United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

September 27, 2017

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Verma:

The Committee on Homeland Security and Governmental Affairs is continuing to examine the Patient Protection and Affordable Care Act's (ACA) Medicaid expansion. As part of this inquiry, I write to request information from the Centers for Medicare & Medicaid Services (CMS).

Federal Medicaid expenditures totaled $246 billion in fiscal year 2009, increased to $299 billion in fiscal year 2014 and are projected to rise 96 percent to $588 billion by 2025.[1] A primary cause of this increase is the ACA Medicaid expansion.[2] Current CMS and other data show original Medicaid expansion per-enrollee spending and overall enrollment projections were significantly understated. In 2014, CMS predicted per-enrollee spending on newly eligible adults in 2015 would be $4,281,[3] but the actual amount was $6,365 (49 percent higher).[4] Accordingly, CMS increased per-enrollee projections for fiscal year 2023 from $5,076 to $7,027 (38 percent higher).[5]

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[1] OFF. OF THE ACTUARY, U.S. DEP'T. OF HEALTH & HUM. SERVS., 2016 ACTUARIAL REPORT ON THE FINANCIAL OUTLOOK FOR MEDICAID 15 tbl.3 (2016), https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2016.pdf.

[2] *See* Robin Rudowitz, *Understanding How States Access the ACA Enhanced Medicaid Match Rates*, KAISER FAM. FOUND. (Sept. 29, 2014), http://www.kff.org/medicaid/issue-brief/understanding-how-states-access-the-aca-enhanced-medicaid-match-rates/ (Medicaid is jointly funded by the federal government and states, and the traditional federal matching rate ranges from 50 percent to as high as 73 percent. For people made newly eligible for Medicaid under the ACA, the federal match rate rose to 100 percent through 2016, before phasing down to 90 percent in 2020 and beyond).

[3] OFF. OF THE ACTUARY, U.S. DEP'T. OF HEALTH & HUM. SERVS., 2014 ACTUARIAL REPORT ON THE FINANCIAL OUTLOOK FOR MEDICAID 62 tbl.16 (2014), https://www.cms.gov/Research-Statistics-Data-and-Systems/Research/ActuarialStudies/Downloads/MedicaidReport2014.pdf.

[4] OFF. OF THE ACTUARY, U.S. DEP'T. OF HEALTH & HUM. SERVS., *supra* note 1, at 62 tbl.19.

[5] *Compare* OFF. OF THE ACTUARY, U.S. DEP'T. OF HEALTH & HUM. SERVS., *supra* note 3, at 62 tbl.16, *with* OFF. OF THE ACTUARY, U.S. DEP'T. OF HEALTH & HUM. SERVS., *supra* note 1, at 62 tbl.19.

In many expansion states, most notably California, enrollment has also significantly exceeded original estimates. CMS data show that enrollment for newly eligible enrollees in California rose 36 percent between 2014 and 2015, from 2.5 million to 3.5 million.[6] By May 2016, California's newly eligible enrollment was 322 percent over what had been projected.[7] Costs per-enrollee are also surging in California, going from $4,526 in 2014 to $5,868 in 2015 – a 30 percent single-year increase.[8] Similarly, costs per-enrollee are on the upswing in virtually every expansion state, including a 214 percent one-year jump in Illinois between 2014 and 2015.[9] In Oregon, a spike in Medicaid expansion enrollment contributed to the state awarding Medicaid benefits to more than 37,000 ineligible people over the past year.[10]

The escalating costs to federal taxpayers could stem from the Medicaid expansion's reimbursement formula, which gives states a financial incentive to categorize people as newly eligible to obtain more federal money.[11] I am seeking to better understand these rising costs, higher-than-expected enrollment and potential eligibility mistakes, especially in states where costs or enrollment are increasing especially quickly. Accordingly, I respectfully request that you please provide the following information and material:

1. Please explain CMS's role in decisions to set payment rates for insurance companies under the ACA Medicaid expansion, both before the expansion took effect in 2014 and for each year since. What factors did CMS consider in any guidance it provided to states about setting these rates?

2. Please explain CMS's methodology for determining the eligibility thresholds in states that have adopted the Medicaid expansion, including:

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[6] *Compare* Ctrs. for Medicare & Medicaid Servs., *Total Medicaid Enrollees – VIII Group Break Out Report: December 2014*, CTRS. FOR MEDICARE & MEDICAID SERVS. 1 (December 2016), https://www.medicaid.gov/medicaid/program-information/downloads/cms-64-enrollment-report-oct-dec-2014.pdf, *with* Ctrs. for Medicare & Medicaid Servs., *Total Medicaid Enrollees – VIII Group Break Out Report: December 2015*, CTRS. FOR MEDICARE & MEDICAID SERVS. 5 (July 2017), https://www.medicaid.gov/medicaid/program-information/downloads/cms-64-enrollment-report-oct-dec-2015.pdf (California's enrollment numbers came from state quarterly Medicaid enrollment reports submitted to CMS).

[7] Jonathan Ingram & Nicholas Horton, *ObamaCare Expansion Enrollment is Shattering Projections: Taxpayers and the Truly Needy Will Pay the Price*, FOUND. FOR GOV'T ACCOUNTABILITY 3 (Nov. 16, 2016), https://thefga.org/wp-content/uploads/2016/12/ObamaCare-Enrollment-is-Shattering-Projections.pdf.

[8] Staff calculated the per-enrollee costs from quarterly state expenditure reports submitted to CMS. *See* Ctrs. for Medicare & Medicaid Servs., *Expenditure Reports from MBES/CBES*, https://www.medicaid.gov/medicaid/financing-and-reimbursement/state-expenditure-reporting/expenditure-reports/index.html (last visited Sept. 15, 2017). The sum of "Total Computable VIII Group Newly Eligible Expenditures" in each quarterly report yields the aggregate expenditure figures for calendar years 2014 and 2015. These figures, divided by the total enrollment numbers for each year, produce the per-enrollee cost for each respective year. This methodology mirrors the methodology that CMS used to calculate per-enrollee costs in a document provided to the Committee in July 2017. On September 18, 2017, Committee staff provided CMS with updated calculations and the supporting data. CMS did not dispute either.

[9] *Id.*

[10] Jeff Manning & Hillary Borrud, *Oregon Finds Nearly Half the Medicaid Recipients Checked in Recent Months No Longer Qualified*, THE OREGONIAN (July 29, 2017), http://www.oregonlive.com/politics/index.ssf/2017/07/oregon_finds_nearly_half_the_m.html.

[11] Rudowitz, *supra* note 2.

a. How CMS verifies whether states are appropriately checking eligibility; and
b. Whether there are financial repercussions if states enroll ineligible people as newly eligible Medicaid recipients. If so, what are those repercussions?

3. Please explain how CMS verifies the appropriateness of insurance and provider rates in the Medicaid expansion, including:
   a. Whether any states have been tardy in submitting information about their managed care rates; and
   b. If CMS has identified any concern about rates in any Medicaid expansion state—including, but not limited to, insurance and provider rates that are higher for the expansion population than the non-expansion population—please produce all documents and communications referring or relating to the rates in that state.

4. Please produce all draft and final copies of contracts between states that have adopted the ACA Medicaid expansion and insurance companies for the period January 1, 2013, to the present.

5. Please produce all documents and communications referring or relating to decisions to set payment rates for insurance companies under the ACA Medicaid expansion for the period January 1, 2013, to the present, between or among CMS officials and the following:
   a. Employees or contractors of other federal entities, including but not limited to the Department of Health and Human Services and the Executive Office of the President;
   b. Employees or contractors of state entities; and
   c. Employees or contractors of insurance companies.

6. Please provide all documents and communications referring or relating to the ACA Medicaid expansion, or the determination of individuals newly eligible under the expansion, for the period January 1, 2013 to the present, concerning the following states:
   1. California;
   2. Illinois;
   3. New York;
   4. Michigan;
   5. New Hampshire;
   6. Ohio;
   7. West Virginia; and
   8. Hawaii

Please provide this information as soon as possible but no later than 5:00 p.m. on October 11, 2017.

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."[12] Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine "the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs."[13] When delivering the information, please produce to the Majority staff in room 340 of the Dirksen Senate Office Building and to the Minority staff in room 442 of the Hart Senate Office Building. For purposes of this request, please refer to the due definitions and instructions in the enclosure.

If you have any questions about this request, please contact me or 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

Enclosure

[12] S. Rule XXV(k); *see also* S. Res. 445, 108th Cong. (2004).
[13] S. Res. 62 § 12, 115th Cong. (2017).