

**Congress of the United States**  
**Washington, DC 20515**

July 1, 2019

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,

We encourage swift finalization of the proposed rule, titled “Patient Protection and Affordable Care Act; Exchange Program Integrity,” as it relates to compliance with the separate payment requirement in Section 1303 of the Patient Protection and Affordable Care Act (ACA). We support the rule and sincerely thank the Department of Health and Human Services (HHS) for proposing it. Finalization of this rule is critical and very time sensitive, as Open Enrollment for 2020 begins November 1, 2019.

Section 1303 of the ACA required qualified health plans (QHPs) that covered elective abortions to collect a separate payment—sometimes referred to as an abortion surcharge—of at least \$1 per enrollee per month and deposit it into an abortion account. By no means is this measure consistent with the principle of the long-standing Hyde Amendment; however, it is important that the administration comply with these minimal requirements with transparency. Section 1303 specifically requires:

- QHPs must “collect from each plan” a “separate payment” of not less than \$1 per month for any elective abortions covered.
- QHPs 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.

Unfortunately, in an exercise of executive overreach, the Obama Administration undermined Section 1303 by interpreting “separate” to mean “together” in subsequent regulatory guidance. Blatantly disregarding congressional authority, the guidance stated that simply sending a single notice about the surcharge or itemizing the abortion surcharge on monthly bills would satisfy the requirement under Section 1303. This meant QHPs could collect the “separate” abortion surcharge payment “together” with the remaining premium in one check. This misinterpretation of the law created a hidden abortion surcharge in many health care plans on exchanges throughout the nation, requiring enrollees to—in some cases unknowingly—subsidize elective abortion.

The proposed rule is consistent with the clear meaning and congressional intent of Section 1303 and eliminates the hidden abortion surcharge in many ACA plans. While this requirement does

not change the fact that the ACA violates the precedent of the long-standing Hyde Amendment through its involvement of tax dollars in subsidies to abortion-covering plans, it is an important step in providing transparency and awareness for enrollees.

As stated in a letter sent to HHS in January, we are concerned that the proposed rule neglected to directly address the Obama Administration's deliberate misinterpretation of the law. We hope the final rule will clearly acknowledge the illegality and extent of this executive overreach in the prior regulation.

We were grateful to see an indication from the Office of Management and Budget that the rule may be finalized in August. We continue to urge swift action to finalize the rule in time for 2020 Open Enrollment. Failing to do so will result in another year of noncompliance with the requirements of Section 1303. It is time for the Obama-era regulation to be replaced.

Sincerely,



Cindy Hyde-Smith  
United States Senator



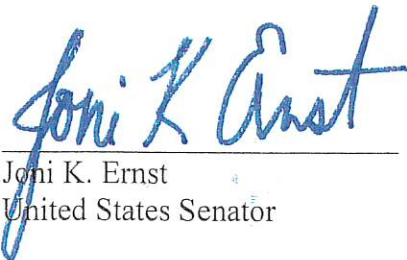
Michael Cloud  
Member of Congress



Deb Fischer  
United States Senator



Steve Scalise  
Member of Congress



Joni K. Ernst  
United States Senator



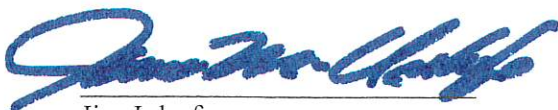
Vicky Hartzler  
Member of Congress



Marsha Blackburn  
United States Senator



Christopher H. Smith  
Member of Congress



Jim Inhofe  
United States Senator



Daniel W. Lipinski  
Member of Congress






Pat Roberts  
United States Senator



Michael B. Enzi  
United States Senator



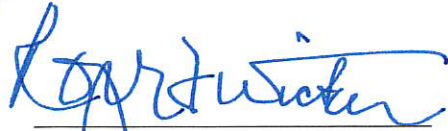
Mike Crapo  
United States Senator



John Thune  
United States Senator



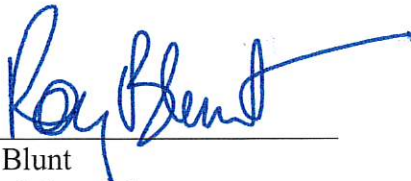
John Barrasso  
United States Senator



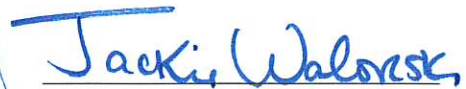
Roger F. Wicker  
United States Senator



James E. Risch  
United States Senator



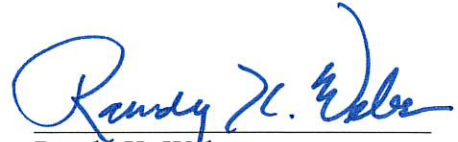
Roy Blunt  
United States Senator



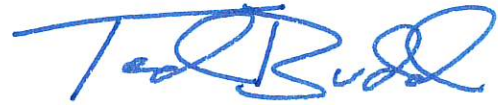
Jackie Walorski  
Member of Congress



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



Randy K. Weber  
Member of Congress



Ted Budd  
Member of Congress



Bradley Byrne  
Member of Congress



Lloyd Smucker  
Member of Congress

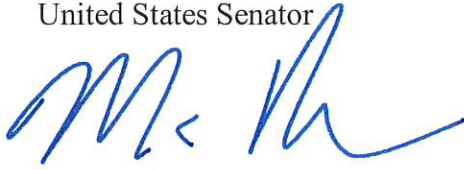



Gary Palmer  
Member of Congress

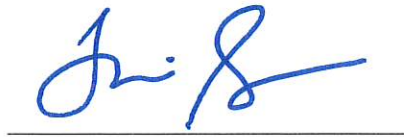


Bruce Westerman  
Member of Congress

  
John Hoeven  
United States Senator

  
Marco Rubio  
United States Senator


  
Mike Lee  
United States Senator

  
Tim Scott  
United States Senator

  
James Lankford  
United States Senator

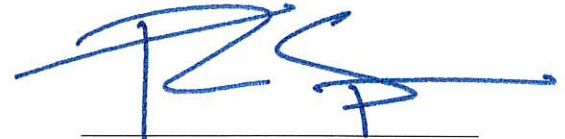
  
Steve Daines  
United States Senator

  
M. Michael Rounds  
United States Senator

  
Thom Tillis  
United States Senator


  
Paul Mitchell  
Member of Congress

  
John Ratcliffe  
Member of Congress


  
Ross Spano  
Member of Congress

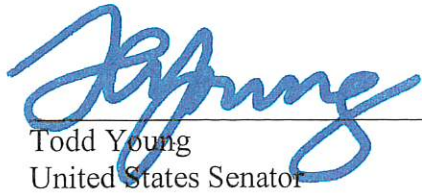
  
Michael Guest  
Member of Congress

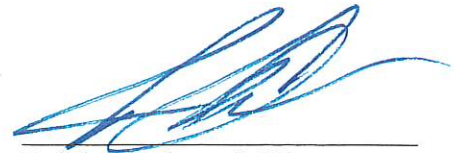
  
Roger W. Marshall, M.D.  
Member of Congress


  
William R. Timmons, IV  
Member of Congress


  
Tom Emmer  
Member of Congress

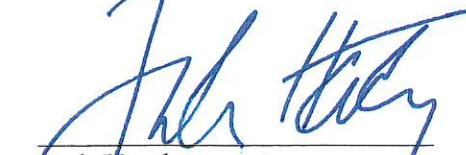
  
Ralph Norman  
Member of Congress

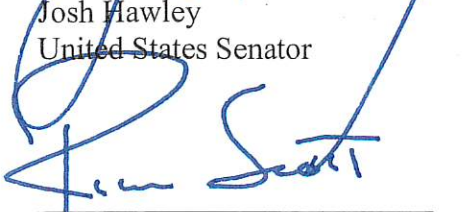
  
Todd Young  
United States Senator

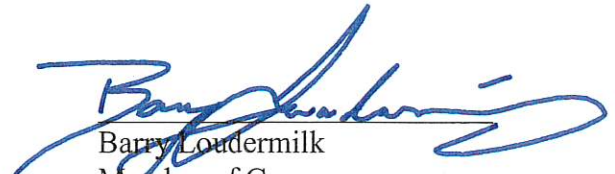
  
Ralph Abraham, M.D.  
Member of Congress

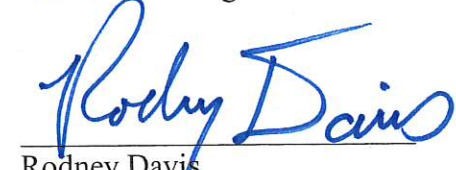
  
Kevin Cramer  
United States Senator

  
Mike Johnson  
Member of Congress

  
Josh Hawley  
United States Senator

  
Rick Scott  
United States Senator


  
Barry Loudermilk  
Member of Congress

  
Rodney Davis  
Member of Congress


  
Doug LaMalfa  
Member of Congress

  
Ron Wright  
Member of Congress


  
Jim Hagedorn  
Member of Congress

  
W. Gregory Steube  
Member of Congress

  
Jody B. Hice  
Member of Congress

  
David Kustoff  
Member of Congress

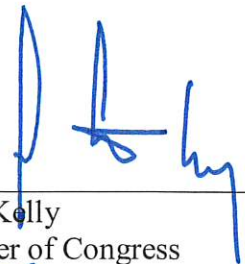
  
Jack Bergman  
Member of Congress

  
Mark E. Green, M.D.  
Member of Congress





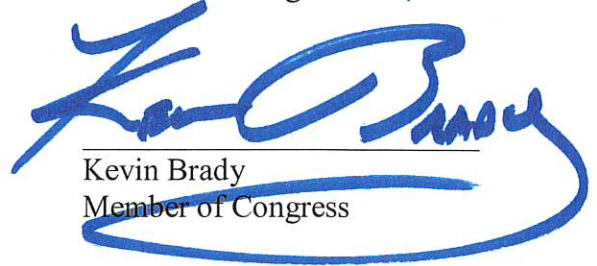
Kelly Armstrong  
Member of Congress



Trent Kelly  
Member of Congress



Ben Cline  
Member of Congress



Kevin Brady  
Member of Congress



Kevin Hern  
Member of Congress



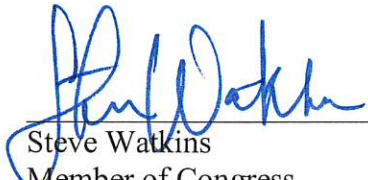
James Comer  
Member of Congress



Tim Burchett  
Member of Congress



Robert B. Aderholt  
Member of Congress



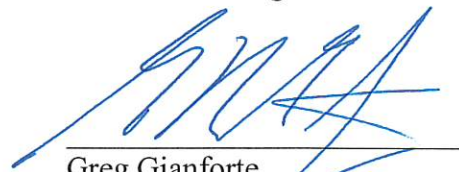
Steve Watkins  
Member of Congress



Daniel Webster  
Member of Congress



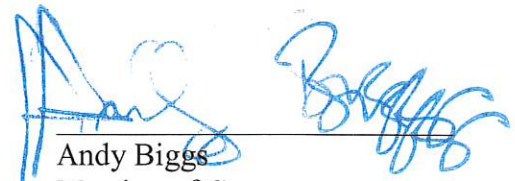
Troy Balderson  
Member of Congress



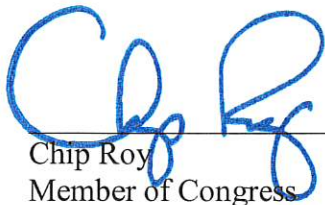
Greg Gianforte  
Member of Congress



John Rose  
Member of Congress



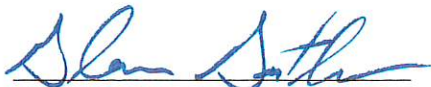
Andy Biggs  
Member of Congress



Chip Roy  
Member of Congress



Dan Newhouse  
Member of Congress



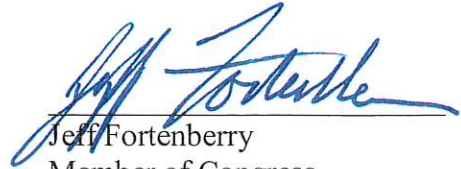
Glenn Grothman  
Member of Congress



Joe Wilson  
Member of Congress



Dusty Johnson  
Member of Congress



Jeff Fortenberry  
Member of Congress



Ron Estes  
Member of Congress



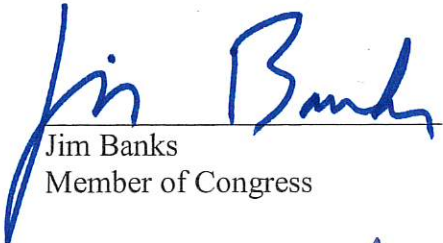
David Schweikert  
Member of Congress



Mike Kelly  
Member of Congress



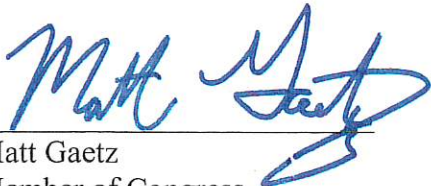
Roger Williams  
Member of Congress



Jim Banks  
Member of Congress



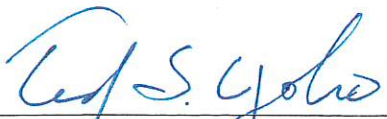
Sean Duffy  
Member of Congress



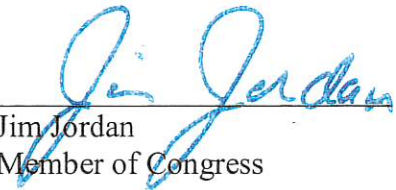
Matt Gaetz  
Member of Congress



Mark Walker  
Member of Congress



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



Jim Jordan  
Member of Congress



Paul Gosar, D.D.S.  
Member of Congress



Tom Graves  
Member of Congress



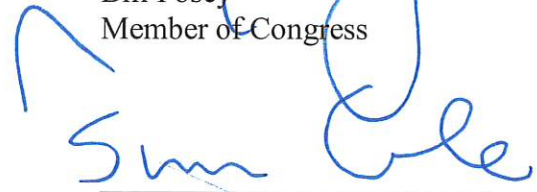
Pete Olson  
Member of Congress



Bill Posey  
Member of Congress



Mark Meadows  
Member of Congress



Tom Cole  
Member of Congress



Steve King  
Member of Congress



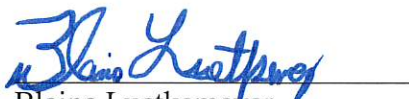
Gus M. Bilirakis  
Member of Congress




Bill Flores  
Member of Congress



Jeff Duncan  
Member of Congress



Blaine Luetkemeyer  
Member of Congress



Bill Huizenga  
Member of Congress



Brian Babin  
Member of Congress



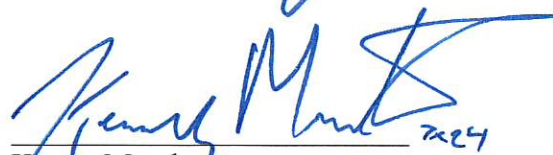
Chris Stewart  
Member of Congress



Tim Walberg  
Member of Congress



Louie Gohmert  
Member of Congress



Kenny Marchant  
Member of Congress

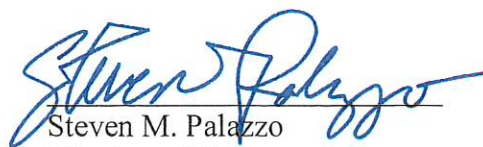


Andy Harris, M.D.  
Member of Congress





Bill Johnson  
Member of Congress



Steven M. Palazzo  
Member of Congress



Doug Lamborn  
Member of Congress




Debbie Lesko  
Member of Congress



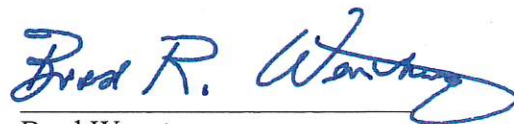
Rick W. Allen  
Member of Congress



Steve Chabot  
Member of Congress



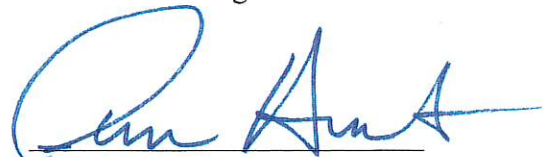
Jason Smith  
Member of Congress



Brad Wenstrup  
Member of Congress



Rick Crawford  
Member of Congress



Duncan Hunter  
Member of Congress



Earl L. "Buddy" Carter  
Member of Congress



David Rouzer  
Member of Congress



Alex X. Mooney  
Member of Congress



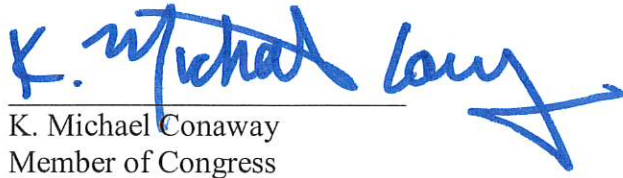
Bob Gibbs  
Member of Congress



Billy Long  
Member of Congress



Robert E. Latta  
Member of Congress

  
K. Michael Conaway  
Member of Congress

  
Dan Crenshaw  
Member of Congress

  
Clay Higgins  
Member of Congress

  
Anthony Gonzalez  
Member of Congress

  
Carol D. Miller  
Member of Congress

  
Rob Wittman  
Member of Congress