

Congress of the United States
Washington, DC 20515

August 6, 2018

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

Dear Secretary Azar,

The 2010 enactment of the Affordable Care Act (ACA) broke with the longstanding safeguards of the Hyde Amendment, which for over 40 years has protected taxpayers from paying for abortion and health insurance plans that include abortion. Since that time, the House has acted on four separate occasions to pass the No Taxpayer Funding for Abortion Act (H.R. 7) to remedy the severe problems with the ACA in regard to abortion coverage. Until this statutory protection is enacted into law, there are steps the Administration can take to mitigate ACA's unprecedented expansion of abortion coverage. **We urge you to issue new regulations regarding Section 1303 as soon as possible.**

Contrary to the Hyde Amendment, ACA's Section 1303 created separate abortion accounting and transparency requirements. Section 1303 of the ACA requires that when federal subsidies are paid toward the purchase of a qualified health plan that includes coverage of elective abortion:

- the health insurance issuer must not use the subsidy amounts to pay for any elective abortion,
- must "collect from each enrollee in the plan" a "separate payment" of not less than \$1 per month for any elective abortions covered,
- and must deposit these separate elective abortion payments into "a separate account that consists solely of such payments and that is used exclusively to pay" for elective abortions.

The statute even gives the example where "in the case of an enrollee whose premium for coverage under the plan is paid through employee payroll deposit, the separate payments required under this subparagraph shall each be paid by a separate deposit."¹ The ACA is absolutely clear: a "separate payment" must be collected when qualified health plans cover abortion.

¹ 42 USC 18023 (a)(2)(B)

Underscoring the plain legislative meaning of the text, then-Senator Ben Nelson (D-NE) described how the process would work during legislative debate surrounding Section 1303. He said “...*the insurance company must bill you separately, and you must pay separately from your own personal funds—perhaps a credit card transaction, your separate personal check, or automatic withdrawal from your bank account—for that abortion coverage. Now, let me say that again. You have to write two checks: one for the basic policy and one for the additional coverage for abortion....*”²

The Obama administration failed to enforce Section 1303 and undermined the segregation of funds requirements through permissive regulations. A 2014 report by the Government Accountability Office found that many insurers were ignoring the requirements of Section 1303.³ While we welcomed CMS’s October 2017 guidance regarding enforcement of ACA Section 1303, meaningful enforcement requires new regulations.⁴ As long as enforcement is tied to the existing Obama-era regulations for Section 1303, it will remain sorely deficient.

Current regulations define compliance with Section 1303 in a number of ways that negate the clear meaning of the statute’s phrase, “separate payment.”⁵ For example, issuers may send a “notice at or soon after the time of enrollment that the monthly invoice or bill will include a *separate charge* for such services,” though it is not required to be noticed on the monthly invoice itself, or issuers may send a monthly invoice or bill that “*separately itemizes*” the abortion surcharge (emphasis added). Further the rule explains that the issuer is not required to separately identify the abortion surcharge, and the surcharge can be collected in a single transaction rather than collected separately. Therefore, according to current regulations, there is no meaningful requirement for the collection of a separate payment for the plan’s abortion services, making the abortion surcharge all but invisible.

HHS should issue new regulations that align with the clear meaning and legislative history of Section 1303 of ACA and its requirement for a truly “separate payment,” and provide ample mechanisms for enforcement. The new regulations should also clarify that *all* qualified health plans that cover elective abortion must provide notice of such coverage to consumers at the time of enrollment. This will provide more transparency to consumers, many who are unwittingly purchasing plans that include abortion coverage. No person should have to pay for abortion coverage that they don’t want.

Sincerely,



Christopher H. Smith
Member of Congress



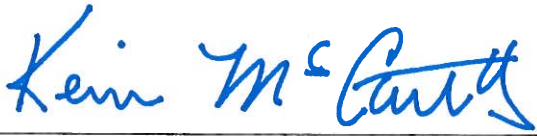
Vicky Hartzler
Member of Congress

² 155 Cong. Rec. S14134 (Dec. 24, 2009) <http://www.gpo.gov/fdsys/pkg/CREC-2009-12-24/pdf/CREC-2009-12-24-pt1-PgS14134-2.pdf#page=1>

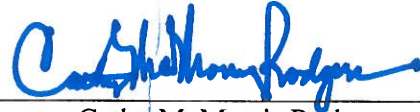
³ <https://www.gao.gov/assets/670/665800.pdf>, page 3, footnote 8

⁴ <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Section-1303-Bulletin-10-6-2017-FINAL-508.pdf>

⁵ 80 CFR 10750, 10840-10841 <https://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf>



Kevin McCarthy
House Majority Leader



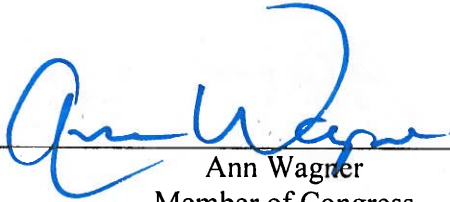
Cathy McMorris Rodgers
House Republican Conference Chair



Steve Scalise
House Majority Whip



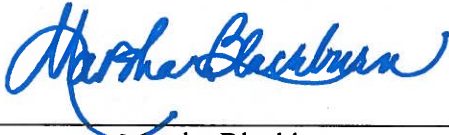
Diane Black
Member of Congress



Ann Wagner
Member of Congress



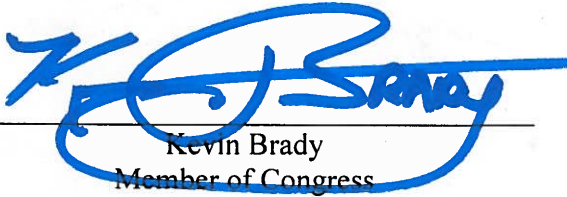
Daniel W. Lipinski
Member of Congress



Marsha Blackburn
Member of Congress



Virginia Foxx
Member of Congress



Kevin Brady
Member of Congress



Andy Harris, M.D.
Member of Congress



Kristi Noem
Member of Congress



Debbie Lesko
Member of Congress



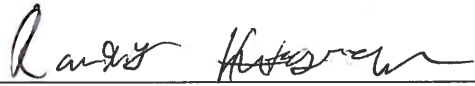
Mia Love
Member of Congress



Jackie Walorski
Member of Congress



Tom Cole
Member of Congress



Randy Hultgren
Member of Congress



Billy Long
Member of Congress



Ron Estes
Member of Congress



Robert Latta
Member of Congress



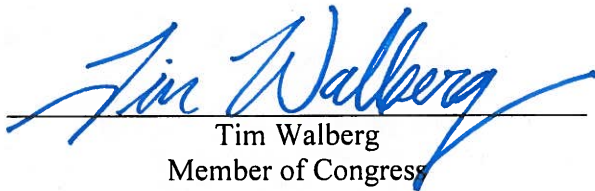
Bob Gibbs
Member of Congress



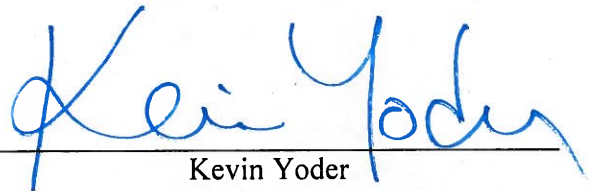
Bill Flores
Member of Congress



Todd Rokita
Member of Congress



Tim Walberg
Member of Congress



Kevin Yoder
Member of Congress



Steve Pearce
Member of Congress



Rick Crawford
Member of Congress



Brad Wenstrup
Member of Congress



Austin Scott
Member of Congress



Lamar Smith
Member of Congress



Doug Lamborn
Member of Congress



Steve Chabot
Member of Congress



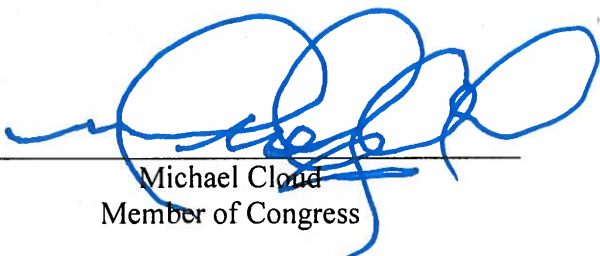
Kenny Marchant
Member of Congress



Ralph Norman
Member of Congress



Walter Jones
Member of Congress



Michael Cloud
Member of Congress



Sean Duffy
Member of Congress



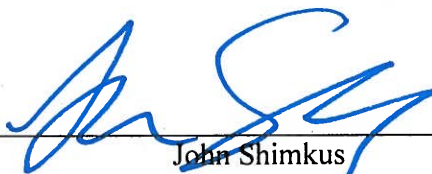
Louie Gohmert
Member of Congress



Bill Huizenga
Member of Congress



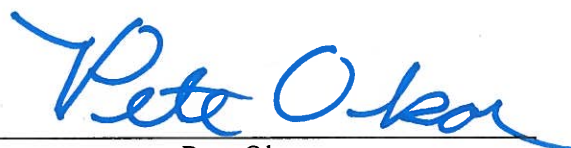
Jeff Duncan
Member of Congress



John Shimkus
Member of Congress



Steve King
Member of Congress



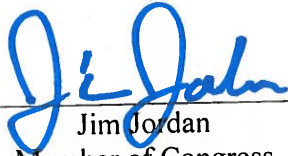
Pete Olson
Member of Congress



Gus M. Bilirakis
Member of Congress



Tom Graves
Member of Congress



Jim Jordan
Member of Congress



Rob Wittman
Member of Congress



Sam Johnson
Member of Congress



Lou Barletta
Member of Congress



Rodney Davis
Member of Congress



Rob Woodall
Member of Congress



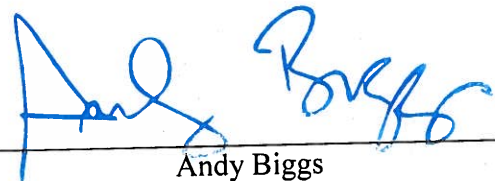
Clay Higgins
Member of Congress



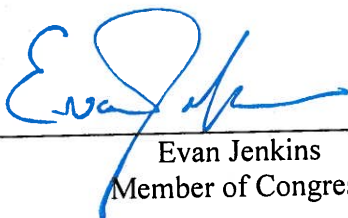
Bill Johnson
Member of Congress



Randy Weber
Member of Congress




Andy Biggs
Member of Congress



Evan Jenkins
Member of Congress



Mike Bost
Member of Congress



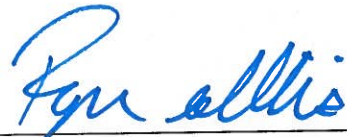
Andy Barr
Member of Congress




Darin LaHood
Member of Congress



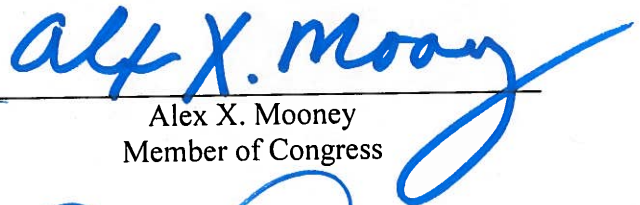
Greg Gianforte
Member of Congress



Roger Williams
Member of Congress



Mark Walker
Member of Congress



Alex X. Mooney
Member of Congress



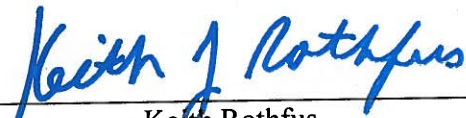
Luke Messer
Member of Congress




Glenn Grothman
Member of Congress



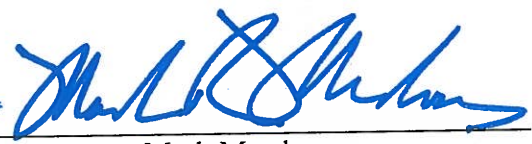
Daniel Webster
Member of Congress



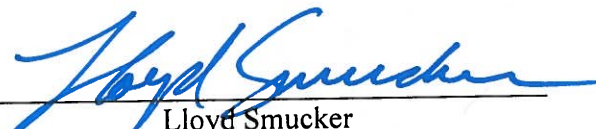
Keith Rothfus
Member of Congress



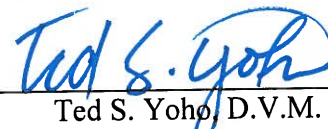
Sam Graves
Member of Congress



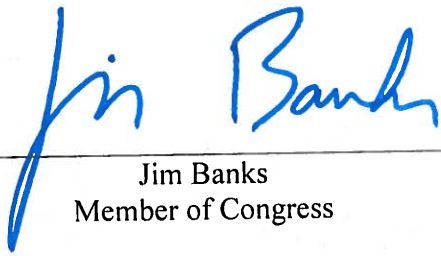
Mark Meadows
Member of Congress



Lloyd Smucker
Member of Congress



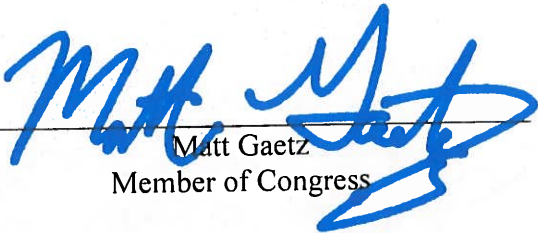
Ted S. Yoho, D.V.M.
Member of Congress



Jim Banks
Member of Congress



David Kustoff
Member of Congress



Matt Gaetz
Member of Congress



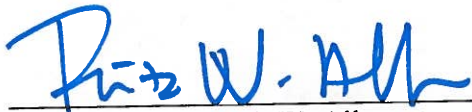
Dennis A. Ross
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



Mike Bishop
Member of Congress



Rick W. Allen
Member of Congress



David Rouzer
Member of Congress



Ralph Abraham, M.D.
Member of Congress



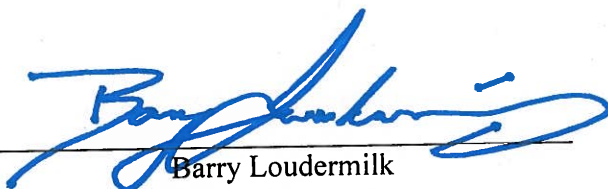
Jack Bergman
Member of Congress



David P. Roe, M.D.
Member of Congress



Gary Palmer
Member of Congress



Barry Loudermilk
Member of Congress



Mike Johnson
Member of Congress



John Ratcliffe
Member of Congress



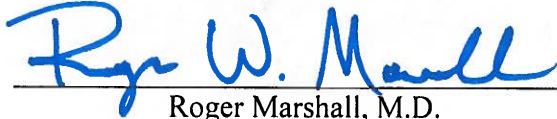
Jody Hice
Member of Congress



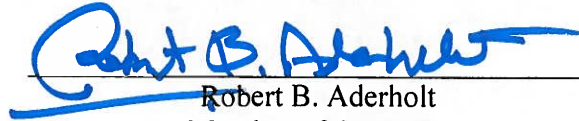
Doug LaMalfa
Member of Congress



Brian Babin, D.D.S.
Member of Congress



Roger Marshall, M.D.
Member of Congress



Robert B. Aderholt
Member of Congress



Robert Pittenger
Member of Congress



Paul Mitchell
Member of Congress



Bruce Westerman
Member of Congress



Steve Russell
Member of Congress



Francis Rooney
Member of Congress



Bradley Byrne
Member of Congress



Claudia Tenney
Member of Congress



H. Morgan Griffith
Member of Congress



Adam Kinzinger
Member of Congress

Brett Guthrie

Brett Guthrie
Member of Congress