

Congress of the United States  
Washington, DC 20515

September 18, 2014

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Tavenner:

We write to express concerns about the tone and tenor of letters that the Centers for Medicare and Medicaid Services (CMS) sent on June 27 and July 9, 2014, to several states.<sup>1</sup> We certainly believe it is appropriate to expect accountability from states as full partners in the administration of the Medicaid program. However, these letters leave the impression that the challenges states are experiencing are wholly due to state problems, not CMS actions. Unfortunately, the reality is that the challenges states are experiencing with Medicaid applications are problems that CMS itself directly contributed to or created.

We also find it troubling that in these letters, CMS demands a level of transparency and accountability to which it is not also willing to hold itself. For example, CMS asked states to answer questions related to eligibility and enrollment activities within 10 days, even though CMS has yet to be fully transparent with Congress in explaining its own eligibility and enrollment activities several months into the largest expansion of the Medicaid program in its history. On May 21, 2014, we wrote you and asked for details on CMS's plans to address the accumulation of currently pending Medicaid applications. Your reply of July 14, 2014, failed to respond to specific questions regarding potential penalties on states.

Nearly nine months into the Medicaid expansion established by the Patient Protection and Affordable Care Act (PPACA), CMS has yet to publicly release the number of *newly-eligible* childless adults enrolled in Medicaid under PPACA — despite repeated requests from our offices. We understand there are notable challenges with Medicaid enrollment data, but taxpayers have a right to know the number of newly-eligible adults for which the federal government is currently paying 100 percent of the costs. Monthly reports of total Medicaid enrollment under the law are useful, but CMS has a duty to be more transparent regarding the details of the program.

Given the size, complexity, and diversity of the Medicaid program, it should surprise no one that there have been enrollment challenges this year. Rather than criticize states operating in good faith to keep up with the federal government's rapidly changing implementation directions, CMS should be

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<sup>1</sup> Alaska, Arkansas, California, Georgia, Illinois, Indiana, Kansas, Michigan, Missouri, North Carolina, Tennessee, Virginia, and Wyoming.

focused on resolving its many eligibility and enrollment problems. It also should acknowledge its own role in contributing to the current challenges.

CMS's focus on state challenges wrongly ignores the serious, systemic operational challenges created by the agency. For example, in a report issued in June, the Department of Health and Human Services' Office of Inspector General found that the federal health insurance exchange was unable to resolve about 2.6 million of 2.9 million (89 percent) applicant information inconsistencies due to CMS's eligibility system not being fully operational.<sup>2</sup> Notably, these application inconsistencies involved important factors such as income, employer-sponsored essential coverage, citizenship, national status, and legal status.<sup>3</sup> A recent Government Accountability Office (GAO) undercover test of enrollment controls for health care coverage through the federal exchange found serious vulnerabilities. For 11 of 12 applications, GAO found CMS granted coverage to fictitious individuals who did not exist.<sup>4</sup>

In its letter to states, CMS gave states ten days to provide a detailed mitigation plan for how they would address enrollment and eligibility challenges. Accordingly, we request that CMS provide Congress with the same level of transparency and timeliness it expects from states. Please answer each of the questions below in full within 10 business days of receipt of this letter.

1. How many *newly-eligible* childless adults enrolled in Medicaid in the first 6 months of 2014?
2. What is CMS's mitigation plan for addressing the 2.6 million applicant information inconsistencies identified by the Inspector General?
3. How many Medicaid and Children's Health Insurance Program (CHIP) applications are still being processed as part of the unresolved pending federal applications? By when will these applications be resolved?
4. How many Medicaid and CHIP applications that are currently pending and unresolved have been so for more than 45 days?
5. Please explain what specific problems with the Federal Data Services Hub have hampered its ability to consistently send accurate, complete and verified applicant information to states.
6. If a Medicaid and/or CHIP application is found to be inconsistent with the Federal Data Services Hub, but has the physical documentation to demonstrate the hub determination to be wrong, what is the current federal protocol for handling said application going forward?

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<sup>2</sup> See OFFICE OF INSPECTOR GEN., DEP'T OF HEALTH AND HUMAN SERVICES, OEI-01-14-00180, MARKETPLACES FACED EARLY CHALLENGES RESOLVING INCONSISTENCIES WITH APPLICANT DATA 10," (2014), available at <http://oig.hhs.gov/oei/reports/oei-01-14-00180.pdf>.

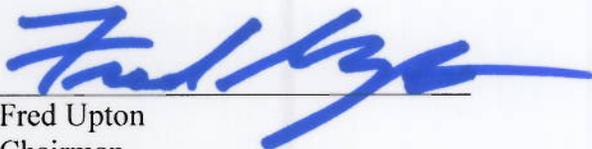
<sup>3</sup> See *id.*

<sup>4</sup> See *Hearing on the Integrity of the Affordable Care Act's Premium Tax Credit, Before the Subcomm. on Oversight of the H. Comm. on Ways and Means, 113th Cong. 5* (2014) (statement of Seto J. Bagdoyan, Acting Dir., Forensic Audits & Investigative Serv., U.S. Gov't Accountability Office), available at [http://waysandmeans.house.gov/uploadedfiles/gao\\_report\\_7\\_22.pdf](http://waysandmeans.house.gov/uploadedfiles/gao_report_7_22.pdf).

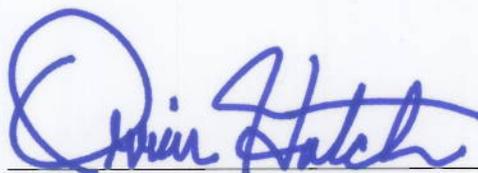
7. When application inconsistencies are found by the hub, does the hub notify CMS to send the application to the applicable state to rectify or are application inconsistencies explored at the federal level? If sent to the state, why? If not, how does CMS handle inconsistencies found by the hub?
8. While the most recent CMS letter does not explicitly threaten states with losing federal matching dollars should certain metrics go unmet, your reply of July 14 failed to clarify CMS's intent with regard to this issue. Is CMS considering or pursuing administrative reductions in payments to states because of state delays in reviewing pending applications? If CMS is considering payment reductions, please explain:
  - a. Would these punitive actions against states apply to:
    - i. all states;
    - ii. only states that have expanded their Medicaid program; or
    - iii. only states that have *not* expanded their Medicaid program?
  - b. What is CMS's method for determining whether payment reductions are warranted and the scope thereof?
  - c. What are the metrics and timeframes states would be expected to meet to avoid such reductions?
9. When will CMS certify that HealthCare.gov sends accurate, complete data on applicants who are deemed eligible for Medicaid and/or CHIP, in a manner that meets states' needs?
10. Given the challenges that HealthCare.gov and the Federal Data Services Hub have faced, what percentage of applications sent to states have incorrect income eligibility which would make an applicant ineligible for Medicaid altogether?

Should your staff have any questions, please have them contact Josh Trent with the House Energy and Commerce Committee at (202) 225-2927, Kim Brandt with the Senate Finance Committee at (202) 224-4515, or Alicia Hennie with the Senate HELP Committee at (202) 224-6770. Thank you for your prompt reply to these important questions.

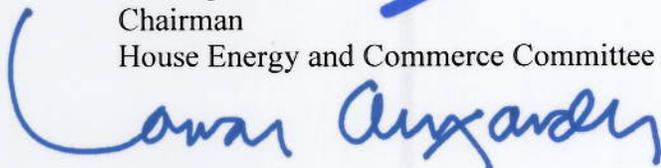
Sincerely,



Fred Upton  
Chairman  
House Energy and Commerce Committee



Orrin G. Hatch  
Ranking Member  
Senate Finance Committee



Lamar Alexander  
Ranking Member  
Senate Health, Education, Labor and Pensions Committee

Letter to the Honorable Marilyn Tavenner

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cc: Cindy Mann, Director, Center for Medicaid and CHIP Services  
The Honorable Henry A. Waxman, Ranking Member  
The Honorable Ron Wyden, Chairman