

# United States Senate

WASHINGTON, DC 20510

May 16, 2014

Ms. Sylvia Burwell  
Director  
Office of Management and Budget  
725 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20503

Dear Director Burwell:

Since the president announced your nomination for Secretary of the U.S. Department of Health and Human Services (HHS), we have reviewed your tenure as Director of the Office of Management and Budget (OMB) and monitored your responses given at confirmation hearings held by the Senate Health, Education, Labor, and Pensions Committee and Finance Committee. While your roles in the private sector and the administration provide you with a unique set of experiences and skills that strengthen your qualification as Secretary Sebelius' replacement, the Senate's authority over confirmation of all presidential nominations provides us and other U.S. Senators the opportunity to perform our oversight of the administration. Additionally, your nomination to such a highly active agency necessitates due diligence to ensure your ability and dedication to leading HHS in a transparent and forthright manner, especially in the midst of the Department's implementation of the Patient Protection and Affordable Care Act (PPACA).

James Madison once wrote, "[a] popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps, both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives." In furtherance of our Founding Fathers' views on the importance of an informed citizenry, we ask that you provide written responses to the following questions before full Senate consideration of your nomination.

- On May 7, 2014, Mark Pratt with America's Health Insurance Plans (AHIP) testified before the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations and stated that due to challenges during open enrollment, insurers have many duplicate enrollments. Does your estimate that there have been approximately 8 million exchange enrollees take duplicate enrollments into consideration and remove them from the count? What percentage of exchange enrollees, broken down by age ranges, has paid its first month's premium? Will you commit to disclosing the percentage of exchange enrollees, broken down by age ranges, that have paid subsequent premiums—first two months, first three months, etc?
- What percentage of exchange enrollees had some form of health insurance during 2013 prior to their enrollment in an exchange? Because the federal exchange's application asks if individuals have insurance either through a job or elsewhere, you should have access to this information.
- Earlier this year, the Congressional Budget Office (CBO) projected the PPACA's three risk-spreading mechanisms would be budget neutral. In April 2014, the Centers for Medicare & Medicaid Services (CMS) released guidance on how the agency would keep PPACA risk

corridors budget neutral. Will CMS use any taxpayer dollars to supplement the risk corridor collections made by insurers? If not, will you maintain this commitment even as the industry exerts pressure on you to reverse such a decision and even if exchange premiums rise?

- Just last year the OMB issued a report indicating that consistent with the law PPACA's insurance cost-sharing subsidies would be subject to the sequester. Yet on March 10, 2014 under your leadership, OMB changed its position to exempt these cost-sharing subsidies from the sequester. Under what legal authority did OMB take such action? Could you elaborate on the specific considerations which prompted this reversal of policy?
- As you know, the Secretary of HHS serves as an ex officio member of the Independent Payment Advisory Board (IPAB), PPACA's fifteen-member panel tasked with reducing Medicare expenditures. To date, President Obama has not nominated anybody to serve on IPAB, and absent an IPAB proposal put before HHS, the Secretary is tasked with creating her own Medicare proposal. In a confirmation hearing, you mentioned that your goal was to ensure that IPAB is never triggered. Therefore, would you support its full repeal, which is the only way to guarantee it is never activated and never has the chance to ration care? If not, how do you envision the Secretary's role as a member of IPAB and what specific Medicare spending reductions would you support as part of a proposal?
- Members from both the House and Senate have sought greater transparency on the exchanges, particularly related to the disclosure of abortion coverage, but HHS has continually resisted. To date, Congress has not received the list of insurers that do and do not include elective abortion coverage in their plans, even though Secretary Sebelius promised to provide such information. Will you commit to delivering such a list? If yes, when could we expect it? Additionally, do you believe all Americans should be informed about elective abortion coverage prior to their selection and purchase of a plan? If so, would you be willing to ensure that such information is available and clearly identifiable to consumers prior to their enrollment in a plan?
- The administration has delayed the employer mandate and reporting requirements multiple times but has refused to provide the same relief to hardworking Americans through a delay in the individual mandate. In your view, were these decisions made with political considerations in mind and for the benefit of big businesses? Do you share former Secretary of State Hillary Clinton's concern that she voiced in 1993 as First Lady that an individual mandate without a strong employer mandate would lead to a decrease in employers offering health coverage?

We appreciate your attention to our letter and would appreciate a prompt response. We look forward to working with you in the future.

Sincerely,



---

Senator Michael S. Lee



---

Senator Ted Cruz