

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES HOUSE OF REPRESENTATIVES,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 14-cv-01967-RMC
)	
SYLVIA MATHEWS BURWELL,)	
in her official capacity as Secretary of the United States)	
Department of Health and Human Services, et al.,)	
)	
Defendants.)	

EXHIBIT BB

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1 {York Stenographic Services, Inc.}

2 RPTS TOOT

3 HIF057.170

4 EXAMINING THE FISCAL YEAR 2016 HHS BUDGET

5 THURSDAY, FEBRUARY 26, 2015

6 House of Representatives,

7 Subcommittee on Health

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The Subcommittee met, pursuant to call, at 10:03 a.m.,
11 in Room 2123 of the Rayburn House Office Building, Hon. Joe
12 Pitts [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Pitts, Guthrie, Barton,
14 Whitfield, Shimkus, Murphy, Burgess, Lance, Griffith,
15 Bilirakis, Ellmers, Bucshon, Collins, Upton (ex officio),
16 Green, Engel, Capps, Schakowsky, Butterfield, Castor,

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1177 infrastructure and expertise necessary to ensure quality care
1178 is available. So how do we ensure stability for these
1179 academic medical centers, and the patients they serve, if we
1180 put GME funding at risk?

1181 Secretary {Burwell.} We believe and hope that our
1182 proposal does not do that, and meets the objectives of making
1183 sure we are training appropriate positions for both primary
1184 care and specialties, where we don't have as many as we
1185 should, at the same time, making sure we target it. There is
1186 100 million for pediatric, and then a wider pool for
1187 competition. It is an issue that we want to meet the same
1188 objectives at the same time we do it in a fiscally
1189 responsible way.

1190 Mr. {Engel.} Thank you. Thank you, Mr. Chairman.

1191 Mr. {Pitts.} Chair thanks the gentleman. Now recognize
1192 the Vice Chairman of the Subcommittee, Mr. Guthrie, 5 minutes
1193 for questions.

1194 Mr. {Guthrie.} Thank you, Madam Secretary for coming,
1195 and I really--and--look forward to working on 21st Century
1196 Cures, and all the things that we could work on over the next
1197 years as Vice Chair.

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1198 But first I would like to direct your attention to the
1199 cost share reduction program contained in the ACA,
1200 specifically Sections 1402 and 1412. Does any part of this
1201 budget request, or does any part of this budget that we are
1202 talking about today request any new authority, including any
1203 transfer authority to pay insurers under the cost share
1204 reduction program?

1205 Secretary {Burwell.} With regard to the program, which,
1206 as a program, as you know, is about making sure that the
1207 costs of health care to this individuals that are coming into
1208 the marketplace is something that they afford, that is what
1209 it is about, and we believe that we do have the authorities
1210 to do the cost sharing.

1211 Mr. {Guthrie.} Is there any new authority requested in
1212 this budget?

1213 Secretary {Burwell.} No new language.

1214 Mr. {Guthrie.} There is no new language? And so we do
1215 know it is up and running. I think we spent \$3 billion
1216 already on the cost share reduction program, that are then
1217 paid to insurers with taxpayer funds. The budget that is
1218 being submitted estimates 11.2 billion over 2015-2016, and

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1219 CBO says 175 billion over the next 10 years is what they have
1220 estimated. And could you cite where the appropriations
1221 authority is? You said you do believe you have the--can you
1222 cite where that is?

1223 Secretary {Burwell.} We do believe we do, and I am sure
1224 you know that right now this is an issue that is under
1225 litigation, and a court case that has been brought. And so,
1226 with regard to that, that is an issue that I will let our
1227 colleagues at the Justice Department speak to, because of the
1228 place it is in litigation.

1229 Mr. {Guthrie.} I understand that, but we are doing
1230 oversight here. I am not an attorney, so--you had--in--when
1231 you were at OMB in 2014, there actually was a request in the
1232 2014 budget for direct appropriation, and that didn't happen,
1233 for whatever reason, but we are spending money. So whether
1234 we spend a penny or 100--this is \$175 billion over 10 year
1235 program. I mean, we feel like we--this is an oversight
1236 hearing, on a--not a--and so we feel like it is our
1237 responsibility to make sure to our taxpayers that we have
1238 good answers on where this is coming from. So we are just
1239 asking for where the appropriation comes from--

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1240 Secretary {Burwell.} I understand--

1241 Mr. {Guthrie.} --authority.

1242 Secretary {Burwell.} --and I appreciate the question,
1243 and I am sorry that it is in litigation. I wish we weren't
1244 in a place where we are in litigation, but once something has
1245 entered into that place, it does create a difficult
1246 circumstance. I respect the issue of oversight, but because
1247 the litigation has been brought by the House--

1248 Mr. {Guthrie.} Yeah.

1249 Secretary {Burwell.} --on this issue, we are in a place
1250 where I think that is the appropriate place for this
1251 conversation.

1252 Mr. {Guthrie.} We are really--we are--I am just not
1253 aware of any pending litigation exception at oversight
1254 hearing questions, and--is there, like, a legal case, or
1255 authority, or did the Justice Department say you don't have
1256 to--

1257 Secretary {Burwell.} With regard to issues that are
1258 being litigated, generally those are matters that we refer,
1259 and let the Justice Department continue on.

1260 Mr. {Guthrie.} And--that we have never been able to get

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1261 an answer from the Administration for where the language--
1262 there--nobody has even been able to point to us where that
1263 appropriation language comes from. And it was--and you
1264 previously had requested appropriation.

1265 Let me ask you another question. You had recently--you
1266 said--you received--I think 18 employer groups sent you a
1267 letter, urging that small groups be maintained at 50
1268 employees. And they were citing an actuarial analysis that
1269 showed when they go to 50--to 51, they use--actuarial
1270 analysis said that it would--estimated that 2/3 of the
1271 members--so they would receive an increase, and--of 18
1272 percent. And I just don't believe that these small
1273 employers, 50 to 100 employees, can accept an 18 percent
1274 increase in their premiums. Also, the promise that if you
1275 like the plan, you can keep it, because if they have--if the
1276 50 to 100 have to go into the new plan, they will have to
1277 meet the new--the requirements of the health care law that--
1278 essential benefits, and the other things that have caused
1279 other people to lose their--the plans that they liked, that
1280 they could keep.

1281 And due to this impact, would you support allowing

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1387 be a person with Alzheimer's on the--as part of the group?

1388 Secretary {Burwell.} I want to get back to you

1389 directly, but it is my understanding that there is a person,

1390 that there is a slot, and that there--either there is or will

1391 be a person that does have that is part of the committee. I

1392 will want to get back to you on that, though, specifically.

1393 Ms. {Schakowsky.} Well, I want to thank you for the

1394 focus, and, as the coach here of the Seniors Task Force of

1395 the Democratic Caucus, I really want to work with you on

1396 that, because this is a problem affecting so many families

1397 and individuals. I appreciate it, and yield back.

1398 Secretary {Burwell.} Thank you.

1399 Mr. {Pitts.} Chair thanks the gentlelady. Now

1400 recognize the gentleman from Kentucky, Mr. Whitfield, 5

1401 minutes for questions.

1402 Mr. {Whitfield.} Thank you. Well, Secretary Burwell, I

1403 also want to thank you for being with us today, and I want to

1404 just follow up on my colleague Brett Guthrie's question. We

1405 are concerned about this cost reduction program because--cost

1406 sharing program because it is 170 some billion dollars over a

1407 number of years, and we understand that that is one of the

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1408 issues involved in the lawsuit. But all we are asking you
1409 is, since you all are dispersing the money, what is your
1410 opinion as to where the appropriation is designated that you
1411 are working from?

1412 Secretary {Burwell.} This is an issue--as I said, I
1413 understand the question. We believe we have the authorities.
1414 With regard to the specifics of that, because we are in
1415 litigation--

1416 Mr. {Whitfield.} But you can't tell us where the money
1417 is coming from?

1418 Secretary {Burwell.} With regard to having that
1419 conversation, that is--that is what the--

1420 Mr. {Whitfield.} Were you instructed by DOJ not to
1421 answer that question?

1422 Secretary {Burwell.} With regard to that specific
1423 issue, that is at the root of the litigation.

1424 Mr. {Whitfield.} Were you instructed by DOJ not to
1425 answer the question?

1426 Secretary {Burwell.} With regard to--when there are
1427 issues of litigation like this, I--this is--our standard--

1428 Mr. {Whitfield.} Well, you know, yesterday we had Gina

This is a preliminary, unedited transcript. The statements within may be inaccurate, incomplete, or misattributed to the speaker. A link to the final, official transcript will be posted on the Committee's website as soon as it is available.

1429 McCarthy here, and we were talking about 111(d), which is
1430 before the Supreme Court right now, and she gave us her
1431 theory of why she thought she was right. We are not saying
1432 that we are right or you are right, we are simply asking what
1433 is your theory? What are you--where does the money come
1434 from, in your view?

1435 Secretary {Burwell.} That is something, as I said--why
1436 don't I work to get back to you on where we feel comfortable--
1437 -

1438 Mr. {Whitfield.} Okay.

1439 Secretary {Burwell.} --with regard to where the
1440 litigation is, and I would like to come back on that.

1441 Mr. {Whitfield.} Well, I must say, I have been
1442 impressed with your facility to use numbers. You were--you
1443 are really tuned into the budget, responding to Mr. Pitts,
1444 responding to Mr. Green about the community health centers.
1445 I was a Rotary Club meeting recently--

1446 Secretary {Burwell.} Um-hum.

1447 Mr. {Whitfield.} --and I was asked the question--they
1448 said, Congressman, can you tell us what dollar amount has
1449 been incurred by the Federal Government as a result of state