

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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Minority (202) 225-3641

February 8, 2019

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Verma:

In light of our responsibility as the Committee of jurisdiction over Medicaid, we are writing to express our deep concern regarding the alarming findings in the recent Government Accountability Office (GAO) report, *CMS Action Needed to Ensure Compliance with Abortion Coverage Requirements* (GAO-19-159).

Medicaid provides comprehensive and affordable health care to millions of people. While states have significant flexibility to administer their programs, they must do so within the requirements of the law. Federal law is clear that state Medicaid programs are required to provide medically necessary care to Medicaid beneficiaries.<sup>1</sup> The Centers for Medicare & Medicaid Services (CMS) has previously stated that “abortions related to rape or incest... are medically necessary services that are required to be provided by states participating in the Medicaid program.”<sup>2</sup> Furthermore, if a state elects to cover prescription drugs, it must generally cover all of a participating manufacturer’s drugs.<sup>3</sup>

For these reasons, it is deeply troubling that in the aforementioned report, GAO identified significant compliance violations with federal requirements for Medicaid abortion coverage. Specifically, GAO found that 14 states currently do not cover mifepristone, the prescription drug used in combination with misoprostol for medical abortions. GAO also reported that South

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<sup>1</sup> Section 1902 of the Social Security Act.

<sup>2</sup> Letter from Sally K. Richardson, Director, Center for Medicaid and State Operations to State Medicaid Directors (Feb. 12, 1998) (<https://www.medicaid.gov/Federal-Policy-Guidance/downloads/smd021298.pdf>).

<sup>3</sup> Section 1927 of the Social Security Act.

Dakota does not cover abortion services in the case of rape or incest. It is even more troubling that CMS has been aware that South Dakota has been in violation of the Medicaid law for 25 years, but has not taken any action to bring the state into compliance, and apparently has no plans to compel the state to comply with the law. For two and a half decades, CMS has allowed the state to deny medically necessary care to women who have been subjected to the horrible trauma inflicted as a result of rape. This is unacceptable.

The failure of states to cover these medically necessary health services imperils women's health and well-being. Furthermore, the agency's response to bring these states into compliance has been woefully inadequate and blatantly disregards the health and wellbeing of some of our nation's most vulnerable. Accordingly, we are requesting the records specified below and a written response to the following questions:

1. A copy of the letter CMS sent South Dakota in 1994 regarding the state's failure to cover abortion in the cases of rape or incest and any correspondence from South Dakota to CMS on this issue.
2. What steps does CMS take currently to ensure that states comply with Medicaid coverage requirements?
3. When CMS becomes aware that a state is out of compliance with federal law, what steps does it take to bring the state into compliance?
4. What steps can CMS take if a state continues to fail to comply with federal law?
5. What steps will CMS take to ensure that South Dakota covers abortions in the case of rape and incest?
6. What steps will CMS take to ensure that the 14 states identified by GAO come into compliance with their obligation to cover mifepristone?

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Thank you for your attention to this matter. Please respond no later than February 22, 2019. If you have any questions, please contact Jacquelyn Bolen of the Committee staff at 202-225-2927.

Sincerely,



Frank Pallone, Jr.  
Chairman



Anna G. Eshoo  
Chairwoman  
Subcommittee on Health



Diana DeGette  
Chair  
Subcommittee on Oversight  
and Investigations