United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

November 19, 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 continuing to examine waste, fraud, and abuse in the Medicaid program. I appreciate your commitment to policing Medicaid fraud and overpayments,[1] and I write to draw your attention to a recent state audit showing Medicaid eligibility errors in California.[2] This audit, in conjunction with a separate federal review, shows that potential improper payments in California have cost federal taxpayers more than $3.3 billion.[3] I respectfully request your assistance in understanding how the Centers for Medicare and Medicaid Services (CMS) plans to address the findings of these audits.

Since the Medicaid expansion took effect in January 2014,[4] overall enrollment in Medi-Cal, the California Medicaid program, has increased 55 percent.[5] Nearly one-third of California's population is now on Medicaid, including "half of the State's youth."[6] This growth is due in large part to Medicaid expansion, which has cost taxpayers an estimated $43.7 billion—

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[1] *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.

[2] Cal. State Auditor, Rep. 2018-603, Department of Health Care Services: It Paid Billions in Questionable Medi-Cal Premiums and Claims Because It Failed to Follow Up on Eligibility Discrepancies (Oct. 2018) [hereinafter Cal. Auditor Rep.], *available at* http://www.auditor.ca.gov/pdfs/reports/2018-603.pdf.

[3] Dep't of Health & Human Servs. Off. of Inspector Gen., A-09-16-02023, California Made Medicaid Payments on Behalf of Newly Eligible Beneficiaries Who Did Not Meet Federal and State Requirements (2018) [hereinafter 2018 HHS OIG Rep.], *available at* https://oig.hhs.gov/oas/reports/region9/91602023.pdf; Cal. Auditor Rep., *supra* note 2.

[4] Kaiser Fam. Found., *Status of State Action on the Medicaid Expansion Decision* (2018), *available at* https://www.kff.org/health-reform/state-indicator/state-activity-around-expanding-medicaid-under-the-affordable-care-act/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D.

[5] Cal. Auditor Rep., *supra* note 2.

[6] *Id.*

277 percent higher than state officials had predicted.[7] As the Committee's oversight has found, California has received a share of Medicaid expansion dollars disproportionate to other states.[8]

Recent independent audits of Medi-Cal have uncovered signs of potential errors in California's Medicaid eligibility determinations.

- In February 2018, the Department of Health and Human Service's Office of Inspector General (HHS OIG) reported that California spent more than $1 billion in federal Medicaid funds for 445,000 ineligible or potentially ineligible beneficiaries.[9] CMS has not sought to recoup these funds to date.[10]

- In October 2018, the California State Auditor found that the state made at least $4 billion in questionable Medicaid payments between 2014 and 2017 on behalf of more than 450,000 people marked as Medicaid-eligible in the state system but ineligible in the county systems.[11] According to the auditor, at least $2.3 billion of the $4 billion was federal funds.[12] In one example, auditors found that California made more than $383,000 in Medicaid long-term care payments on behalf of a beneficiary who had been deceased for four years.[13] The state auditors strived to "avoid duplicating the work of the federal Inspector General,"[14] but still found that "the monetary impact of the problems . . . could be greater than $4 billion."[15]

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[7] Jonathan Ingram & Nic Horton, *A Budget Crisis in Three Parts: How ObamaCare is Bankrupting Taxpayers*, Found. for Gov't Accountability (Feb. 1, 2018), *available at* https://thefga.org/wp-content/uploads/2018/02/A-Budget-Crisis-In-Three-Parts-2-6-18.pdf.

[8] 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) (maj. staff report) [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.

[9] 2018 HHS OIG Rep., *supra* note 3.

[10] CMS's deputy director for Medicaid, Timothy Hill, testified in April before the House Committee on Oversight and Government Reform that "we are not issuing a disallowance to California." *Improper Payments in State-Administered Programs: Medicaid: Hearing before H. Comm. on Oversight & Govt. Reform*, 115th Cong. (2018) (statement of Tim Hill, Deputy Director, Centers for Medicaid & CHIP Servs.), *available at* https://oversight.house.gov/hearing/improper-payments-state-administered-programs-medicaid; Maj. Staff Rep., *supra* note 8.

[11] Cal. Auditor Rep., *supra* note 2.

[12] Email to Committee staff from Margarita Fernandez of the California State Auditor's Office (Nov. 5, 2018) (on file with Comm. staff). According to the auditor, $2.3 billion is the federal portion of $3 billion in questionable Medicaid payments California made for managed care premiums. *Id.* Auditors found that California also paid nearly $1 billion in questionable Medicaid fee-for-service payments; however, the auditors did not calculate how much of that additional $1 billion consisted of federal funds. *Id.* But because Medicaid is a federal-state partnership, the total amount of questionable payments using federal funds is likely higher than $2.3 billion.

[13] Cal. Auditor Rep., *supra* note 2.

[14] *Id.*

[15] *Id.*

As you stated in your testimony to the committee in August 2018, CMS has "a responsibility to make sure that taxpayer dollars are spent only on those who are truly eligible."[16] I appreciate that we both share a commitment to ensure that Medicaid dollars are preserved for people truly in need. To assist the Committee's oversight of potential fraud and overpayments in the California Medicaid program, I respectfully request that you provide the following information:

1. Please explain if CMS intends to attempt to recoup from California the more than $1 billion in federal Medicaid funds spent on ineligible or potentially ineligible beneficiaries identified by the HHS OIG.[17] If CMS does not intend to recoup these funds, please explain why not.

2. Please explain if CMS intends to attempt to recoup from California the federal Medicaid funds – at least $2.3 billion -- identified by the state auditor as questionable.[18] If CMS does not intend to recoup these funds, please explain why not.

3. Please explain what broader steps CMS is taking, or planning to take, to better oversee California's Medicaid program and police potential Medicaid eligibility fraud in the state.

4. Please explain if CMS has examined, or plans to examine, California's use of so-called Medicaid maximization schemes that artificially inflate the federal share of Medi-Cal.

5. Please explain how the new audit of California's Medicaid eligibility determinations, to be conducted under CMS's program integrity initiatives announced in June,[19] will address the eligibility problems and potential fraud identified by state auditors and the HHS OIG.

Please provide this material as soon as possible but no later than 5:00 p.m. on December 3, 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

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[16] *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 Servs.), *available at* https://www.hsgac.senate.gov/imo/media/doc/Verma%20Statment.pdf.

[17] 2018 HHS OIG Rep., *supra* note 3.

[18] Cal. Auditor Rep., *supra* note 2.

[19] Press Release. Centers for Medicare & Medicaid Servs., CMS announces initiatives to strengthen Medicaid program integrity (June 26, 2018), *available at* https://www.cms.gov/newsroom/press-releases/cms-announces-initiatives-strengthen-medicaid-program-integrity.

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