a lot of smoke and mirrors, and there was a lack of transparency. And you said that in one of your glib statements, even though it was very accurate.

But, in your opening statement today, you said that the point you were trying to make about the possibility of Federal Government was whatever reason they might not set up a Federal exchange.

Well, you just said that they had to set up a Federal exchange. You just testified to that. Right?

Mr. GRUBER. The law said that there should be Federal backstop.

Mr. DESJARLAIS. Okay. But it didn't say that the Federal exchange would subsidize people in those States. And that's why you made the comment in 2012; correct?

Mr. GRUBER. It is a very clear reading of the law that tax credits should be available to citizens in all States regardless of who runs the exchange.

Mr. DESJARLAIS. It's not clear. That's why there's a Supreme Court case. It's not clear at all. That's why we're going to hear this.

But you knew in January of 2012 that there was a concern. The President knew there was a concern because he assumed the States were going to set up exchanges. He put enough incentives

in there, he thought they would fall in line, and they would have that nice optic of not having a Federal takeover of healthcare but, rather, State-run exchanges. Well, only 16 did. And then there was a problem. So that's why you were concerned in 2012. Correct?

Mr. GRUBER. My comments in 2012, as I said, were my effort to try to seem like I knew more than I did.

Mr. DESJARLAIS. You belittle yourself. You know a lot. You were the guy they turned to to do this. I mean, you were the one that they were going to to get advice. You ran the models. You had all these models for State and Federal exchanges. Did you not have a model in the event that this happened, what's happening now, 16 States and the rest are Federal, was there not a model that showed financially that was unworkable?

Mr. GRUBER. I am an expert within economics and microsimulation modeling. In the microsimulation modeling, I did, I assumed tax credits would be available in all States.

Mr. DESJARLAIS. And so you knew that, but they didn't write in that the law. But who did? It wasn't Congress. Four months after you made your comment in 2012, apparently the IRS listens to you because they did an end around Congress and they rewrote and promulgated a rule to say that Federal exchanges also had to offer subsidies. And that's why you were concerned in January. IRS listened to you. They came through, took an eraser to the bill, and tried to change it for Congress because they knew we wouldn't change it for them.

Mr. GRUBER. Is there a question?

Mr. DESJARLAIS. Well you can comment on that. Am I wrong?

Mr. GRUBER. I can't conjecture on what the—why the IRS did what it did——

Mr. DESJARLAIS. You conjectured in 2012, you conjectured in your opening statement that you always assume that. But you ran models, and apparently the legislators didn't listen to those models because, in a hurry, they passed this bill to try to sell it to the people of the State-run exchanges. But they didn't have language saying the Federal exchanges would subsidize the taxpayer—subsidize the people.

Mr. GRUBER. As I said, I think a clear reading of the law makes it clear the tax subsidy should be available to citizens in all States, regardless——

Mr. DESJARLAIS. Again, that's why we're in the Supreme Court. That's why it's going to the Supreme Court, because it wasn't clear.

Ms. Tavenner, real quickly, if I may.

Do you know, you're the numbers person, you said there were 6.7 million people that signed up for the Obamacare. Is that right?

Ms. TAVENNER. 6.7 million people as of October 15th had paid their premiums.

Mr. DESJARLAIS. I don't know, I'm hoping you know this, and you may or may not have it with you, may have to get to it me, but if you do, please tell me. How many of these people who signed up are Federal workers?

Ms. TAVENNER. Are Federal workers?

Mr. DESJARLAIS. Yes. People who are already on Federal health care, and then they switched over to Obamacare like Mrs. Lummis just did.

Ms. TAVENNER. I don't know that number. But I would assume the only individuals would be the Members of Congress who were, like her husband, in the exchanges——

Mr. DESJARLAIS. Well, there's that and there's Federal employees all over this country. Two to 4 million Federal employees. How many of those signed up for Obamacare?

Ms. TAVENNER. I don't know. I'd be glad to try to find that out.

Mr. DESJARLAIS. I'd like to know that because I'm just wondering, out of the 6.7, how many actually helped the private citizens of this country and how many of those are actually just Federal workers that shifted over to the healthcare exchanges.

Ms. TAVENNER. I mean, that numbers—those numbers may be available in the D.C. exchange. I'll see if I can get you that.

Mr. DESJARLAIS. Thank you, Ms. Tavenner. Thanks to all the witnesses.

Chairman ISSA. Thank the gentleman.

We now go to the gentleman from South Carolina, Mr. Rice.

Mr. RICE. Thank you, Mr. Chairman. And thank you for allowing me to speak in as a guest today. This has been a truly fascinating hearing.

Professor Gruber, when you spoke in your videos, which I've watched with great interest, you said that the administration used a lack of transparency to its advantage in getting these—the Affordable Care Act passed. But I think you spoke with a great understatement. It's more and more clear the more we speak here today that it's actually the Affordable Care Act was passed as a pack of lies on a foundation of deception. And it continues here today.

Going back to what Dr. DesJarlais was just asking about, your assessment in 2012 that if a State didn't set up an exchange, that its citizens would pay the tax and benefit the citizens in other States. And now you say that's incorrect?

Mr. GRUBER. What I said in—as I said, what I said in January 2012 was that if a Federal exchange was not established and only in that circumstance, then States that did not have——

Mr. RICE. You didn't say that in January of 2012. You're saying that today. What you said in January of 2012 was that if the States, recognizing their citizens would pay the tax but not get the benefit, that that would be a sufficient economic incentive for them to set up the—set up the exchange. That's what you said in 2012. You didn't say anything about a Federal exchange.

Mr. GRUBER. As I've said, I was conjecturing areas beyond my expertise, trying to seem smarter than I was. And I just shouldn't have done that.

Mr. RICE. When you say "conjecture," you mean lies? Is that what you mean?

Mr. GRUBER. No, I mean conjecture.

Mr. RICE. So you were telling the truth back then in 2012.

Ms. TAVENNER. I was conjecturing.

Mr. RICE. All right. You also said in 2012 that the taxes under the Affordable Care Act were put on the insurance companies and not on individuals, knowing full well that the insurance companies would pass them on down to individuals as an additional premium, and that was disguised tax. Do you still believe that?

Mr. GRUBER. I do believe, as many economists do, that in a competitive insurance market, if you levy a tax on an insurer, it will be largely passed forward to premiums to their consumers.

Mr. RICE. Okay. It was a way of hiding the tax on the individual. That's the way you described it in 2012. Do you still believe that?

Mr. GRUBER. Once again, that was me conjecturing about political areas that I shouldn't have. What I believe is the economics that I just stated to you.

Mr. RICE. You also said that if the people had known, if the taxpayers, the stupid American taxpayers, had recognized that we were shifting costs from healthy people to unhealthy people, you said that the law wouldn't have passed. Do you still believe that?

Mr. GRUBER. That was once again my trying to pretend I'm something I'm not, which is a political expert.

Mr. RICE. Okay. So are you saying that was a lie then or is it a lie today?

Mr. GRUBER. It was a conjecture and my trying to be something I'm not.

Mr. RICE. All right. You said that the Affordable Care Act was written in a tortured way to avoid the mandates being scored by CBO as a tax. Because you knew if it was scored as a tax, it wouldn't pass. You still believe that today?

Mr. GRUBER. Once again, that was my trying to act like I was a political expert that I'm not.

Mr. RICE. So what you're saying, then, is you were lying then?

Mr. GRUBER. What I'm saying is I was conjecturing in an area which I shouldn't have.

Mr. RICE. You weren't lying, then. Okay. So you still believe that, I suppose.

All right. Do you believe—do you still believe that this deception was necessary to get the law passed?

Mr. GRUBER. The statements to which we've been referring today were, once again, conjectures by me in an area in which I'm not expert.

Mr. RICE. You served as an adviser to CBO from 2008 until when?

Mr. GRUBER. I joined—I don't recall exactly. I believe someone said I joined the council of—the advisory council CBO in 2007. And I went to a few meetings. And those meetings ended—the last meeting was maybe end of 2008 or very early 2009.

Mr. RICE. So, at that time, this law was being drafted wasn't it?

Mr. GRUBER. No.

Mr. RICE. Okay. You're not sure about the—you're not sure about when you got off of this CBO advisory panel.

Mr. GRUBER. I'm not sure either about when I got off or the last meeting I was at.

Mr. RICE. That would seem to me to be, somebody who is as detail oriented as you testified you are, that's pretty important. Because CBO is supposed to be a nonpartisan, independent advisory group. And if you're being paid by the administration to advise them on tortured language to avoid these things being scored as a tax, isn't that kind of a conflict of interest?

Mr. GRUBER. I am certain—actually, I am pretty sure that I did not attend any meetings of a CBO——

Mr. RICE. I don't care if you attended meetings or not. Were you on the panel or weren't you?

Mr. GRUBER. I don't know the official date at which they took me off the panel.

Mr. RICE. Not very detail oriented for somebody who is supposed to be detail oriented.

Do you believe the administration used lack of transparency to its advantage in passing the Affordable Care Act as you said in 2012?

Mr. GRUBER. What I said in 2012 was just trying to speak about an area in which I'm not expert.

Mr. RICE. Okay. So let me ask you this. Forget about 2012. Do you believe today the administration used a lack of transparency to its advantage in passing the Affordable Care Act?

Mr. GRUBER. I believe the Affordable Care Act was debated extensively and was a very transparent process.

Mr. RICE. So you were lying in 2012.

Mr. GRUBER. In 2012, I was conjecturing about political things——

Mr. RICE. What you said just now is in direct opposition to exactly what you said in 2012. So it was a lie today, or it was a lie in 2012. Which one's a lie?

Mr. GRUBER. I believe that the Affordable Care Act was passed in transparent?

Mr. RICE. So you were lying in 2012 is what you're saying.

Mr. GRUBER. 2012, I was trying to play amateur politician, and I shouldn't have done that.

Chairman ISSA. I thank the gentleman.

I gather the gentleman's really saying amateur politician in which, as a politician, you're allowed to say things that just aren't true out on the stump. And then when you're under oath. You say the truth, right?

Mr. RICE. Yes, sir.

Chairman ISSA. I gather.

I thank the gentleman for your participation.

Mr. RICE. Thank you very much.

Chairman ISSA. I'm going to try to get this done so we can recess. We have a vote on the floor.

But, Ms. Tavenner, can we get the cost-sharing reduction payment figures requested by Mr. Collins in the next 10 days? This is fiscal year 2014 plus 2015 payments to insurers. Could we be assured we'll have it in the text 10 days?

Ms. TAVENNER. So it has the 2014 payments.

Chairman ISSA. Right. Fiscal year 2014.

Ms. TAVENNER. Yes.

Chairman ISSA. Can we get copies of the revised insurer contracts, which include the opt-out clause within the next 10 days?

Ms. TAVENNER. Yes.

Chairman ISSA. Thank you. Can any—has any insurer participating in the 2015 Affordable Care Act exchanges expressed any concern at any time to anyone that to your knowledge in is executive branch of the Federal Government regarding the lack of an appropriation of funds to make cost-sharing reduction payments to insurers?

Ms. TAVENNER. Not to me. I'm not aware of anyone else. But definitely not to me.

Chairman ISSA. But you know of no question from any insurers you haven't heard through staff.

Ms. TAVENNER. About cost-sharing reduction, no.

Chairman ISSA. Okay.

Chairman ISSA. Mr. Gruber, I'll be quick. You are familiar with the CBO, you sat on the advisory board, and you made this comment about tortured scoring. I know the tortured scoring, so let's go through it very quickly.

Isn't it true that the Affordable Care Act received revenue in years in which it was paying nothing out, which allowed, in the 10-year window, for it to have revenue that on a long-term basis could—would not fail to have a deficit? In other words, by collecting a tax before they began paying out, that shifting in the 10-year window, causes the 10-year window to show a balance that disappeared later, but a balance that in the next 10-year window would not exist? Isn't that true?

Mr. GRUBER. The Affordable Care Act did have revenue-raising provisions which started before 2014, but it lowered the deficit overall in the first decade, and by increasing——

Chairman ISSA. We're not worried about the deficit, but it—that's the tortured stuff you were talking about, is that because they were able to not score certain things as expenditures, make certain assumptions in there and, most importantly, collect revenue which was during a period in which they were paying nothing out, that gave them a score of revenue that, in fact, on an ongoing basis—in other words, if they started on the day that the Affordable Care Act began providing services and took only the revenue during that period, they would have had a deficit. Isn't that true?

Mr. GRUBER. If they started the day the Affordable Care Act began and they went for the next decade, they would have showed a massive surplus.

Chairman ISSA. You're saying that, in fact—are you sure you want to say that as your knowledge, that, in fact, today, for example, with the payout and the—the in, you want to say that the incremental Medicaid payments and so on that were caused as a result of the Affordable Care Act would, in fact, have had a surplus, not a deficit, in revenue?

Mr. GRUBER. My recollection of the numbers—and I haven't looked at them in a while—my recollection of the numbers was that by the end of the decade, that on a year-to-year basis, the Affordable Care Act significantly lowered the deficit such that if you add up to 10 years after 2014, I believe that if you go by CBO's numbers, that that would have been deficit reducing.

Chairman ISSA. You are aware that CBO has revised their numbers and they now show a deficit in the Affordable Care Act and have since really shortly after the parties changed here in the House and they redid their numbers.

Ms. Tavenner, you aware that they show a deficit—that CBO has revised their numbers, they no longer stand behind the numbers during passage?

Ms. TAVENNER. I'm not aware.

Chairman ISSA. I sure wish you had been aware of it.

Mr. Cummings.

Mr. CUMMINGS. You had not heard that? I hadn't heard it either.

Ms. TAVENNER. I don't think so.

Mr. CUMMINGS. But we'll check on that.

I just—as I close, let me just say this, you know, one of the things that I—that I think about and talk about the older I get is that we have a limited amount of time to be in these offices. And I'm so sorry, Mr. Gruber, that you said what you said, you can call it conjecture, whatever, and I'm so sorry that the mistake was made, and I do believe it was a mistake, but what it does is distracts, it distracts from all of the good things that are being done with regard to this law, and that—and that is the most painful part of all this, you know. You know, I talked to a lady the other day who had to wait for the Affordable Care Act to go into effect to get breast cancer treatment. I mean, I can just—story after story after story, and now we've got to spend all this time dealing with something, Mr. Gruber, that you—you know, you were conjecturing about.

I just told my staff, I said we ought to learn from this. You've got to watch what you say, you know, watch what you say, because it can lead to significant consequences.

And I was so sorry to hear about Ms. Lummis' husband, and I know you wanted to say something. I was just curious, what did you want to say, Ms. Tavenner?

Ms. TAVENNER. Just, first of all, I wanted to express my sorrow at her loss, and that we would follow up with the D.C. exchange to see what had happened.

Mr. CUMMINGS. Yeah.

Ms. TAVENNER. I know that's cold comfort now, but——

Mr. CUMMINGS. Yeah. That's a painful story.

Ms. TAVENNER. Yes.

Mr. CUMMINGS. But—and—and so anyway, I—again, Ms. Tavenner, I hope you'll go out there and you'll continue to work hard to make this work. No matter what happens in these hearings, we've got to protect people's health, we've got to try to keep people well and help families stay strong, because I think that when we have an unhealthy population, we have an unhealthy country.

And, Mr. Gruber, you know, you call it amateur politics or whatever you want to call it, like I said, I think the most painful thing—and I always try to keep sight of the big picture. You know, my mother has a saying, she says, small—big can't get you if small's got you. And I think sometimes we can get so caught up in distracting things, that we don't deal with the bigger picture, the life and death situations, and so—but thank you all much for your testimony.

Chairman ISSA. I'm going to close the hearing.

Mr. Goldman, thank you for your participation.

Mr. GOLDMAN. Thank you.

Chairman ISSA. Yeah. Thank you for your participation. I suspect that this is an unusual event for you, and you carried yourself off well, even though there weren't as many questions. Perhaps if you'll post a few videos, you will get an opportunity.

Mr. Gruber, I think you saw here that, on both sides of the aisle, at least a number of members don't buy that you were saying one thing there that you didn't believe. I think most of us believe you believed a lot of what you said. And in the case of the tortured accounting that CBO used with 10 years worth of revenue and a fraction, only about 6 years worth of payout, it was tortured. It is tortured. And the American people in the long-run are going to realize there's no free lunch, and paying 100 percent and then later 90 percent of Medicaid payments as the major part of the new insured under Obamacare has a cost, it has a cost to the taxpayers, and the taxpayers are who we represent from this side of the dais.

Ms. Tavenner, the only reason you're back here today is that you came with figures that are deceptive, needlessly deceptive. We can take bad news here. We've overseen a lot of agencies, problems at the Department of Transportation, problems at the Secret Service and others, and Mr. Cummings and I have been able to work without endlessly bringing people back when there's open and transparent delivering of information.

Now, you've made some specific promises of delivering information today. I trust that you will keep those. I will tell you that no matter who sits in this chair, and I've sat here under five chairmen—or four chairmen, and I can tell you, Mr. Waxman would have been just as animated as we are here today, that, give us the bad news, give us what you have, even give us bad information. In the early days of the stimulus package, we were told there were congressional districts in numbers greater than existed, and we laughed a little bit and we had hearings. But, at the end of the day, working with Earl Devaney and other people, we accepted that they were giving us the best information, and when we saw mistakes, they corrected them. You have that opportunity. I won't be in this dais, you know, next Congress, but somebody else will, and when they call you back, tell us what you don't know early on, not when we ask for facts later on, and that will be helpful.

I've said all along that the problem in this administration is that they didn't live up to their promise of being the most transparent administration in history. The standard, the bar was low. All administrations have a tendency to deliver good news in press conferences and bad news at the latest possible date.

So I want to thank my ranking member. He said earlier that he—that I made him better. Well, I will tell you, Mr. Cummings has worked very hard to make me have to be better in trying to get to the truth, and I've learned a great deal.

And I will just say one thing in closing to my friend. I would do things differently with what I now know, but I would hope that anyone who sits in this chair would never do less than I have done, because it is our watch, it is our time, and I think you and I have worked hard to try to make sure this committee did as much as it could, and my only regret is that we couldn't do more. So I want to thank you.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

We stand adjourned.

[Whereupon, at 1:38 p.m., the committee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

QUALIFIED HEALTH PLAN CERTIFICATION AGREEMENT AND PRIVACY AND SECURITY AGREEMENT BETWEEN QUALIFIED HEALTH PLAN ISSUER AND THE CENTERS FOR MEDICARE & MEDICAID SERVICES

THIS QUALIFIED HEALTH PLAN ("QHP") ISSUER AGREEMENT ("Agreement") is entered into by and between THE CENTERS FOR MEDICARE & MEDICAID SERVICES "(CMS"), as the party responsible for the management and oversight of the Federally-facilitated Exchange ("FFE"), including the Federally-facilitated Small Business Health Options Program ("FF-SHOP") and CMS Data Services Hub ("Hub"), and _____ ("QHPI"), an Issuer that provides Health Insurance Coverage through QHPs offered through the FFE and FF-SHOP to Enrollees; and provides customer service. CMS and QHPI each are hereinafter referred to as a "Party" or, collectively, the "Parties."

WHEREAS:

1. Section 1301(a) of the Affordable Care Act ("ACA") provides that QHPs are health plans that are certified by an Exchange and, among other things, comply with the regulations developed by the Secretary of the Department of Health and Human Services under section 1311(d) and other requirements that an applicable Exchange may establish.

2. QHPI is an entity licensed by an applicable State Department of Insurance ("DOI") as an Issuer and seeks to offer through the FFE in such State one or more plans that are certified to be QHPs.

3. It is anticipated that periodic APTCs, advance payments of CSRs, and payments of FFE user fees will be due between CMS and QHPI.

4. QHPI and CMS are entering into this Agreement to satisfy the requirements under 45 CFR 155.260(b)(2).

Now, therefore, in consideration of the promises and covenants herein contained, the adequacy of which the Parties acknowledge, QHPI and CMS agree as follows:

I. Definitions

a. **Affordable Care Act (ACA)** means the Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), which are referred to collectively as the Affordable Care Act.

b. **Advance Payments of the Premium Tax Credit (APTC)** has the meaning set forth in 45 CFR 155.20.

c. **Applicant** has the meaning set forth in 45 CFR 155.20.

d. **Breach** has the meaning contained in OMB Memoranda M-07-16 (May 22, 2007), and means the compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, loss of control, or any similar term or phrase that refers to situations where persons other than authorized uses or for an other than authorized purpose have access or potential access to Personally Identifiable Information (PII), whether physical or electronic.

e. **CMS Companion Guides** means a CMS-authored guide, available on the CMS web site, which is meant to be used in conjunction with and supplement relevant implementation guides published by the Accredited Standards Committee.

f. **CMS Data Services Hub (Hub)** is the CMS Federally-managed service to interface data among connecting entities, including HHS, certain other Federal agencies, and State Medicaid agencies.

g. **CMS Data Services Hub Web Services (Hub Web Services)** means business and technical services made available by CMS to enable the determination of certain eligibility and enrollment or Federal financial payment data through the Federally-facilitated Exchange web site, including the collection of personal and financial information necessary for Consumer, Applicant, Qualified Individual, Qualified Employer, Qualified Employee, or Enrollee account creations; Qualified Health Plan (QHP) application submissions; and Insurance Affordability Program eligibility determinations.

h. **Consumer** means a person who, for himself or herself, or on behalf of another individual, seeks information related to eligibility or coverage through a Qualified Health Plan (QHP) or other Insurance Affordability Program, or whom an agent or broker (including Web-brokers), Navigator, Issuer, Certified Application Counselor, or other entity assists in applying for a coverage through QHP, applying for APTCs and CSRs, and/or completing enrollment in a QHP through its web site for individual market coverage.

i. **Cost-sharing Reduction (CSR)** has the meaning set forth in 45 CFR 155.20.

j. **Day or Days** means calendar days unless otherwise expressly indicated in this Agreement.

k. **Enrollee** has the meaning set forth in 45 CFR 155.20.

l. **Federally-facilitated Exchange (FFE)** means an **Exchange** (or **Marketplace**) established by HHS and operated by CMS under Section 1321(c)(1) of the ACA for individual or small group market coverage, including the Federally-facilitated Small Business Health Options Program (**FF-SHOP**).

m. **Health Insurance Coverage** has the meaning set forth in 45 CFR 155.20.

n. **Health Insurance Portability and Accountability Act (HIPAA)** means the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, as amended, and its implementing regulations.

o. **Incident**, or **Security Incident**, means the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent.

p. **Issuer** has the meaning set forth in 45 CFR 144.103.

q. **Personally Identifiable Information (PII)** has the meaning contained in OMB Memoranda M-07-16 (May 22, 2007), and means information which can be used to distinguish or trace an individual's identity, such as their name, social security number, biometric records, *etc.*, alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, *etc.*

r. **Qualified Employee** has the meaning set forth in 45 CFR 155.20.

s. **Qualified Employer** has the meaning set forth in 45 CFR 155.20.

t. **Qualified Health Plan (QHP)** has the meaning set forth in 45 CFR 155.20.

u. **Qualified Individual** has the meaning set forth in 45 CFR 155.20.

v. **State** means the State that has licensed the Issuer that is a party to this Agreement.

II. Acceptance of Standard Rules of Conduct

a. Standards regarding Personally Identifiable Information

QHPI and CMS are entering into this Agreement to satisfy the requirements under 45 CFR 155.260(b)(2). QHPI hereby acknowledges and agrees to accept and abide by the standard rules of conduct set forth herein, and to require that its employees, officers, directors, contractors, agents, and representatives strictly adhere to the same, in order to gain and maintain access to the CMS Data Services Hub Web Services ("Hub Web Services"). QHPI agrees that it will create, collect, disclose, access, maintain, use, or store PII that it receives directly from Exchange applicants and from Hub Web Services only in accordance with all laws as applicable, including HIPAA and section 1411(g) of the ACA.

(1) Safeguards. QHPI agrees to monitor, periodically assess, and update its security controls and related system risks to ensure the continued effectiveness of those controls in accordance with 155.260(a)(5); and to inform the Exchange of any material change in its administrative, technical, or operational environments, or

that would require an alteration of the privacy and security standards within this Agreement.

(2) Downstream Entities. QHPI will satisfy the requirement in 45 CFR 155.260(b)(2)(v) to bind downstream entities by entering into written agreements, including where appropriate, Business Associate Agreements (as such term is defined under HIPAA), with any downstream entities that will have access to PII as defined in this Agreement.

b. Standards for Communication with the Hub

(1) QHPI must complete testing for each type of transaction it will implement and shall not be allowed to exchange data with CMS in production mode until testing is satisfactorily passed as determined by CMS in its sole discretion. Satisfactorily passed testing generally means the ability to pass all HIPAA compliance standards, and to process electronic healthcare information transmitted by QHPI to the Hub. This capability to submit test transactions will be maintained by QHPI throughout the term of this Agreement.

(2) As applicable, all transactions must be formatted in accordance with the Accredited Standards Committee Implementation Guides, adopted under HIPAA, available at http://store.x12.org/store/. CMS will make available Companion Guides for all applicable transactions, which specify certain situational data elements necessary.

(3) QHPI agrees to abide by the Standard Companion Guide Transaction Information Instructions related to the ASC X12 Benefit Enrollment and Maintenance (834) transaction, based on the 005010X220 Implementation Guide and its associated 005010X220A1 addenda for the Federally facilitated Marketplace (FFM) Companion Guide Version most recently released by CMS and in effect at the time the transactions are sent, and the CMS Instructions related to the ASC X12 820 transaction as specified in the ASC X12 005010X306 Health Insurance Exchange Related Payments (820) Implementation Guide.

(4) QHPI agrees to submit test transactions to the Hub prior to the submission of any transactions to the FFE production system, to determine that the transactions and responses comply with all requirements and specifications approved by the CMS and/or the CMS contractor.[1]

[1] While CMS owns data in the FFE, other contractors operate the FFE system in which the enrollment and financial management data flow. Contractors provide the pipeline network for the transmission of electronic data, including

(5) QHPI agrees that prior to the submission of any additional transaction types to the FFE production system, or as a result of making changes to an existing transaction type or system, it will submit test transactions to the Hub in accordance with paragraph (1) above.

(6) If QHPI enters into relationships with other affiliated entities, or their authorized designees, for submitting and receiving FFE data, it must execute contracts with such entities that stipulate that such entities and any subcontractors or affiliates of such entities, must be bound by the terms of this Agreement, test software, and receive QHPI's approval of software as being in the proper format and compatible with the FFE system.

(7) Incident and Breach Reporting Policies and Procedures. QHPI agrees to report any Incident or Breach of PII to the CMS IT Service Desk by telephone at (410)786-2580 or 1-800-562-1963 or via email notification at cms_it_service_desk@cms.hhs.gov within seventy-two (72) to ninety-six (96) hours after discovery of the Incident or Breach.

III. CMS Obligations

a. CMS will undertake all reasonable efforts to implement systems and processes that will support QHPI functions. In the event of a major failure of CMS systems and/or processes, CMS will work with QHPI in good faith to mitigate any harm caused by such failure.

b. As part of a monthly payments and collections reconciliation process, CMS will recoup or net payments due to QHPI against amounts owed to CMS by QHPI or any entity operating under the same tax identification number as QHPI (including overpayments previously made) with respect to offering of QHPs, including the following types of payments: APTCs, advance payments of CSRs, and payment of Federally-facilitated Exchange user fees.

IV. Effective Date; Term; Renewal.

a. Effective Date and Term. This Agreement becomes effective on the date the last of the two Parties executes this Agreement and terminates on December 31, 2015.

b. Renewal. This Agreement may be renewed upon the mutual written consent of both parties for subsequent and consecutive one (1) year periods.

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the transport of Exchange data to and from the Hub and QHPI so that QHPI may discern the activity related to enrollment functions of persons they serve. QHPI may also use the transported data to receive descriptions of financial transactions from CMS.

IV. Termination.

a. This Agreement shall terminate automatically upon QHPI's ceasing to provide all coverage under any QHPs that were offered through an FFE in the State(s) QHPI offered them.

b. CMS acknowledges that QHPI has developed its products for the FFE based on the assumption that APTCs and CSRs will be available to qualifying Enrollees. In the event that this assumption ceases to be valid during the term of this Agreement, CMS acknowledges that Issuer could have cause to terminate this Agreement subject to applicable state and federal law.

c. Termination with Notice by CMS. CMS may terminate this Agreement for cause upon sixty (60) Days' written notice to QHPI if QHPI materially breaches any term of this Agreement as determined at the sole but reasonable discretion of CMS, unless QHPI commences curing such breach(es) within such 60-Day period to the reasonable satisfaction of CMS in the manner hereafter described in this subsection, and thereafter diligently prosecutes such cure to completion. A QHPI's inability to perform due to a CMS error will not be considered a material breach. The 60-Day notice from CMS shall contain a description of the material breach and any suggested options for curing the breach(es), whereupon QHPI shall have seven (7) Days from the date of the notice in which to propose a plan and a time frame to cure the material breach(es), which plan and time frame may be rejected, approved, or amended in CMS' sole but reasonable discretion. The Agreement shall not be terminated if QHPI cures the cause for termination within 30 Days of the written notice to the satisfaction of CMS, which satisfaction shall be in CMS' sole discretion but shall not be unreasonably withheld. Notwithstanding the foregoing, QHPI shall be considered in "Habitual Default" of this Agreement in the event that it has been served with a 60-Day notice under this subsection more than three (3) times in any calendar year, whereupon CMS may, in its sole discretion, immediately thereafter terminate this Agreement upon notice to QHPI without any further opportunity to cure or propose cure.

d. QHPI acknowledges that termination of this Agreement 1) may affect its ability to continue to offer QHPs through the FFE; 2) does not relieve QHPI of applicable obligations to continue providing coverage to enrollees; and 3) specifically does not relieve QHPI of any obligation under applicable State law to continue to offer coverage for a full plan year. This Agreement does not impose any independent obligation on QHPI, after termination of this Agreement, to continue enrollment or treat those enrolled as being contracted for coverage.

V. Miscellaneous.

a. Notice. All notices specifically required under this Agreement shall be given in writing and shall be delivered as follows:

If to QHPI: To the contact identified in QHPI's QHP Application using the contact information provided in QHPI's QHP Application.

If to CMS:

Centers for Medicare & Medicaid Services (CMS)
Center for Consumer Information & Insurance Oversight (CCIIO)
Attn: Office of the Director – Issuer Agreement
Room 739H
200 Independence Avenue, SW
Washington, DC 20201

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, provided that notices not given on a business day (i.e., Monday – Friday excluding Federal holidays) between 9:00 a.m. and 5:00 p.m. local time where the recipient is located shall be deemed to have been given at 9:00 a.m. on the next business day for the recipient. QHPI or CMS to this Agreement may change its contact information for notices and other communications by providing thirty (30) Days' written notice of such change in accordance with this provision.

b. Assignment and Subcontracting. QHPI shall assume ultimate responsibility for all services and functions including those that are assigned or subcontracted to other entities and must ensure that subcontractors and assignees will perform all functions in accordance with all applicable requirements. QHPI shall further be subject to such compliance actions for functions assigned to subcontractors or assignees as may otherwise be provided for under applicable law. Notwithstanding any assignment of this Agreement or subcontracting of any responsibility hereunder, QHPI shall not be released from any of its performance or compliance obligations hereunder, and shall remain fully bound to the terms and conditions of this Agreement as unaltered and unaffected by such assignment or subcontracting.

c. Amendment. CMS may amend this Agreement for purposes of reflecting changes in applicable law or regulations, with such amendments taking effect upon sixty (60) Days' written notice to QHPI ("CMS notice period"), unless a different effective date is required by law. Any amendments made under this provision will only have

prospective effect and will not be applied retrospectively unless required by law. QHPI may reject such amendment, by providing to CMS, during the CMS notice period, thirty (30) Days' written notice of its intent to reject the amendment ("rejection notice period"). Any such rejection of an amendment made by CMS shall result in the termination of this Agreement upon expiration of the rejection notice period.

d. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. In the event that any provision of this Agreement is determined to be invalid, unenforceable or otherwise illegal, such provision shall be deemed restated, in accordance with applicable law, to reflect as nearly as possible the original intention of the parties, and the remainder of the Agreement shall be in full force and effect.

e. Disclaimer of Joint Venture. Neither this Agreement nor the activities of the QHPI contemplated by and under this Agreement shall be deemed or construed to create in any way any partnership, joint venture or agency relationship between CMS and QHPI. Neither QHPI nor CMS is, nor shall either QHPI or CMS hold itself out to be, vested with any power or right to bind the other Party contractually or to act on behalf of the other Party, except to the extent expressly set forth in ACA and the regulations codified thereunder, including as codified at 45 CFR part 155.

f. Remedies Cumulative. No remedy herein conferred upon or reserved to CMS under this Agreement is intended to be exclusive of any other remedy or remedies available to CMS under operative law and regulation, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy now or hereafter existing at law or in equity or otherwise.

g. Governing Law. This Agreement will be governed by the laws and common law of the United States of America, including without limitation such regulations as may be promulgated from time to time by the Department of Health and Human Services or any of its constituent agencies, without regard to any conflict of laws statutes or rules. QHPI further agrees and consents to the jurisdiction of the Federal Courts located within the District of Columbia and the courts of appeal therefrom, and waives any claim of lack of jurisdiction or forum *non conveniens*.

h. Audit. QHPI agrees that CMS, the Comptroller General, the Office of the Inspector General of HHS or their designees have the right to audit, inspect, evaluate, examine, and make excerpts, transcripts, and copies of any books, records, documents, and other evidence of QHPI's compliance with the requirements of this Agreement, upon

reasonable notice to QHPI and during QHPI's regular business hours and at QHPI's regular business location. QHPI further agrees to allow reasonable access to the information and facilities requested by CMS, the Comptroller General, the Office of the Inspector General of HHS or their designees for the purpose of such an audit.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated by each signature.

FOR QHPI

_____

Signature of Person Authorized to Enter Agreement on behalf of QHPI

_____

Type or printed Name and Title of Person Authorized to Enter into Agreement for QHPI

_____

Issuer Name

_____

Issuer HIOS ID

_____

Entity Address

_____

Date

FOR THE CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)

The undersigned are officials of CMS who are authorized to represent CMS for purposes of this Agreement.

Kevin J. Counihan Marketplace Chief Executive Officer and Director Center for Consumer Information & Insurance Oversight Centers for Medicare & Medicaid Services	**Date**
David J. Nelson Deputy Chief Operating Officer and Chief Information Officer Centers for Medicare & Medicaid Services	**Date**
Todd A. Lawson Acting Director, Office of E-Health Standards and Services and Acting Senior Official for Privacy Centers for Medicare & Medicaid Services	**Date**

CONGRESSIONAL BUDGET OFFICE
U.S. Congress
Washington, DC 20515

Douglas W. Elmendorf, Director

December 6, 2012

Honorable Darrell E. Issa
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

This letter responds to your request for information about CBO's March 20, 2010, cost estimate for H.R. 4872, the Health Care and Education Reconciliation Act of 2010, in combination with H.R. 3590, the Patient Protection and Affordable Care Act. Specifically, you asked for a description and explanation of CBO's assumption that the premium assistance tax credits established by that legislation would be available in every state, including states where the insurance exchanges would be established by the federal government.

To the best of our recollection, the possibility that those subsidies would only be available in states that created their own exchanges did not arise during the discussions CBO staff had with a wide range of Congressional staff when the legislation was being considered. Nor was the issue raised during consideration of earlier versions of the legislation in 2009 and 2010, when CBO had anticipated, in its analyses, that the credits would be available in every state. CBO's analysts reviewed H.R. 4872 and H.R. 3590 to try to ensure that the agency's estimate accurately reflected the legislative language, as they do for all legislation that they analyze, but that question did not arise in the course of that review, and CBO did not perform a separate legal analysis of that issue.

I hope this information is helpful to the committee.

Sincerely,

Douglas W. Elmendorf

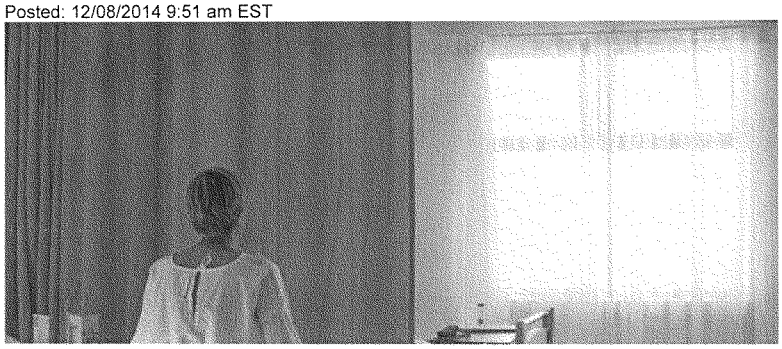
cc: Honorable Elijah E. Cummings
Ranking Member

HUFFPOST POLITICS

December 8, 2014
Douglas Holtz-Eakin
President, American Action Forum

Midnights and Medicare

Posted: 12/08/2014 9:51 am EST



Co-authored by Brittany La Couture, AAF's Health Care Policy Analyst

It can be dangerous to put important life decisions on a clock. Medicare has proven that it is even worse to make decisions solely by the clock.

It costs more for a hospital to admit a patient for surgery than to suture a cut finger and send the patient home, so it is intuitive that Medicare should, and does, reimburse more for inpatient stays than for outpatient care. It also makes sense to safeguard the taxpayer against improper billing of (inexpensive) outpatient care as (expensive) inpatient treatment. Medicare Recovery Audit Contractors (RACs) are firms hired to detect and correct improper Medicare claims. Hospitals that bill for an inpatient status when outpatient status would suffice are liable to be audited, and will forfeit the inpatient reimbursement.

Unfortunately, patients do not naturally divide cleanly into "inpatients" and "outpatients." Instead, they present a continuum of conditions and symptoms that evolve in complex ways. As a result, auditing admission decisions is complicated and messy. In an attempt to simplify and streamline the audit process, the Centers for Medicare and Medicaid Services (CMS) issued a proposed regulation known as the 'Two Midnight" rule: RACs should automatically consider a

person an "inpatient" if the hospital stay spans two midnights; all other hospital visits billed as inpatient are subject to audits.

The well-intentioned idea was to get the right care and save Medicare dollars. The reality is exactly the opposite. The rule distorts the incentives to provide the right care. Patients deemed inpatient may be held too long--inconveniently or inappropriately--in order for their stay to encompass two midnights. Or, patients may be designated as outpatient or on observation status despite receiving a level of care commensurate with inpatient status. This changes Medicare reimbursement from Part A to Part B, so those patients would be burdened by the full cost of their post-acute care costs because Medicare only covers these costs after an inpatient hospital stay. This would leave the patient ineligible for Medicare coverage of any skilled nursing care or maintenance drugs received from the hospital as a result of the episode. In either event, the quality of patient outcomes may suffer.

Consider short-term inpatients and observation patients. They stay at the hospital comparable amounts of time, but the former's medical needs may require inpatient status and therefore make the hospital susceptible to an audit, while the latter's do not. Based on time at the hospital, they are equivalent, but a 2013 study by the University of Wisconsin School of Medicine and Public Health found "little overlap in diagnosis codes between short-stay inpatients and observation patients," indicating a clinical justification for assigning short-stay patients as inpatients.

Furthermore, the University of Wisconsin researchers found, unsurprisingly, that time of day and day of the week played a large role in whether or not a patient achieved two midnights. This is at least in part because most hospitals have more limited capabilities at night and on the weekend, so a patient's length of stay may be determined by whether labs are open or specialists are available at the time of check-in more than the severity of the diagnosis.

The rule is simply at odds with the care needs of Medicare beneficiaries. And it's costing taxpayers more Medicare dollars. The same researchers concluded that the Two Midnight rule would likely have the effect of increasing the average length of stay, creating unintended inefficiencies, and increasing the total cost of care both for Medicare and beneficiaries.

On top of that, the rule's unworkability has stopped the RAC audits. CMS declared a grace period from audits while hospitals learn and adjust to the new regulations. This has been successively extended, delaying enforcement until March 31, 2015. Hospitals have a free pass in submitting bills for reimbursement; industry sources project that the cost of suspending the auditing program could be as high as $6 billion.

The Two Midnight rule was well intentioned--streamlining audits of the cost of providing effective care to Medicare beneficiaries. Instead, it is distorting care incentives and costing taxpayers. It is time to get rid of the rule and return to a more rational, medicine-based standard of determining when it is appropriate to assign patients inpatient, outpatient, or observation status.

The Washington Post

Opinions

Affordable Care Act opponents are cherry-picking their history

By Tom Harkin, Ron Wyden, Sander M. Levin, George Miller and Henry A. Waxman October 30, 2014

Tom Harkin (D-Iowa) and Ron Wyden (D-Ore.) are the chairmen of the Senate Health, Education, Labor and Pensions Committee and the Senate Finance Committee, respectively. When the Affordable Care Act was enacted, Sander M. Levin (D-Mich.), George Miller (D-Calif.) and Henry A. Waxman (D-Calif.) were chairmen of the House Ways and Means Committee, the House Education and Workforce Committee, and the House Energy and Commerce Committee, respectively.

The Affordable Care Act was created to improve the quality and affordability of health care for all Americans. Indeed, many people who didn't have — and couldn't afford — health insurance before the law have it now.

As the New England Journal of Medicine recently determined, an estimated 10 million Americans gained health insurance between September 2013 and this past April, and most of them received financial help to make their coverage affordable.

Despite this progress, the law's opponents continue to try to undermine it. They seem unwilling to recognize the implications of their actions. Repealing the Affordable Care Act would take us back to the days when health care was reserved for the healthy and wealthy.

In a series of legal challenges, opponents have inaccurately argued that Congress intended to provide financial help only to Americans living in the 14 states that directly run their own health insurance

marketplaces, not in the 36 states that delegated administration of their marketplaces to the federal government.

This interpretation is wrong. As members of Congress who shaped and debated the legislation, we want to set the record straight.

This year, two federal appellate courts issued conflicting rulings on who qualifies for subsidies under the law. A three-judge panel from the Fourth Circuit Court of Appeals unanimously ruled that financial help with premiums is appropriately provided to people throughout the country, no matter where they live. A panel from the D.C. Circuit Court of Appeals, in a 2 to 1 decision, reached an opposite ruling. That judgment, however, has been vacated, and the full court will rehear the issue soon.

None of us contemplated that the bill as enacted could be misconstrued to limit financial help only to people in states opting to directly run health insurance marketplaces. In fact, as chairs of the three House committees that collectively authored the health-care reform legislation (Ways and Means, Energy and Commerce, and Education and the Workforce), three of us issued a joint fact sheet in March 2010 reflecting our intention that financial help would be available to consumers in the state marketplaces, whether the state were to run it directly or via the federal government.

On the Senate side, provisions from the bill reported by Sen. Harkin's Health, Education, Labor and Pensions Committee were combined with provisions from the bill reported by the Finance Committee, of which the current chairman, Sen. Wyden, was a senior member. There, too, the final bill embodied our universal understanding that financial assistance would be available in every state.

The respected, nonpartisan Congressional Budget Office came to the same conclusion.

When we asked it to estimate the cost of our legislation, the CBO understood our intent and repeatedly provided fiscal projections based on the availability of financial help in every state and the District. Even though early political opposition to the Affordable Care Act made it apparent that some governors might refuse to directly run their own marketplaces, thereby delegating such administration to the federal government, the CBO's projections always correctly assumed that financial help would be available to qualifying individuals and families regardless.

However, those who brought the recent lawsuits have developed a fanciful notion about Congress's intentions. They assert that we intended to compel all states to run marketplaces directly by penalizing residents of those states that refused to do so.

But the law expressly provides that low- and middle-income Americans and their families will receive financial help to make their coverage more affordable. In an attempt to make their case, the law's opponents cherry-pick one four-word phrase — "established by the State" — from the formula used to determine how much financial help Americans are eligible to receive and use this phrase to argue that assistance isn't available to people living in states that decided to use the federal marketplace. But the language on which the law's opponents rely means no such thing.

Every state is required to have a marketplace to help Americans shop for affordable coverage. While states can set up a marketplace themselves, the law directs the federal government to set up "such" exchanges in states that do not. The law requires the federally facilitated marketplace to be functionally the same as marketplaces established by states — making clear that an exchange created by the federal government is, as a matter of law, "an Exchange established by the State" — and people are entitled to financial assistance regardless of which type of marketplace they use.

The Affordable Care Act was designed to make health-care coverage affordable for all Americans, regardless of the state they live in. Providing financial help to low- and moderate-income Americans was the measure's key method of making insurance premiums affordable. Without it, millions would remain uninsured, and for them, the new law would be nothing more than an empty, unfulfilled promise.

Before health-care reform, the need for affordable insurance was universally documented across all states. Americans who could not afford insurance had to choose between putting food on the table and purchasing needed medicines. Many went without medical treatment, faced bankruptcy or even risked premature death. These problems affected families regardless of where they lived.

The Affordable Care Act makes financial help available to working Americans in every state. That is the law we intended. That is the law we enacted. That is the law that is covering millions of people through marketplaces. And that is the law that should continue to be in force.

Read more on this issue:

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Ruth Marcus: Supreme Court may not protect Obamacare this time

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