

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

September 21, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Verma:

The Committee on Homeland Security and Governmental Affairs is examining so-called “Medicaid maximization schemes,” in which some states artificially inflate the federal government’s contribution to the Medicaid program while reducing their state share.¹ At a time of rising federal deficits and increased federal Medicaid spending,² the Centers for Medicare and Medicaid Services (CMS) should closely scrutinize these schemes. I appreciate your testimony about this matter in August 2018, and I respectfully write to request your further assistance.

By law, federal and state governments share Medicaid expenses, with the federal contribution varying based on each state’s average per capita income.³ Although states have flexibility in financing their Medicaid share,⁴ the federal contribution “is open-ended.”⁵ This open-ended entitlement, as you testified, incentivizes states to “creat[e] all of these types of programs to try to draw down federal dollars.”⁶

Independent watchdogs have warned that Medicaid maximization schemes undermine the federal-state Medicaid partnership by making federal taxpayers responsible for costs that should

¹ Maj. Staff, S. Comm. on Homeland Sec. & Governmental Affairs, *The Centers for Medicare & Medicaid Services Has Been a Poor Steward of Federal Medicaid Dollars* (June 20, 2018) [hereinafter “Maj. Staff Rep.”], available at <https://www.hsgac.senate.gov/imo/media/doc/2018-06-20%20Medicaid%20Fraud%20and%20Overpayments%20Majority%20Staff%20Report.pdf>.

² Cong. Budget Office, *The 2018 Long-Term Budget Outlook* (June 2018), available at <https://www.cbo.gov/publication/53919>; Christopher J. Truffer et al., Dep’t. of Health & Human Servs., *2016 Actuarial Report on the Financial Outlook for Medicaid* (2016), available at <https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2016.pdf>.

³ Alison Mitchell, Cong. Research Serv., R42640, *Medicaid Financing and Expenditures* (2015), available at <http://www.crs.gov/Reports/R42640?source=search&guid=c91300291de84d9e8fa148c4946022b4&index=0>.

⁴ *Id.*

⁵ *Id.*

⁶ “*Examining CMS’s Efforts to Fight Medicaid Fraud and Overpayments*”: *Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2018) (statement of Seema Verma, Administrator, Centers for Medicare & Medicaid Services), available at <https://www.hsgac.senate.gov/hearings/examining-cmss-efforts-to-fight-medicaid-fraud-and-overpayments>.

be borne by the states.⁷ Comptroller General Gene Dodaro cautioned that these schemes are “almost limitless,”⁸ but popular gimmicks include:

- **Intergovernmental transfers (IGTs)**, which include “transfers of . . . funds between State and/or local public Medicaid providers and the State Medicaid agency” in ways designed to trigger the release of federal matching funds.⁹
 - In one example, Michigan “paid” \$122 million in state funds to county health facilities, along with a \$155 million federal match triggered by the state payment—and the same day, the county facilities transferred all but \$6 million of the \$277 million total back to the state.¹⁰ From this transaction, “the state realized a net gain of \$149 million over the state’s original outlay of \$122 million.”¹¹
 - States have used the enhanced federal funds received through IGTs “for a range of purposes with no direct link to improving quality of care or increasing Medicaid services.”¹²
- **Provider taxes**, in which states tax healthcare providers and then return the funds to the providers, triggering a federal match.¹³
 - More than 40 states impose such taxes on hospitals in what one expert called a “Medicaid shell game.”¹⁴
 - An Oregon official called the state’s provider tax a “dream tax,” because “we [Oregon] collect the tax from hospitals, we put it up as a match for federal money, and then we give it back to the hospitals.”¹⁵
- **Supplemental payments**, in which states make payments to healthcare providers separate from regular claims-based payments for Medicaid services.¹⁶

⁷ Gov’t Accountability Office, GAO-16-195T, Medicaid: Improving Transparency and Accountability of Supplemental Payments and State Financing Methods 6 (2015), available at <https://www.gao.gov/assets/680/673493.pdf>; Office of Inspector Gen., Dep’t of Health & Human Servs., Spotlight on Medicaid: State Policies that Result in Inflated Federal Costs (2018) [hereinafter “HHS OIG Rep.”], available at <https://oig.hhs.gov/newsroom/spotlight/2014/inflated-federal-costs.asp>.

⁸ “Examining CMS’s Efforts to Fight Medicaid Fraud and Overpayments,” *supra* note 6 (statement of Eugene L. Dodaro, Comptroller General, Government Accountability Office).

⁹ “Examining Medicaid and CHIP’s Federal Medical Assistance Percentage”: Hearing Before the Subcomm. on Health of the H. Comm. on Energy & Commerce, 114th Cong. (2016) (statement of John Hagg, Dir. of Medicaid Audits, Office of Inspector Gen., Dep’t of Health and Human Serv.).

¹⁰ Gov’t Accountability Office, GAO-04-574T, Intergovernmental Transfers Have Facilitated State Financing Schemes (2004), available at <https://www.gao.gov/assets/120/110702.pdf>.

¹¹ *Id.*

¹² HHS OIG Rep., *supra* note 7.

¹³ Maj. Staff Rep., *supra* note 1.

¹⁴ Red Jahncke, *Why Tax Hospitals? It’s a Medicaid Shell Game*, Wall St. J. (Dec. 29, 2017), available at <https://www.wsj.com/articles/why-tax-hospitals-its-a-medicare-shell-game-1514586150>.

¹⁵ Peter Wong, *Oregon House Extends Hospital Tax*, Portland Trib. (Mar. 11, 2015), available at <http://portlandtribune.com/pt/9-news/253422-123198-oregon-house-extends-hospital-tax>.

¹⁶ Maj. Staff Rep., *supra* note 1.

- Some payments can amount to hundreds of millions of dollars annually to a single provider, and can far exceed the actual cost of services provided.¹⁷
- Supplemental payments “have increased over the last decade” and totaled more than \$48 billion in 2016, nearly 10 percent of the Medicaid program’s overall cost.¹⁸

GAO has found that CMS “generally does not require (or otherwise collect) information from states on the funds they use to finance Medicaid, nor ensure that the data that it does collect are accurate and complete.”¹⁹ Likewise, according to GAO, many state supplemental payments “are not subject to audit.”²⁰

Without timely, complete, and accurate data subject to independent audits, CMS and Congress cannot determine the extent of Medicaid maximization schemes and how much they are costing federal taxpayers. It is imperative that CMS obtain data about state Medicaid financing, especially now that the Transformed Medicaid Statistical Information System (TMSIS) is collecting Medicaid data from every state. I appreciate you recognizing CMS’s need for better data and transparency surrounding Medicaid maximization schemes.²¹

To assist the Committee’s oversight of Medicaid maximization schemes, I request that you provide the following information:

1. Please explain the actions CMS is taking or planning to take to address Medicaid maximization schemes, including:
 - a. CMS’s plans to “hold states and providers accountable” for intergovernmental transfers;²²
 - b. CMS’s plans to address states’ use of provider taxes as a Medicaid maximization scheme; and
 - c. CMS’s planned regulatory or other actions to address supplemental Medicaid payments.²³
2. Please explain why CMS historically has not collected accurate and complete data from states on the sources of funds they use to finance the non-federal Medicaid share.

¹⁷ Gov’t Accountability Office, GAO-16-195T, Medicaid: Improving Transparency and Accountability of Supplemental Payments and State Financing Methods 6 (2015) [hereinafter 2015 GAO Rep.], available at <https://www.gao.gov/assets/680/673493.pdf>.

¹⁸ “Examining CMS’s Efforts to Fight Medicaid Fraud and Overpayments,” *supra* note 6 (statement of Eugene L. Dodaro); Truffer et al., *supra* note 2.

¹⁹ 2015 GAO Rep., *supra* note 17.

²⁰ *Id.*

²¹ “Examining CMS’s Efforts to Fight Medicaid Fraud and Overpayments,” *supra* note 6 (statement of Seema Verma, Administrator, Centers for Medicare & Medicaid Services).

²² *Id.*

²³ *Id.*

3. Please explain how CMS plans to use new data collected through TMSIS to determine the extent of Medicaid maximization schemes and how much the schemes may be costing the federal government each year.
4. For the second and third quarters of fiscal year 2018, for each state reporting Medicaid inpatient hospital supplemental payments in TMSIS, please provide:
 - a. The number of payments made;
 - b. The number of unique national provider identifiers (NPIs) reported;
 - c. The number of payments for which the NPI was not provided and the total amount of these payments; and
 - d. The total dollar amount of payments made, as well as the minimum payment, the 25th percentile, the median payment, the 75th percentile, and the maximum payment.
5. For the most recent year available, please provide the total amount of supplemental Medicaid payments reported by each state on the CMS-64 state expenditure form.

Please provide this material as soon as possible but no later than 5:00 p.m. on October 5, 2018, so that the Committee may begin to receive responsive information.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate “the efficiency, economy, and effectiveness of all agencies and departments of the Government.” Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine “the efficiency and economy of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices”

If you have any questions regarding this letter, please ask your staff to contact Jerry Markon of the Committee staff at (202) 224-4751. Thank you for your attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member