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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 6, 2013

Mr. John T. McDonald III
Vice President
Marra's Pharmacy, Inc.
217 Remsen Street
Cohoes, New York 12047

Dear Mr. McDonald:

The Committee on Oversight and Government Reform is conducting oversight of New York State's Medicaid program. On March 5, 2013, the Committee issued a bipartisan report on the program which concluded that the State had "misspen[t] tens of billions of Federal tax dollars over the past few decades."[1] One aspect of the Committee's oversight of New York's Medicaid program is the claim that the New York State Office of Medicaid Inspector General (OMIG), the State agency responsible for oversight of State Medicaid spending, has become "a highly politicized, dysfunctional, mismanaged and ineffective agency where many of the 500 or so employees have little to do."[2] We are writing you to request that you provide documents and information to assist the Committee's oversight.

After publication of the Committee's report, many whistleblowers contacted the Committee to explain problems at OMIG. In particular, several whistleblowers discussed OMIG's audit of Marra's Pharmacy, Inc. According to the *Albany Times Union*, a former OMIG auditor and supervisor, Sonia Arroyo, indicated that Marra's Pharmacy has received favorable treatment from OMIG:

> [Arroyo] decided it was time to retire, even though it was a financial risk to do so, after she was asked by her new boss, Mark Hennessey, to see if she could redo an audit of a pharmacy in Cohoes led by a family active in Democratic politics. Hennessey, a former Democrat on the Bethlehem Town Board, was recently promoted after serving as a legislative liaison for OMIG; he is now in charge of communications and other functions.

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[1] REPORT BY THE H. COMM. ON OVERSIGHT & GOV'T REFORM, "Billions of Federal Tax Dollars Misspent on New York's Medicaid Program," H.R. REP. NO. 113-11 (Mar. 5, 2013). [hereinafter COMMITTEE REPORT].

[2] James M. Odato, *Fraud Agency Called Adrift*, ALBANY TIMES UNION (Nov. 18, 2012) (copy on file with author).

> Arroyo said Hennessey told her he was concerned about the heavy penalty that would have been imposed on Marra Pharmacy, run by the family of Mayor and Assemblyman-elect John McDonald, who contested the audit findings. Arroyo felt Hennessey's directive put her in a position of doing something she thought would be unethical, since similar breaks were not given to other audited pharmacies. Her audit findings called for a $1.4 million penalty for missing pharmacy records.
>
> The case was settled for $268,000 in August, two months after she retired. She said the lighter fine went against procedures. A hearing and consultation with Albany County should have happened first, she said. [3]

Other OMIG employees also said "protocols in the Marra case seem to have been revised to help the pharmacy dodge a big fine – an episode emblematic of OMIG's problems."[4]

Documents produced to the Committee by OMIG confirm that there were dramatic reductions in the amount of findings of Medicaid overpayments received by Marra's Pharmacy. For example, OMIG's findings of overpayments received by Marra's Pharmacy totaled $2,940,032 at the original audit exit conference (during which OMIG discusses its preliminary findings with an audited entity) in November 2009.[5] The draft audit issued in November 2010 reduced the amount of Medicaid overpayments to $2,903,708, with an offer to settle the overpayments for $1,551,140.[6] A final draft audit contained a slightly lower finding of Medicaid overpayments received by Marra's Pharmacy of $2,819,128, with an offer to settle the overpayments for $1,467,804.[7]

Two days after that final audit was issued, Barbara J. McDonald, your mother and president of Marra's Pharmacy, wrote Governor Cuomo in an attempt to have him intervene in your dispute with OMIG. Discussing OMIG's findings of Medicaid overpayments, she stated, "We will be unable to handle this kind of [recovery] payment."[8] Ms. McDonald noted she "asked Assembly Majority Leader Ron Canestrari" to provide references to her "personal character . . . ."[9] After your mother's letter to Governor Cuomo, OMIG further reduced the findings of Medicaid overpayments

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[3] *Id.*
[4] *Id.*
[5] Exit Conference Summary, Audit #09-5280 (Nov. 3, 2009), at Exhibit 1.
[6] Letter from Katherine Napoli, Dir., County Demonstration Project, N.Y. State Office of Medicaid Inspector Gen., to Barbara Marra McDonald, Supervising Pharmacist, Marra's Pharmacy (Nov. 22, 2010), (Draft Audit Report Audit #09-5280), at 2, 9.
[7] Letter from Katherine Napoli, Dir., County Demonstration Project, N.Y. State Office of Medicaid Inspector Gen., to Barbara Marra McDonald, Supervising Pharmacist, Marra's Pharmacy (undated), (Final Audit Report Audit #09-5280), at 2, 12.
[8] Letter from Barbara J. McDonald, President, Marra's Pharmacy, to the Hon. Andrew M. Cuomo, Governor of New York (June 22, 2011).
[9] *Id.*

received by Marra's Pharmacy to $566,739[10] with an offer to settle the overpayments for only $268,038.28.[11]

In addition to Ms. Arroyo's statement that Mark Hennessey put inappropriate, and perhaps unlawful, pressure on her to reduce the audit findings for Marra's Pharmacy, the Committee has learned that another senior OMIG official gave Marra's Pharmacy favorable treatment during the audit. According to information obtained by the Committee, Katherine Napoli, Deputy Director at OMIG, sought to give computer discs containing sensitive agency materials to Marra's Pharmacy over the objections of OMIG's legal counsel.[12] In addition, Ms. Napoli had Ms. Arroyo "re-run the extrapolation [for the estimated overpayment] WITHOUT [sic] the projection of the missing prescriptions."[13] According to information obtained by the Committee, excluding the missing prescriptions from the audit extrapolations was a violation of OMIG protocols.

The combination of OMIG's decision to repeatedly lower the findings of overpayments received by Marra Pharmacy and to settle for less than a tenth of OMIG's initial estimates of overpayments, the indication that at least two senior OMIG employees intervened on your behalf during OMIG's audit, your position as an elected official, and your mother's plea for assistance with the audit from both Governor Cuomo and at least one member of the New York State legislature, are troubling. The available information suggests your company got away with inappropriately billing the Medicaid program by millions of dollars because of your powerful political connections.

Since federal tax dollars support over half of New York's Medicaid spending, the federal government would be entitled to at least half of the amount of any final settlement with Marra's Pharmacy.[14] As a result, any improper treatment received by your company harms both State and federal taxpayers.

As part of the Committee's continuing oversight of New York's Medicaid program, we request that you produce the following documents, in electronic format, as soon as possible, but no later than 5:00 p.m. on August 20, 2013:

1. All documents and communications, including e-mails, between agents, contractors, or employees of Marra's Pharmacy and officials of any New York State agency, including the New York State Office of the Medicaid Inspector General, and the Executive Office of the Governor, referring or

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[10] Exit Conference Summary, Audit #09-5280 (undated), at Exhibit 1.
[11] Marra's Pharmacy, Inc., Stipulation of Settlement of Audit #09-5280 (2012).
[12] E-mail from Katherine Napoli to Joanna Rabilotti (Feb. 22, 2011) (copy on file with author); E-mail from Kevin Ryan to Katherine Napoli (Apr. 14, 2011) (copy on file with author).
[13] E-Mail from Katherine Napoli to James C. Cox, Deborah Acanfora, Janine Rivera, Sonia Arroyo, and Mark Hennessey (Aug. 10, 2011) (copy on file with author) (emphasis in original).
[14] COMMITTEE REPORT, *supra* note 1, at 5.

relating to any Marra's Pharmacy audit, from October 1, 2009 to the present; and

2. All documents and communications, including e-mails, between agents, contractors, or employees of Marra's Pharmacy and officials and staff of the New York State Legislature, referring or relating to any Marra's Pharmacy audit, from October 1, 2009 to the present.

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.

If you have any questions about this request, please contact Brian Blase or Matthew Tallmer of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements

Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation, and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member
Subcommittee on Energy Policy, Health Care and Entitlements

The Honorable Matt Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs

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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.