



Written by [Raven Clabough](#) on March 2, 2015

Treasury Ignores Inquiry Into \$3 Billion in ObamaCare Payments

The Treasury Department is raising eyebrows with its refusal to explain \$3 billion in ObamaCare payments to health insurers that were not authorized by Congress. The department has denied a request by House Ways and Means Chairman Representative Paul Ryan for an explanation about payments that were made as cost-sharing subsidies to insurers.



Under the Patient Protection and Affordable Care Act, the Obama administration makes premium assistance tax credit payments, as well as cost-sharing subsidy payments, directly to insurance companies on behalf of eligible taxpayers who have enrolled for healthcare coverage through a state exchange.

The *Washington Examiner* explains, “These payments come about because President Obama’s healthcare law forces insurers to limit out-of-pocket costs for certain low income individuals by capping consumer expenses, such as deductibles and co-payments, in insurance policies. In exchange for capping these charges, insurers are supposed to receive compensation.”

Last November, the House of Representatives filed a lawsuit that asks a federal court to invalidate cost-sharing subsidies because Congress never appropriated funds for them.

Forbes provides some background on that suit:

House [v. Burwell] claims the president cannot issue “cost-sharing subsidies” in *any* state, because Congress never appropriated funds for those subsidies. Spending federal dollars not pursuant to a congressional appropriation is [a federal crime](#). It would block \$3 billion in subsidies this year, and \$175 billion over the next 10 years. (The House also claims the president violated the law by unilaterally delaying the obligations the PPACA imposes on employers by delaying the onset of the employer mandate past the date specified in the statute.)

And though Congress did not authorize money to make such payments in its annual appropriations, the Department of Health and Human Services, with the help of the U.S. Treasury, made the payments anyway.

House Energy and Commerce Committee Chair Representative Fred Upton (R-Mich.) sent a letter to Treasury Secretary Jack Lew on February 3 demanding “a full explanation for, and all documents relating to” the administration’s decision to make the cost-sharing payments without congressional authorization.

Nearly a month later, the Treasury Department responded to the letter by describing the cost-sharing



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program, but failing to explain the decision to make the payments. According to the *Washington Examiner*, the letter stated that \$2.997 billion in payments were indeed made in 2014, but failed to indicate where the money came from.

Lew's letter instead references the House of Representative's lawsuit against the Obama administration and refers the committee to the Department of Justice for answers.

According to the Department of Justice, the cost-sharing payments do not require appropriation. The DOJ's January 26 brief states, "The cost sharing reduction payments are being made as part of a mandatory payment program that Congress has full appropriated."

As observed by the *Washington Examiner*, however, such a claim is "undercut by the administration's own previous budget request."

The Centers for Medicare and Medicaid Services had requested that Congress approve an annual appropriation of \$4 billion to finance the cost-sharing payments for fiscal year 2014, as well as an additional \$1.4 billion "advance appropriation" for the first quarter of fiscal year 2015, "to permit CMS to reimburse issuers."

Those requests represent the acknowledgment by CMS that congressional appropriations are indeed necessary.

It was only after Congress rejected the request that the administration suddenly did not see the need for annual appropriations and went ahead with the payments anyway.

The *Washington Examiner* also turned to a 2013 letter from the Congressional Research Service for further evidence that annual appropriations are required to make these payments. In that letter, the Congressional Research Service wrote that "unlike the refundable tax credits, these [cost-sharing] payments to the health plans do not appear to be funded through a permanent appropriation. Instead, it appears from the President's FY2014 budget that funds for these payments are intended to be made available through annual appropriations."

On Friday, Congressman Brett Guthrie questioned Health and Human Services Secretary Sylvia Burwell, who appeared before the House Energy and Commerce Committee's Health Subcommittee.

Friday's hearing examined the Health and Human Services budget, as well as a number of items related specifically to ObamaCare, including the enrollment period and the administration's plans for the *King v. Burwell* Supreme Court case decision on subsidies.

Both *King v. Burwell* and *House v. Burwell* would impact \$2 billion in cost-sharing subsidies, but each case blocks subsidies that the other does not. *Forbes* elaborates,

While *King* would also block the \$7 billion (\$523b/10yrs) in "premium-assistance tax credits" the administration is issuing in those 36 states, *House* would block the \$1 billion (\$49b/10yrs) in "cost-sharing subsidies" the administration is issuing in the 14 states that established Exchanges. Put differently, *King* would knock out two legs of the PPACA's three-legged stool in 36 states. *House* would at least shorten one of those legs in all 50 states.

At Friday's hearing, Congressman Guthrie, vice chair of the Health Subcommittee, questioned Secretary Burwell about reports that HHS has spent roughly \$3 billion this past fiscal year. Guthrie also referred to statements from the Congressional Budget Office that payments to insurers could be as high as \$175 billion over the next 10 years. "Article 1, section 9 of the Constitution clearly gives Congress the power of the purse, and HHS' actions appear to be in direct violation of the Constitution," said



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Guthrie. “Secretary Burwell’s refusal to answer where the statutory authority for these expenditures comes from is deeply concerning and indicates that the legality is clearly suspect.”

But Secretary Burwell repeatedly refused to answer the question, reiterating that she could not since the subsidies are currently in litigation in *House v. Burwell*.

As noted in that lawsuit, the case, though focusing on subsidies, goes far beyond subsidies and ObamaCare as a whole, as it seeks to restore the Constitution’s power in limiting executive overreach. “In challenging these actions, this case addresses fundamental issues regarding the limits of Executive power under our constitutional form of government, and the continued viability of the separation of powers doctrine upon which ‘the whole American fabric has been erected,’” the preliminary statement reads.

Unfortunately, some critics have little faith that this flagrant constitutional violation will be rectified. “A second grader knows that only Congress can appropriate funds. And even though CMS apparently agrees with that, the managers at HHS don’t,” the *American Thinker’s* Rick Moran opined.

“Unfortunately, unless both the House and Senate order the insurance companies to return the funds — and President Obama signs the bill — HHS is going to get away with this.”



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