

Congress of the United States
Washington, DC 20515

January 27, 2012

Ms. Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
Room 445-G, Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Acting Administrator Tavenner:

As Members of the Senate Committee on Finance and the House Committee on Energy and Commerce and Members with specific interest in the Medicaid program, we are writing regarding an issue that has created confusion and uncertainty for health care providers, pharmacists, and patients. It has been over a year since the Centers for Medicare and Medicaid Services (CMS) first provided guidance on the changes to the Average Manufacturer Price (AMP) calculation as required in the Patient Protection and Affordable Care Act (PPACA), but CMS has yet to issue a notice of proposed rulemaking let alone finalize an AMP rule.

As you know, PPACA revised the formula for reimbursing pharmacies for generic and multiple source drugs in the Medicaid program by using the AMP to set Federal Upper Limits (FULs); and the accurate calculations of the AMP and the FULs are dependent on one another. It is our understanding that CMS sent the proposed AMP rule to the Office of Management and Budget (OMB) for regulatory clearance in 2011, but unfortunately, CMS continues to delay taking any regulatory action. To make matters worse, CMS has issued four sets of draft FUL reimbursement files, all of which are dependent on further guidance from CMS regarding the new definitions of AMP. It is unacceptable for CMS to continue delaying action on a final AMP rule when providers are expected to comply with the related FULs. Additionally, the law explicitly requires CMS to implement a smoothing process for the AMP as reimbursements are calculated, and CMS has yet to comply with this statutory requirement.

Predictably, these delays and selective implementation of the law have created unnecessary confusion across the country. Due to the lack of clarity on the AMP calculation, manufacturers, pharmacists, and states have been forced to guess the intent of CMS when performing tens of billions of dollars in calculations. CMS's regulatory uncertainty has added unnecessary burdens on health care providers who are already struggling through tough economic times. Additionally, this lack of clarity and transparency from CMS has put new burdens on state governments that are already struggling to manage their Medicaid programs during difficult budget cycles. This regulatory quagmire is simply unacceptable, and stakeholders deserve better.

President Obama promised that transparency would be a touchstone of his Administration and that “those of us who manage the public’s dollars will be held to account.” Unfortunately, CMS’s handling of the AMP regulation is just the latest example of this Administration failing to keep those promises. Whether it is bypassing public comment or missing key statutory deadlines, we have become increasingly concerned with the Administration’s lack of transparency as it implements a law that will affect more than 300 million lives and one-sixth of the American economy.

In response to these concerns, we ask that you provide us with an update on CMS’s plans to issue future guidance on the AMP calculation and the related FULs lists by February 10, 2012. Please include specific dates by which CMS will issue first the proposed AMP rule and then the final rule. If you have any questions regarding this request, please contact Monica Popp with the Energy and Commerce Committee at (202) 225-2927, or Stephanie Carlton with the Senate Finance Committee at (202) 224-4515.

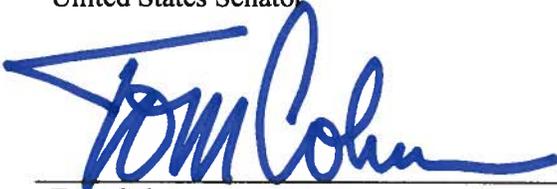
Sincerely,



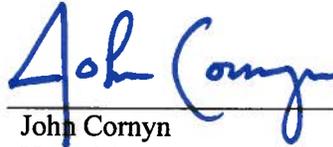
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United States Senator



Fred Upton
United States Representative



Tom Coburn
United States Senator



John Cornyn
United States Senator



Mike Crapo
United States Senator



Jon Kyl
United States Senator



Jerry Moran
United States Senator



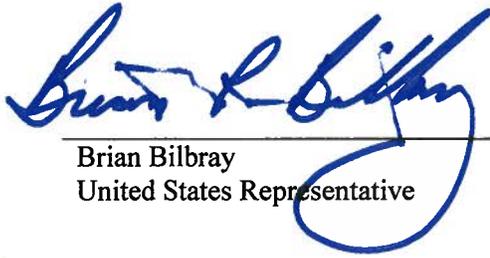
Pat Roberts
United States Senator



Joe Pitts
United States Representative



Joe Barton
United States Representative



Brian Bilbray
United States Representative



Marsha Blackburn
United States Representative



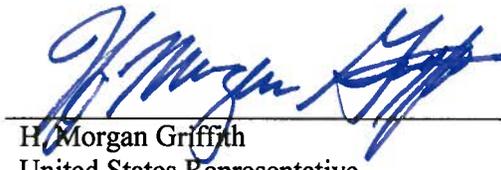
Mary Bono Mack
United States Representative



Michael C. Burgess
United States Representative



Bill Cassidy
United States Representative



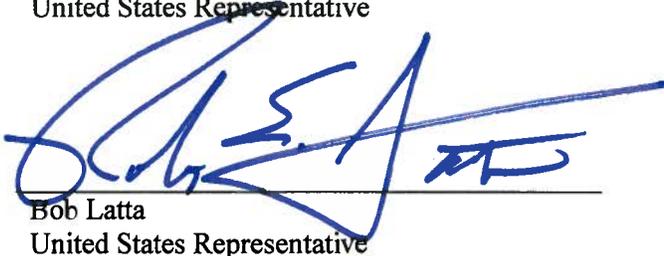
H. Morgan Griffith
United States Representative



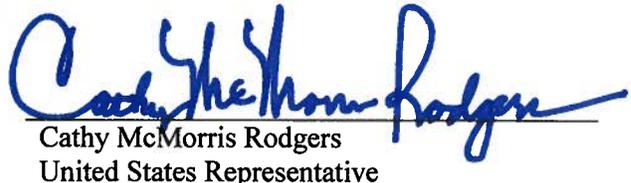
Brett Guthrie
United States Representative



Leonard Lance
United States Representative



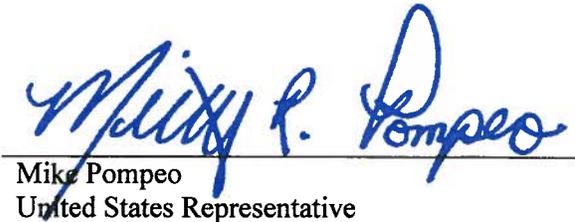
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Cathy McMorris Rodgers
United States Representative



Tim Murphy
United States Representative



Mike Pompeo
United States Representative



Cliff Stearns
United States Representative



Lee Terry
United States Representative



Ed Whitfield
United States Representative

cc: The Honorable Max Baucus, Chairman
Senate Committee on Finance

The Honorable Henry A. Waxman, Ranking Member
House Committee on Energy and Commerce