

Congress of the United States
Washington, DC 20515

August 30, 2012

Ms. Lucinda Jesson
Commissioner
Minnesota Department of Human Services
540 Cedar Street
St. Paul, MN 55164-0998

Dear Commissioner Jesson:

As Ranking Member of the Senate Committee on the Judiciary, Chairman of the House Committee on Oversight and Government Reform, and Chairman of the House Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census, and the National Archives, we are committed to ensuring that taxpayer dollars are being spent appropriately and fairly. We continue to examine Minnesota's inappropriate use of federal tax dollars to cross-subsidize its state-only health programs.¹ We also continue to examine UCare's \$30 million repayment of excess Medicaid payments and Minnesota's attempt to keep this \$30 million repayment.

On March 15, 2011, the day after your meeting with UCare's CEO Nancy Feldman, Ghita Worcester, an employee at Minnesota's Department of Human Services (DHS), sent an email to Scott Leitz, a senior employee at DHS who attended the meeting with Ms. Feldman, titled "UCare points to be included in DHS news release."² The email contained an attachment listing six points to be considered for DHS's news release announcing UCare's repayment.³ One of the points in the attachment explained the nature of the cross subsidy:

Historically, DHS rates set for General Assistance Medical Care [a state-only health program] resulted in health plan losses which were offset by higher [Medicaid] payments. When GAMC moved out of managed care in July of 2010, [Medicaid] rates were not lowered to reflect this overpayment.⁴

Your previous response to the Committee on Oversight and Government Reform indicate your direct knowledge that federal Medicaid payments were cross-subsidizing state-only health insurance programs at the time UCare made its \$30 million repayment.⁵ Moreover, since UCare only administers tax-financed health insurance programs and

¹ See e.g. State of Minnesota Office of the Legislative Auditor, *Evaluation Report: Financial Management of Health Care Programs*, page 4, February 2008.

² Email from Ghita Worcester, DHS employee, to Scott Leitz, DHS employee, March 15, 2011.

³ *Id.*

⁴ *Id.*

⁵ Letter from Lucinda Jesson, Commissioner of Minnesota DHS, to Darrell Issa, Chairman of the Committee on Oversight and Government Reform, May 29, 2012.

federal taxes finance the majority of UCare's revenue, we believe you should have recognized that federal taxpayers were due at least half of UCare's \$30 million repayment.

In addition to our concern that Minnesota has claimed upwards of \$500 million in improper federal Medicaid reimbursement over the past decade,⁶ we remain concerned that the State of Minnesota and the Minnesota DHS under your leadership sought to characterize UCare's repayment as a "donation" in order for the entire amount to be counted as state revenue. More than a year after the issue received national attention as a result of our oversight, the State finally conceded that half of UCare's \$30 million repayment should be returned to the U.S. Treasury.⁷

After UCare's repayment, Minnesota negotiated a profit cap with all four managed care companies in the state (UCare, BlueCross BlueShield, Medica, and Health Partners) participating in Medicaid.⁸ The deal involved the state's managed care companies returning all their 2011 profits in excess of a one percent profit cap for the Medicaid and Minnesota Care programs.⁹ On April 3, 2012, the Minnesota DHS announced that the four companies repaid the state \$73 million.¹⁰ This \$73 million collective repayment was split between the State and the U.S. Treasury.¹¹

Despite having the smallest portfolio, UCare earned \$38 million in excess of the 2011 profit cap.¹² In your testimony before the House Committee on Oversight and Government Reform Subcommittee on Health Care, District of Columbia, Census, and National Archives on April 25, 2012, you stated:

Ultimately, we agreed that the initial \$30 million donation would have ended up being added to what UCare returned based on the one percent caps we negotiated, and decided that the fair way to handle it would be to treat it as if it were part of that return, thus entitling the federal government to its share. Since we didn't know what, if anything, the plans would be returning until early this month, we were unable to make any decision before then.¹³

⁶ Is Government Adequately Protecting Taxpayers from Medicaid Fraud: Hearing Before the Subcomm. on Health Care, Dist. of Columbia, Census, and Nat'l Archives and the Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov't Spending of the H. Comm. on Oversight and Government Reform, 112th Cong. (Apr. 25, 2012), available at: <http://oversight.house.gov/hearing/joint-hearing-is-government-adequately-protecting-taxpayers-from-medicaid-fraud/>.

⁷ Christopher Snowbeck, "Minnesota will split \$30 million UCare payment with feds," April 24, 2012. Available at: http://www.twincities.com/ci_20461280/minnesota-agrees-split-30-million-contribution-from-ucare.

⁸ Josh Simeone, "Minnesota HMOs Agree to Give Back Excess '11 Profits," April 5, 2011. Available at: <http://kstp.com/news/stories/s2051173.shtml>.

⁹ *Id.*

¹⁰ Office of the Governor, Mark Dayton, *Dayton Healthcare Reform Saves Millions for Taxpayers*, April 3, 2012. Available at: <http://mn.gov/governor/newsroom/pressreleasedetail.jsp?id=102-38112>. (August 13, 2012)

¹¹ *Id.*

¹² Congressional staff briefing between Nancy Feldman, CEO of UCare, and Brian Blase, Erika Smith, and Rodney Whitlock (June 12, 2012).

¹³ Is Government Adequately Protecting Taxpayers from Medicaid Fraud: Hearing Before the Subcomm. on Health Care, Dist. of Columbia, Census, and Nat'l Archives and the Subcomm. on Regulatory Affairs, Stimulus Oversight and

On June 12, 2012, staff of the Senate Judiciary Committee and the House Committee on Oversight and Government Reform interviewed Ms. Feldman about the \$30 million “donation”.¹⁴ Ms. Feldman confirmed that the \$30 million repayment was made from excess reserves in UCare’s account at the end of 2010.¹⁵ During the interview, Ms. Feldman also informed Committee staff about the negotiations of the one percent profit cap in 2011.¹⁶ Ms. Feldman confirmed that the State and UCare agreed that UCare’s \$30 million “donation” would be included in the one percent profit cap on managed care companies for 2011.¹⁷

Because of the agreement with the State, UCare’s \$30 million “donation” made from excess reserves at the end of 2010 was incorporated into UCare’s \$38 million of profits in excess of the one percent profit cap in 2011. Because of this agreement, UCare only owed the State an additional \$8 million for payments of profits in excess of the one percent profit cap.

The State’s agreement with UCare to count UCare’s \$30 million repayment toward the 2011 profit cap raises serious questions regarding your insistence that half of UCare’s \$30 million “donation” was not subject to federal recoupment. Since Minnesota agreed that half of the profits returned through the profit cap would be remitted to the U.S. Treasury, the State should have remitted half of UCare’s “donation” as soon as the State agreed that UCare’s \$30 million was going to be counted towards the company’s profits in excess of the 2011 profit cap.

To help us gain a better understanding of the timeline involved with the development of the one percent profit cap and Minnesota’s decision to eventually remit the federal share of UCare’s payment to the U.S. Treasury, please answer the following questions and provide the following information no later than September 13, 2012:

1. Provide all documents and communications produced by State employees or received by State employees referring or relating to UCare’s portion of the one percent profit cap and the agreement that UCare’s \$30 million repayment would count toward the 2011 profit cap.
2. Provide all documents and communications between Minnesota State employees and employees, contractors, or agents of UCare, employees, contractors, or agents of Medica, employees, contractors, or agents of Health Partners, and employees, contractors, or agents of Blue Cross Blue Shield

Gov’t Spending of the H. Comm. on Oversight and Government Reform, 112th Cong. (Apr. 25, 2012), *available at*: <http://oversight.house.gov/hearing/joint-hearing-is-government-adequatelv-protecting-taxpayers-from-medicaid-fraud/>.

¹⁴ Congressional staff briefing between Nancy Feldman, CEO of UCare, and Brian Blase, Erika Smith, and Rodney Whitlock (June 12, 2012).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

referring or relating to the one percent profit cap between January 1, 2011, and the present.

3. Provide all documents and communications between Minnesota State employees and employees of the federal government referring or relating to the one percent profit cap between January 1, 2011, and the present.
4. We have obtained a March 15, 2011, email sent from Christine Wasieleski to Scott Leitz and an attached document titled "UCare points to be included in DHS news release."¹⁸ Who authored this document? Who was the highest ranking Minnesota state official to review the document?
5. You testified that the State believed that it did not have to remit half of UCare's \$30 million payment to the federal government.¹⁹ However, you also stated in your testimony that you and the State believed it had to share the money returned to the State through the one percent profit cap with the federal government.²⁰ Please reconcile these statements which seem to conflict.
6. Our request on June 28, 2012, asked you to provide "all documents and communications produced by State employees from March 1, 2011, through June 30, 2011, referring or relating to UCare's \$30 million payment to the State."²¹ Your response provided "non-privileged documents and communications responsive to this request."²² Provide all documents and communications, including privileged ones, related to our June 28, 2012, request.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive documents in electronic format.

¹⁹ Is Government Adequately Protecting Taxpayers from Medicaid Fraud: Hearing Before the Subcomm. on Health Care, Dist. of Columbia, Census, and Nat'l Archives and the Subcomm. on Regulatory Affairs, Stimulus Oversight and Gov't Spending of the H. Comm. on Oversight and Government Reform, 112th Cong. (Apr. 25, 2012), *available at*: <http://oversight.house.gov/hearing/joint-hearing-is-government-adequately-protecting-taxpayers-from-medicaid-fraud/>.

²⁰ *Id.*

²¹ Letter from Darrell Issa, Chairman of the Committee on Oversight and Government Reform, to Lucinda Jesson, Commissioner of Minnesota DHS, May 29, 2012.

²² Letter from Minnesota DHS to Darrell Issa, Chairman of the Committee on Oversight and Government Reform, July 17, 2012.

Ms. Lucinda Jesson

August 30, 2012

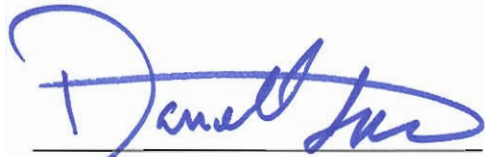
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Thank you for your prompt attention and response to our request. Should you have any questions regarding this request, please contact Erika Smith of the Senate Judiciary Committee staff at (202) 224-5225 or Brian Blase of the House Committee on Oversight and Government Reform staff at (202) 225-5074.

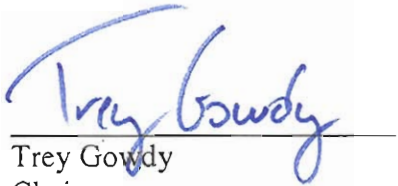
Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate



Darrell Issa
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives



Trey Gowdy
Chairman
Subcommittee on Health Care, District of
Columbia, Census, and the National Archives
Committee on Oversight and
Government Reform
U.S. House of Representatives

Enclosure

cc: The Honorable Patrick Leahy, Chairman
Committee on the Judiciary
U.S. Senate

The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Danny Davis, Ranking Minority Member
Subcommittee on Health Care, District of Columbia, Census, and the National Archives
U.S. House of Representatives

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JOHN L. MICA, FLORIDA
TODD RUSSELL PLATTS, PENNSYLVANIA
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Congress of the United States

House of Representatives

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LAWRENCE J. BRADY
STAFF DIRECTOR

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.