

Congress of the United States
Washington, DC 20515

January 23, 2015

The Honorable Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Administrator Tavenner:

We write today out of concern over the Centers for Medicare & Medicaid Services' (CMS) oversight of states' eligibility determinations and use of Medicaid dollars for the coverage of long term services and supports (LTSS). LTSS includes many types of services needed by individuals who have a physical or mental disability and thus require assistance carrying out activities of daily living, such as eating and bathing, and instrumental activities of daily living, such as shopping for groceries. LTSS can be provided in a variety of settings, including an individual's home or an institution, such as a nursing home. In fiscal year 2013, federal and state Medicaid spending on LTSS totaled nearly \$126 billion, nearly 30 percent of total Medicaid benefit spending. As the baby boomer generation ages, Medicaid spending on LTSS is expected to grow.

Medicaid coverage for LTSS is intended for individuals who cannot afford coverage on their own. Specifically, in order to qualify for Medicaid coverage of LTSS, individuals must meet financial eligibility criteria including having limited income and assets. Unfortunately, research has shown that some individuals artificially impoverish themselves, for example giving away their assets to children or other family members, to qualify for Medicaid coverage.

Congress has acted numerous times to preserve Medicaid for the most vulnerable Americans by discouraging individuals from transferring assets to meet eligibility standards, most recently through the passage of the Omnibus Budget Reconciliation Act of 1993 (OBRA) and the Deficit Reduction Act of 2005 (DRA). For example, federal law specifies that individuals who transfer assets for less than fair market value during a set period of time before applying for Medicaid coverage for LTSS may be subject to a penalty period in which they are ineligible for Medicaid coverage for LTSS. Additionally, federal law specifies how certain types of assets, such as annuities and trusts, should be treated in determining Medicaid eligibility and the extent to which individuals with substantial equity in their home are eligible for Medicaid LTSS coverage.

As the day-to-day administrators of the Medicaid program, states are responsible for assessing applicants' financial eligibility for Medicaid coverage to ensure that Medicaid resources only go to individuals for whom the program is intended. CMS has a duty to ensure

that states' eligibility determination processes are in line with federal statute and that states are implementing Medicaid policy in a fair and equitable manner.

We are troubled to learn that many states have not implemented all of the eligibility and asset transfer requirements enacted in OBRA and DRA. Information provided to us by the Department of Health and Human Services' Office of Inspector General (OIG) shows that, as of November 2013, only 28 states reported that they implemented all of the relevant provisions from these two laws. Thus, although it has been over 20 years since enactment of OBRA and nearly 10 years since DRA, the remaining 22 states and the District of Columbia have yet to comply with federal law. California, which accounts for 12 percent of Medicaid LTSS spending, reported that it has not implemented the majority of the relevant provisions. As a result, federal Medicaid dollars may be paying for care for individuals who are not eligible for coverage under federal law, which puts a strain on resources for those individuals who are eligible and in need.

Given what the OIG has found, and in the interest of protecting the use of federal Medicaid dollars, we request answers to the following questions:

- 1) What is the current status of states' implementation of the eligibility and asset transfer requirements enacted in OBRA and DRA?
- 2) What assistance, if any, has CMS provided to states to bring their eligibility policies into compliance with federal law? For example, what outreach and education, training, or technical assistance has CMS provided to help states understand and comply with the law?
- 3) What is CMS doing to facilitate states adoption of these policies?
- 4) Has CMS taken action against the states that have failed to fully implement the eligibility and asset transfer requirements enacted in OBRA and DRA?
- 5) How is CMS ensuring that federal Medicaid dollars are not being used to support coverage for individuals ineligible for LTSS under federal law?
- 6) More generally, what actions does CMS take to assist states who have problems implementing federal Medicaid program requirements?
- 7) Moving forward, what actions will CMS take to ensure that state Medicaid programs comply with these and other federal laws within a reasonable time frame?

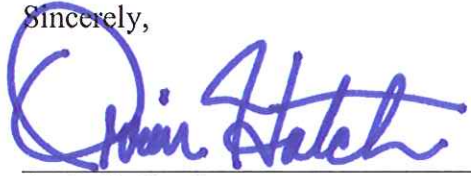
Thank you for your attention to this important matter. We respectfully request your response by February 27, 2015. Should you have any questions regarding this letter, please contact Josh Trent or Michelle Rosenberg with the House Energy and Commerce Committee at (202) 225-2927 and Kim Brandt with the Senate Finance Committee at (202) 224-4515.

Letter to the Honorable Marilyn Tavenner
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Sincerely,

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Fred Upton
Chairman
Committee on Energy and Commerce

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Orrin G. Hatch
Chairman
Senate Finance Committee

Attachment

cc: Frank Pallone, Jr., Ranking Member,
Committee on Energy and Commerce