

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



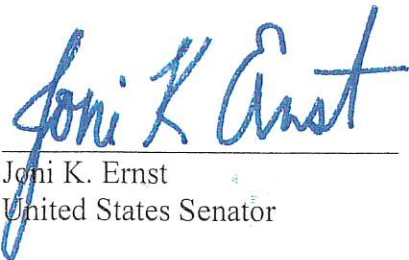
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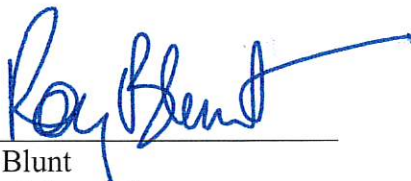
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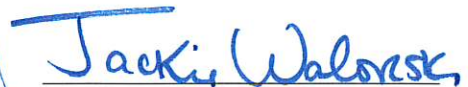
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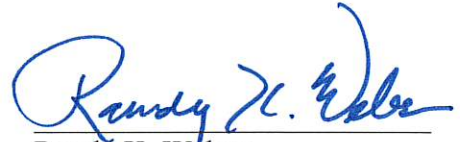
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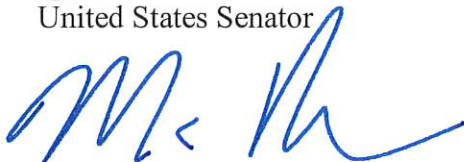



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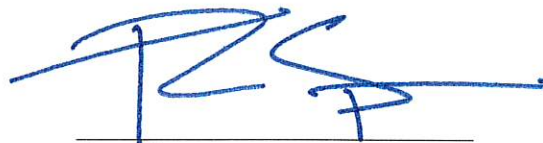

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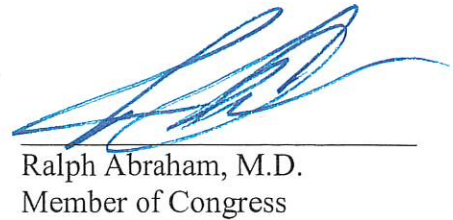

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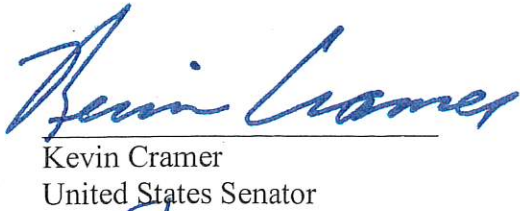

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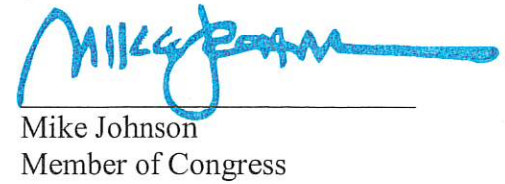

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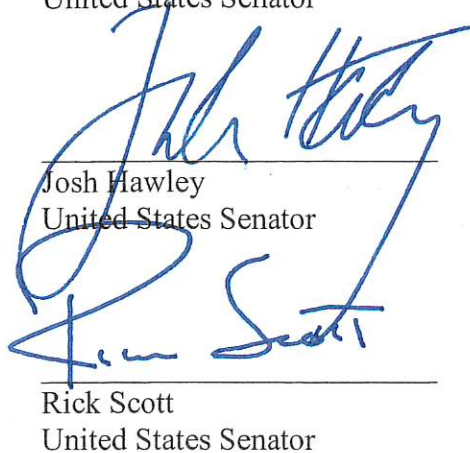

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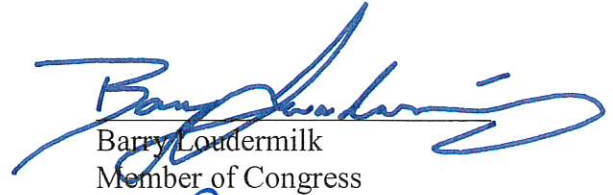

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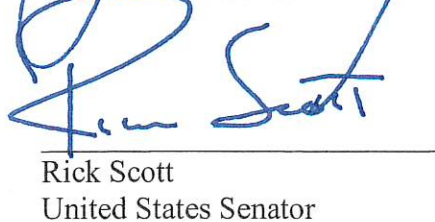

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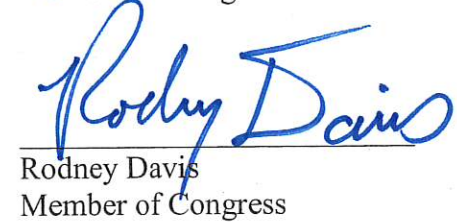

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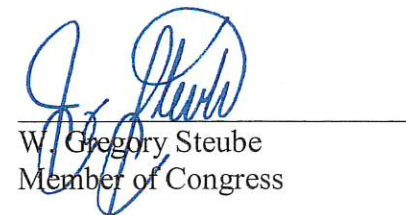

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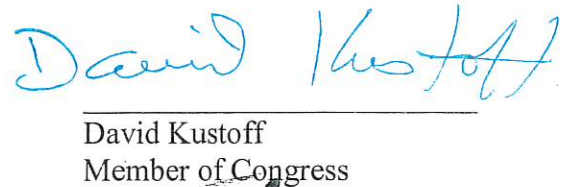

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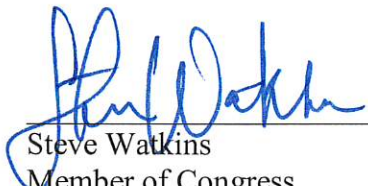
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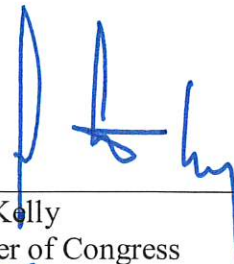
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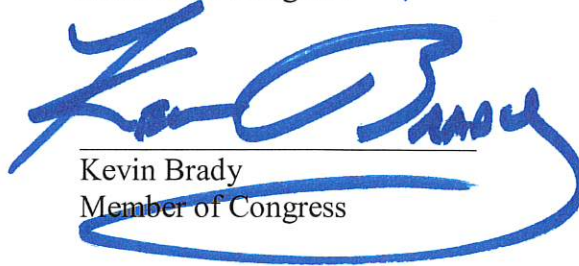
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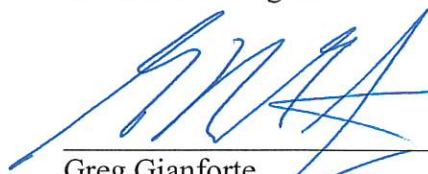
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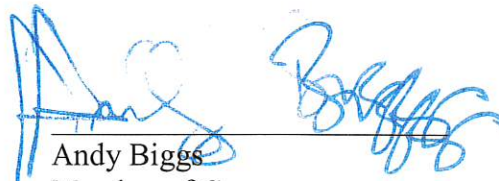
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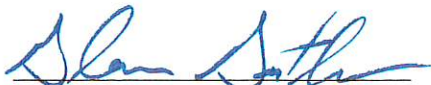
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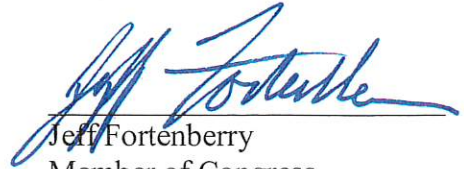
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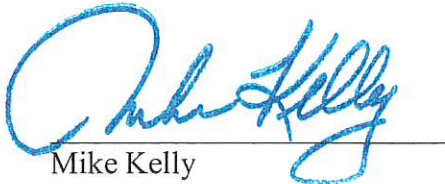
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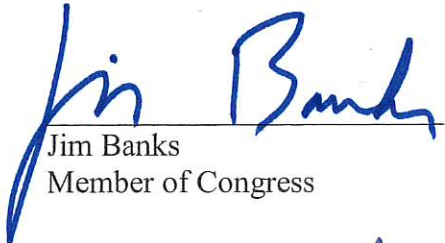
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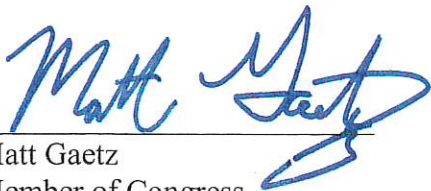
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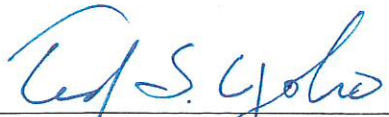
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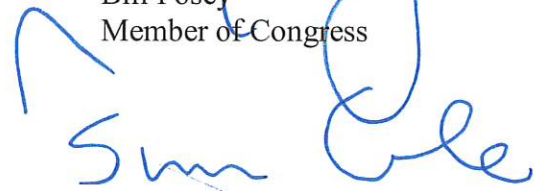
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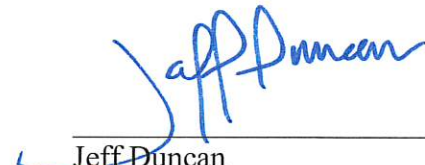
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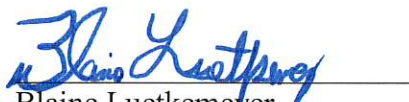
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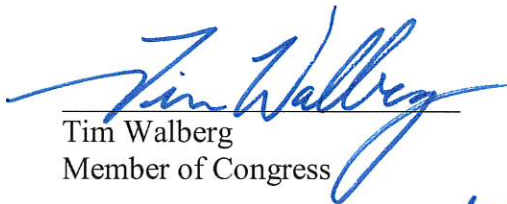
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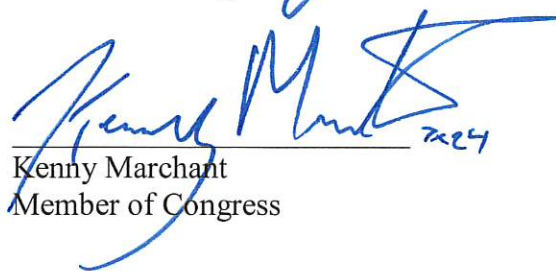
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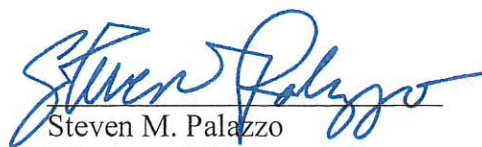
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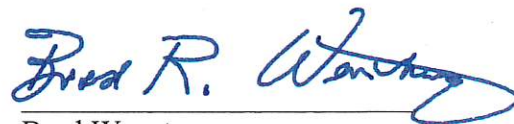
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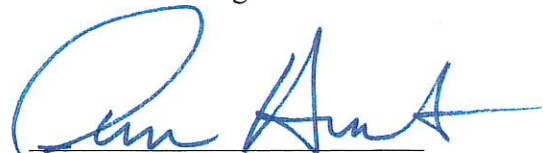
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