

Congress of the United States
U.S. House of Representatives
Committee on Small Business
2561 Rayburn House Office Building
Washington, DC 20515-6515

March 27, 2013

The Honorable Marilyn Tavenner
Administrator
Centers for Medicare and Medicaid Services
P.O. Box 8016
Baltimore, MD 21244-8016
Via Facsimile: 202.690.8168

Re: Request for Written Response on the Proposed Rule on Patient Protection and Affordable Care Act: Establishment of Exchanges and Qualified Health Plans; Small Business Health Options Program, March 1, 2013

Dear Administrator Tavenner:

The Small Business Committee is required by the Rules of the House to study and investigate the problems of all types of small businesses. This jurisdiction extends to matters concerning small businesses and health care. As the Chairman of the Committee, I have strongly opposed the health care law, and voted numerous times to repeal it. But because it is now law, many small entities are struggling to comply with it.

Supporters of the health care law have cited the creation of health exchanges in each state as one of the law's central benefits. As you know, these exchanges have been described as marketplaces where individuals without access to employer-sponsored health insurance could compare, select and purchase coverage directly from participating insurance companies.¹ The health care law also requires the creation of similar exchanges, called the Small Business Health Options Program (SHOPs) where small businesses would be able to shop for and purchase coverage for their employees.² Under the law, states must implement an exchange – including a SHOP exchange – by January 1, 2014, or the federal government will do so.³ A business owner would determine which insurance plans to offer employees, and the percentage of premiums that would be covered. If a business chose to enroll, the exchange would also handle enrolling employees and consolidating billing.

¹ UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, FACT SHEET, AFFORDABLE INSURANCE EXCHANGES: CHOICES, COMPETITION AND CLOUT FOR SMALL BUSINESSES, *available at* <http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011c.html>

² Pub. L. No. 111-148, 124 Stat. 186 (2010).

³ *Id.*

Proponents of the health care law have said exchanges would increase the availability and affordability of health insurance.⁴ During the debate on the law, and still today, the exchanges – and the SHOs -- have been touted as a key element of its implementation.⁵ In fact, according to the Center for Consumer Information and Insurance Oversight’s website:

By permitting consumers and employers to easily compare health plans, Exchanges will increase competition among issuers and improve the affordability of coverage. Exchanges are integral to the Affordable Care Act’s goals of prohibiting discrimination against people with pre-existing conditions and insuring all Americans.⁶

For many years, small business owners have cited the cost of health insurance as one of their most pressing problems.⁷ One of the reasons small business owners were promised that costs would drop was the competition ensured by the law’s SHOs. In the Exchange Establishment Rule, CMS detailed the minimum functions of a SHO, including that “the SHO must allow employers the option to offer employees all QHPs at a level of coverage chosen by the employer...”⁸

On March 1, 2013, the Centers for Medicare and Medicaid Services (CMS) issued a proposed rule⁹ addressing participation in the SHOs. Specifically, the proposed rule would amend the current regulations regarding enrollment periods for employees’ choice of Qualified Health Plans (QHPs) on the SHOs.

In the three years since the health care law’s passage, a number of questions have arisen about the progress to date by the states and the federal government to plan and implement the exchanges by 2014. Gary Cohen, Director of the Center for Medicare and Medicaid Services’ Office of Consumer Information and Insurance Oversight, repeatedly assured Congress that the Exchanges would be open for enrollment on October 1, 2013 as the law requires. He testified in December 2012 that he was “confident that states and the federal government will be ready [to open enrollment in the exchanges]

⁴ UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, FACT SHEET, AFFORDABLE INSURANCE EXCHANGES: CHOICES, COMPETITION AND CLOUT FOR SMALL BUSINESSES, *available at* <http://www.healthcare.gov/news/factsheets/2011/07/exchanges07112011c.html>.

⁵ On the United States Department of Health and Human Services’ website, “establishment of the exchanges” is listed as one of the “key features of the Affordable Care Act.” www.healthcare.gov, *available at* <http://www.healthcare.gov/law/timeline/full.html>.

⁶ CENTER FOR CONSUMER INFORMATION AND INSURANCE OVERSIGHT, CENTERS FOR MEDICARE AND MEDICAID SERVICES, GENERAL GUIDANCE FOR FEDERALLY-FACILITATED EXCHANGES, *available at* http://cciio.cms.gov/resources/files/ffe_guidance_final_version_051612.pdf.

⁷ See HEALTHCARE BIGGEST HEADACHE FOR SMALL EMPLOYERS, CNNMONEY (JUNE 10, 2008), *available at* http://money.cnn.com/2008/06/10/smallbusiness/nfib_healthcare.fsb/index.htm, and *Small Business Confidence Barely Budgets*, NFIB (Feb. 12, 2013), *available at* <http://www.nfib.com/press-media/press-media-item?cmsid=62013>.

⁸ Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, 77 Fed. Reg. 18,310 (Mar. 27, 2012) (to be codified at 45 C.F.R. Pts. 155, 156 and 157, *available at* <http://www.nfib.com/press-media/press-media-item?cmsid=62013>.

⁹ 45 C.F.R. Pts. 155 and 156 (2013) (“proposed rule”), *available at* http://www.ofr.gov/OFRUpload/OFRData/2013-04952_PI.pdf.

in 10 months”¹⁰ and in February, 2013, he testified that “all Exchanges will be open for enrollment on October 1, 2013.”¹¹

Just two weeks later, on March 1st, CMS released its proposed rule suggesting a “transitional policy” that “is intended to provide additional time to prepare for an employee choice model and to increase the stability of the small group market while providing small groups with the benefits of SHOP in 2014...” This proposed rule delaying the SHOPS would provide additional time for CMS to establish the exchanges, but its claim that it will “stabilize the small group market” and “provide a choice among competing QHPs”¹² seems rather specious.

While the proposed rule would not delay the SHOPS from operating entirely, it seems to delay the implementation of the “employee choice” model for one year in federally-operated SHOPS, and designate it as an option in the state-operated SHOPS. To assist the Committee in its oversight of issues concerning health care and small businesses, we request that you provide the following information:

1. Does the proposed delay in the SHOPS mean that small business owners won’t be able to select a benefit level with a number of QHPs to choose from as promised; rather, they may offer just one plan for their employees?¹³
2. If employees are not offered a choice of plans providing various features, it is unclear what benefit the SHOPS would offer in the short term. If there are other benefits from the SHOPS, please specify.
3. What are the reasons for the SHOPS delay?
4. What progress has been made on the SHOPS to date?
5. Because under the employer mandate many small business owners will be required to offer health insurance to their employees or face a penalty, what other options for providing coverage will be available?
6. What leads you to conclude that the SHOPS will be ready to open in January, 2015?
7. Will the broader exchanges be similarly delayed?

Please provide this information by April 22, 2013.

If one of the key goals of supporters of the health care law was to provide small business owners with a competitive process by which they could select from a number of affordable health insurance

¹⁰ *State of Uncertainty: Implementation of PPACS’s Exchanges and Medicaid Expansion, Hearing Before the House Energy and Commerce Subcommittee on Health*, 113th Congress 8, December 13, 2012 (testimony of Gary Cohen, Deputy Administrator and Director, Office of Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services), available at <http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/Hearings/Health/20121213/HHRG-112-IF14-WState-Mann-Cohen-20121213.pdf>.

¹¹ *Health Insurance Exchanges: Progress Report, Hearing Before the Senate Finance Committee*, 113th Congress 2, February 14, 2013 (testimony of Gary Cohen, Deputy Administrator and Director, Office of Consumer Information and Insurance Oversight, Centers for Medicare and Medicaid Services), available at [http://www.finance.senate.gov/imo/media/doc/CMS%20Health%20Insurance%20Exchanges%20Testimony%20%2014%2013%20\(G%20%20Cohen\).pdf](http://www.finance.senate.gov/imo/media/doc/CMS%20Health%20Insurance%20Exchanges%20Testimony%20%2014%2013%20(G%20%20Cohen).pdf).

¹² 45 C.F.R. Pts. 155 and 156 at 10 (2013) (“proposed rule”), available at http://www.ofr.gov/OFRUpload/OFRData/2013-04952_PI.pdf.

¹³ *Id.*

plans for their employees, then that goal is not in sight. In the meantime, it is likely that entrepreneurs will continue to experience the premium increases they have come to expect.

I look forward to your response.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sam Graves", with a stylized flourish extending to the right.

Sam Graves
Chairman