

**EXHIBIT Y**

## **Brown, Nicole (HHS/ASL)**

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**From:** Orris, Allison B. (CMS/OL)  
**Sent:** Thursday, March 04, 2010 12:56 PM  
**To:** Gotts, Jill M. (CMS/OL)  
**Cc:** Aten, Adam (CMS/OL); Britton, Chantelle V. (CMS/OL); Long, Molly E. (CMS/OL)  
**Subject:** RE: Urgent Request from Amy

**Categories:** CLASS Act Oversight Request

Thanks everybody. I was trying to wrap this up before a 1:00 call but I have run out of time due to other urgent items. I will take a look after my call and circle back with you as needed. If anything else comes to mind in the next little while, shoot me an email. Thanks again.

**From:** Gotts, Jill M. (CMS/OL)  
**Sent:** Thursday, March 04, 2010 12:49 PM  
**To:** Orris, Allison B. (CMS/OL)  
**Cc:** Aten, Adam (CMS/OL); Britton, Chantelle V. (CMS/OL); Long, Molly E. (CMS/OL)  
**Subject:** RE: Urgent Request from Amy

Please see below.

**From:** Orris, Allison B. (CMS/OL)  
**Sent:** Thursday, March 04, 2010 12:01 PM  
**To:** Aten, Adam (CMS/OL); Britton, Chantelle V. (CMS/OL); Gotts, Jill M. (CMS/OL); Long, Molly E. (CMS/OL)  
**Subject:** Urgent Request from Amy  
**Importance:** High

Hi. Amy has asked for assistance identifying MUST CHANGE items in the Senate passed bill. I know we have done similar exercises before but I'd like everybody to please take another look with the very narrow wiggle room we seem to have now in mind. Amy's questions are below. Please provide answers to me by 12:45 if at all possible. Emails with bullets under each question are fine with me and I will compile – just clearly note section number at issue and WHY a change MUST be made. THANK YOU!!

- 1) If there are any provisions in your area in the extenders bill that's being debated on the floor that conflict with what is in the Senate-passed bill. And, if both bills pass, what would that mean, and would we rather have the extenders provision or the Senate-passed one.

*The Senate bill did not extend the ARRA FMAP so I think we are ok w/ respect to section 232 of the Jobs/extenders bill. Adam or Jill, are there any conflicts with Section 229??*

*To expand on what Adam found, in addition to sec. 3306 of the Senate-passed health reform legislation (HR3590), sec. 2405 does provide funding for ADRCs for purposes of activities associated with sec. 202 of the Older Americans Act (see: [http://www.oaa.gov/AoARoot/AoA\\_Programs/OAA/oa\\_full.asp# Toc153957633](http://www.oaa.gov/AoARoot/AoA_Programs/OAA/oa_full.asp# Toc153957633)). However, there is not a similar provision in the jobs bill for this purpose.*

- 2) If there are any provisions in the Senate bill that absolutely positively need to be fixed in order for CMS to implement it. Not "nice to have" but "otherwise it won't work".
  - **Sec. 2402. Removal of barriers to providing home and community-based services (HCBS).** 1) Increase income eligibility for Medicaid HCBS provided under the State plan from 150 percent of the FPL to 300 percent of SSI; 2) Eliminate requirement for States to renew the State plan every 5 years when targeting HCBS, which is precedent setting for a State plan service.
  - **Sec. 2403. Money Follows the Person Rebalancing Demonstration.** Eliminate requirement to count Medicare-covered days in calculating 90-day prior institutional stay.

- **Sec. 6103. Nursing Home Compare Medicare Website.** Address different requirements governing the reporting of adjudicated instances of criminal violations for SNFs and NFs, the latter of which would be required to report information about applies to crimes “committed outside of the facility.” Any reports of violations or crimes committed outside of a facility would require background checks for all facility employees, which is likely not achievable.
  - **Sec. 6111. Civil Monetary Penalties (CMPs).** Address loophole that enables nursing homes to avoid having a CMP apply until the Independent Dispute Resolution is completed, because the penalty may not be “imposed” for “any day” until its completion. Otherwise, every facility will participate in an IDR while they fix the problem, and once the deficiency is fixed, then no CMP can apply. In addition, excluding actual harm or immediate jeopardy deficiencies from reductions will not achieve the intended effect encourage self-reporting and correction.
  - **Sec. 8002. Establishment of National Voluntary Insurance Program for Purchasing Community Living Assistance Services and Support.** 1) Modify primary payer rules for Medicaid beneficiaries receiving HCBS by accounting for types of HCBS services an individual receives rather than characteristics of the State program as a whole (all States waive comparability); 2) Require the Secretary to assume responsibility for building workforce infrastructure; otherwise, this will impose costs and burdens on States and potentially put CLASS at risk.
  - **Sec. 10202. Incentives for States to offer home and community-based services as a long-term care alternative to nursing homes.** Requiring participating States to make changes to their program within 6 months is not realistic, and probably not achievable. Instead allow a State to specify a date in its application, which the Secretary must approve.
- 3) Are there any places where we absolutely must have PRA or IFR or change a date. Again, not a “nice to have” but **must** be fixed. I am not sure we will be able to get ANY date changes or PRA/IFR, so only give me the ones that we can’t go on without.
- **Sec. 2602. Providing Federal coverage and payment coordination for dual eligible beneficiaries.** Operational March 1, 2010 is impossible since it’s in the past. Suggest at least October 1, 2010. [While not a must have, Recommend changing name of the office.]
  - **Sec. 6101. Required Disclosure of Ownership and Additional Disclosable Parties Information.** Recommend reporting beginning 3 years on or after the beginning of a calendar quarter. Unlikely to meet reporting deadline of 2 years after enactment, since we will need to undergo rulemaking and make substantial IT systems changes to collect and report this information.
  - **Sec. 6104. Reporting of Expenditures.** Highly recommend starting new requirement with cost reporting periods 2 years after modification of cost report rather than from the date of enactment and requiring the redesign of the cost report 2 years after date of enactment. The modified cost report must be final before skilled nursing facilities can start collecting data for reporting direct care expenditures and changes to the form itself will be subject to public comment and PRA review and approval, which is likely to take at least 2 years. Also recommend making categorization effective with cost reports submitted by skilled nursing facilities, rather than 30 months from date of enactment, which can only begin once the Secretary actually receives cost reports.
  - **Sec. 8002. Establishment of National Voluntary Insurance Program for Purchasing Community Living Assistance Services and Support.** Currently, States are required to build workforce infrastructure by 1/1/2013 (2 years after date of enactment of CLASS). We would propose 1/1/2015, to the extent that this responsibility falls to States. States are not uniformly equipped to perform activities related to designating existing or new entities to ensure the service infrastructure is adequate to meet the needs of beneficiaries, which will likely pose significant and potentially costly administrative challenges, particularly in light of the implementation deadline.