

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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September 20, 2016

The Honorable Sylvia Burwell
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

The Honorable Jacob Lew
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

The Honorable Thomas Perez
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Dear Secretaries Burwell, Lew, and Perez:

Thank you for reviewing this letter concerning the June 10, 2016, the proposed rule entitled "Expatriate Health Plans, Expatriate Health Plan Issuers, and Qualified Expatriates; Excepted Benefits; Lifetime and Annual Limits; and Short-Term, Limited-Duration Insurance." This tri-agency rule was issued by the U.S. Departments of Health and Human Services, Treasury, and Labor (Departments).

As written, this rule will severely restrict millions of Americans' access to fixed indemnity health insurance coverage. Even worse, the rule conflicts with current law as well as Congressional intent. This is why I urge you to withdraw this provision of the proposed rule.

In 1996, Congress created fixed indemnity and other excepted benefits under the Health Insurance Portability and Accountability Act (HIPAA).¹ Specifically, under the Public Health Service Act (PHSA), such plans are authorized if they 1) are provided under a separate policy or contract, and 2) offer independent non-coordinated benefits.

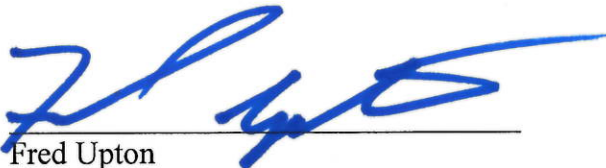
When the Patient Protection and Affordable Care Act (ACA) passed in 2010, Congress incorporated 42 U.S.C § 201 of the PHSA definition of “excepted benefits” into the law, and chose not to make any changes to these fixed indemnity plans or apply any of the act’s new rules to these offerings.

The Departments’ proposed rule would require all fixed indemnity plans to provide benefits on a per-day or other per-period basis rather than on a per-service basis. Even more, the rule would amend the structure of these offerings to provide a dollar benefit amount without regard to the type of items or services received. For these reasons, it is my strong belief that the proposed limitations violate statutory language for fixed indemnity excepted benefits as well as Congressional intent of both Republican and Democratic lawmakers.

It is important to note that the recent D.C. Circuit Court of Appeals decision in *Central United Life Ins. V. Burwell*² opined that such regulatory overreach on fixed indemnity plans is not based in law and; therefore, is not permissible.

The Departments’ proposed rule could limit choices for nearly 49 million Americans who like their plan and want to keep it. As we work to achieve our shared goal of providing patients with affordable health care options, I urge the Departments to withdraw this proposed rule and not seek to regulate these plans in opposition to law, Congressional intent, and court rulings.

Sincerely,



Fred Upton
Chairman

¹ P.L. 104-191, 110 Stat. 1936, enacted August 21, 1996.

² No. 15-5310, decided July 1, 2016.