

**Opening Statement of the Honorable Fred Upton**  
**Energy and Commerce Committee**  
**Markup of H.R. 1206, the Access to Professional Health Insurance Advisors Act of 2011**  
**and H.R.1063, the Strengthening Medicare and Repaying Taxpayers (SMART) Act of 2012**  
**September 19, 2012**  
*(As Prepared for Delivery)*

The committee will consider two bills at markup today.

The first, H.R.1063, the Strengthening Medicare and Repaying Taxpayers (SMART) Act of 2012, works to improve the integrity of Medicare provider payments.

In instances where Medicare has paid a claim but another entity is deemed responsible for the payment, the Medicare Secondary Payer program is charged with recouping these funds to the Medicare Trust Fund. It is an important safeguard for taxpayer dollars and Medicare solvency. It is also a program which can be improved.

Although Congress has sought to improve Medicare Secondary Payer over the years, most recently in 2007, problems still persist. Today, many injury claims cannot be settled in a timely or conclusive manner because of the actions of CMS. Under current law, CMS is not required to – and therefore does not – provide the amounts either due or that must be set aside to cover future payments so that parties can resolve their Medicare obligations during settlement. As a result, party settlements are often delayed or settlement amounts placed in escrow until CMS can deliver a final amount – a process that can take years. This lack of a timely response has created a costly legal nightmare for large and small businesses, and created undue hardship on beneficiaries through no fault of their own.

The SMART Act makes several improvements to the Medicare Secondary Payer statute to fix these problems, which will benefit Medicare beneficiaries and taxpayers alike. I'd like to recognize Dr. Murphy for the considerable time and expertise he has given to this issue. I would also like to thank Ranking Members Waxman and Pallone, as well Chairman Pitts for working together to prepare this bill for consideration today.

The committee will also consider H.R. 1206 – a bipartisan measure that addresses the devastating consequences of the president's health care law for insurance agents and brokers, which have a ripple effect on the insurance market and consumers.

Section 1001 of the Patient Protection and Affordable Care Act contains what is known as the Medical Loss Ratio requirement, otherwise known as the MLR rule. PPACA's MLR requirement gives HHS sweeping power over the design of health insurance at the expense of consumer choice. The MLR rule also punishes agents and brokers who help families and employers find an affordable health plan that best fits their needs.

Here is how one Michigan agent described the consequences of the MLR: "[The MLR] will limit our ability to retain staff to service our clients. With significant cuts to commissions, we would be forced to reduce the amount of dollars that are reinvested into our clients and our business. A significant portion of the agent [and] broker community will be out of work along with the cuts in staff for those who manage to stay in business. This will drive higher unemployment costs for [Michigan] which already has a seriously strained budget..."

Another Michigan agent told us, "the continued downward adjustments to commissions would make it difficult to survive. Current margins are extremely low for the work an agency does, and impacting them will cause many agencies to not exist anymore."

The Access to Professional Health Insurance Advisors Act is a bipartisan solution that begins to address this growing problem created by the health care law. The legislation has 220 co-sponsors and has the

support of conservatives and progressives alike. H.R. 1206 amends PPACA's MLR to exclude compensation paid for licensed independent insurance producers from the premium portion of the MLR calculation. This much needed change will help stem the negative impacts of the MLR on America's agents and brokers, many of whom are small businesses. This bill will also ensure families and employers continue to have access to qualified professionals who can assist them in finding an affordable, high quality health plan.

H.R. 1206 also requires HHS to defer to state insurance commissioners regarding requests for MLR waivers in order to ensure consumer access to a robust choice in health plans. Michigan's request for a waiver was denied despite warnings from our state that the MLR threatens to destabilize our individual health insurance market. Michigan, not Washington, should make this decision.

I would like to thank Mr. Rogers and Mr. Barrow for taking the lead on this bipartisan initiative. I urge my colleagues on both sides of the aisle to support H.R. 1206.

###