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Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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<http://oversight.house.gov>

August 6, 2013

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LAWRENCE J. BRADY
STAFF DIRECTOR

Mr. John Navarra
Owner
Town Total Nutrition, Inc.
6 East 32nd Street, 5th Floor
New York, NY 10016-5422

Dear Mr. Navarra:

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. Several of them discussed OMIG's audit of Town Total Nutrition, Inc.³ OMIG whistleblowers told Committee staff that OMIG's findings of estimated inappropriate overpayments received by Town Total were in excess of \$12 million, but that the final recoveries were for much less.⁴

Documents produced to the Committee confirm that OMIG's finding of overpayments dropped considerably over time. At the initial exit conference (during which OMIG discusses its preliminary findings with an audited entity) OMIG reported

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

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

³ See Town Total Nutrition, Inc., Stipulation of Settlement of Audit 04-1342 (2011).

⁴ Comm. Staff Interview with OMIG Whistleblower (June 19, 2013).

that Town Total had been overpaid through Medicaid by \$10,671,736.⁵ By the second exit conference conducted in November 2007, the overpayment findings were reduced to \$9,119,135.⁶ By February 2009, the overpayments were reduced to \$7,098,878,⁷ with a further reduction to \$5,551,552 and an offer to settle the dispute for \$3,465,760 in March 2010.⁸ At some point later in 2011, OMIG settled the dispute for only \$531,291,⁹ less than 5 percent of the initial findings of wrongdoing.

Several whistleblowers indicated that the large reduction in OMIG's findings of Medicaid overpayments received by Town Total possibly resulted from your powerful political influence. These assertions are supported by information uncovered by the Committee. For example, the Committee has learned that former Pennsylvania Governor and former Democratic National Committee Chairman Ed Rendell intervened on your behalf during the period Town Total was being audited. According to James G. Sheehan, former OMIG Inspector General, Mr. Rendell called him in an apparent attempt to obtain favorable treatment from OMIG for Town Total.¹⁰ In addition, a letter your attorneys wrote to Mr. Sheehan noted that you "currently [serve] as a member of the New York State Board of Pharmacy," and "as Chairman of Medicaid's [Pharmacy Advisory Committee] PAC on which he has served for the twenty-two (22) years."¹¹ As a result, you have an expertise in Medicaid rules as they relate to pharmacies.

The combination of OMIG's decision to repeatedly lower the findings of overpayments received by Town Total and to settle for less than a five percent of OMIG's initial estimate of overpayments, Ed Rendell's intervention on your behalf during OMIG's audit, and your position as a member of the New York State Board of Pharmacy and Chairman of the Board's Medicaid's Pharmacy Advisory Committee, is troubling. The available information indicates 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 Town Total.¹² As a result, any improper treatment received by your company harms both state and federal taxpayers.

⁵ Town Total Nutrition, Inc., Pharmacy Services Audit 04-1342, Exit Conference Summary (undated), at 7.

⁶ Town Total Nutrition, Inc., Pharmacy Services Audit 04-1342, Exit Conference Summary (Nov. 20, 2007), at Exhibit 1.

⁷ Letter from Craig C. Francis, Dir., Bureau of Medicaid Audit, N.Y. State Office of the Medicaid Inspector General, to Mr. John Navarra, Owner, Town Total Nutrition, Inc. (Feb 9, 2009), at Exhibit 1.

⁸ Letter from Craig C. Francis, Dir., Bureau of Medicaid Audit, N.Y. State Office of the Medicaid Inspector General, to Mr. John Navarra, Owner, Town Total Nutrition, Inc. (Mar. 10, 2010), at 8, 9.

⁹ Stipulation of Settlement Agreement of Audit, Audit 04-1342 (2011), at 2.

¹⁰ Transcribed Interview of James G. Sheehan, Deputy Comm'r, N.Y.C. Human Res. Admin., by Comm. Staff (June 20, 2013).

¹¹ Letter from Amy T. Kulb to James G. Sheehan, Medicaid Inspector General, N.Y. State Office of the Medicaid Inspector General (Jan. 10, 2008), at 1.

¹² COMMITTEE REPORT, *supra* note 1, at 5.

As part of the Committee's continuing oversight of New York's Medicaid program, we request that you produce the following information and 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 Town Total 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 relating to any Town Total audit, from January 1, 2007 to the present;
2. All documents and communications, including e-mails and staff, between agents, contractors, or employees of Town Total and officials of the New York State Legislature, referring or relating to any Town Total audit, from January 1, 2007, to the present;
3. All documents and communications, including e-mails, between any agents, contractors, or employees of Town Total Nutrition, Inc., and former Governor Ed Rendell or his agents or employees from January 1, 2007, to the present; and
4. All documents and communications, including e-mails, between any agents, contractors, or employees of Town Total Nutrition, Inc, referring or relating to any meetings or conversations with former Governor Ed Rendell or his agents or employees from January 1, 2007 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. The Committee prefers, if possible, to receive all documents in electronic format.

Mr. John Navarra

August 6, 2013

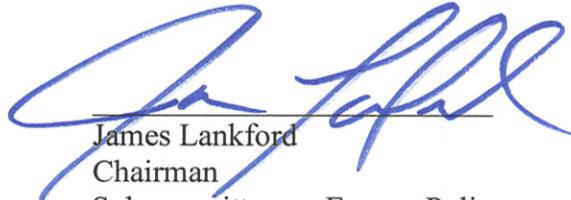
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If you have any questions about this request, please contact Brian Blase or Matthew Tallmer of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

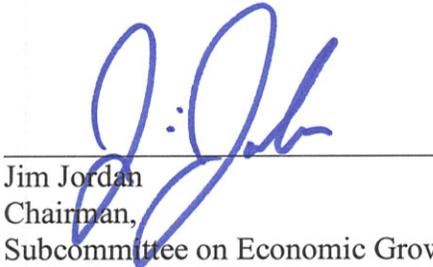
Sincerely,



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.