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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 1, 2013

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LAWRENCE J. BRADY
STAFF DIRECTOR

Ms. Joan Marren
Chief Executive Officer
Visiting Nurse Service of New York Home Care, Inc.
107 East 70th Street
New York, NY 10021

Dear Ms. Marren:

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, and several of them discussed the hold-up of OMIG's audit of Visiting Nurse Service of New York (VNS). Additionally, several media outlets have reported on OMIG's audit of VNS and, in particular, the failure of OMIG to finalize the audit and recover unlawfully spent money. According to the *Wall Street Journal*:

[A]uditors from the state Medicaid inspector general's office claimed [VNS] inflated Medicaid payments by billing for home-care services that weren't performed or weren't authorized by doctors as required by law. . . . The probe poses a potentially troubling development for Visiting Nurse Service, a venerable, century-old company that claims to be the largest nonprofit home-health company in the nation. The Manhattan-based firm

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

draws most of its revenue, which totaled \$1.1 billion in 2009, from Medicaid and Medicare.³

According to OMIG staff, as of November 2012, approximately 25,000 hours were expended conducting the VNS audit.⁴ During a transcribed interview with Committee staff on June 20, 2013, James G. Sheehan, the former OMIG Inspector General, confirmed the 25,000-hour figure.⁵

VNS acknowledges on its Website that VNS Home Care is a subsidiary.⁶ Documents produced to the Committee by OMIG demonstrate there were dramatic reductions in the amount of findings of Medicaid overpayments received by VNS. For example, OMIG's findings of overpayments received by VNS totaled \$153,459,984 at an audit exit conference (during which OMIG discusses its preliminary findings with an audited entity) in February 2011.⁷ The draft audit issued in May 2013 reduced the amount of Medicaid overpayments to \$94,136,232,⁸ with an offer to settle the overpayments for \$68,244,267,⁹ an amount \$85 million less than the findings of overpayments from February 2011.

Information obtained by the Committee indicates that during a 2011 meeting about the VNS audit, the Governor's Office advised OMIG not to release the audit. Additionally, the former chief operating officer of VNS, Carol Raphael, "was paid \$1 million in 2009, is a member of [Governor] Cuomo's Medicaid team, a special policy panel appointed by the governor to redesign Medicaid and lower its costs."¹⁰ Since the audit started, Ms. Raphael has donated \$2,250 to Governor Cuomo's campaign.¹¹

These political donations, along with the the position of Ms. Raphael on Governor Cuomo's Medicaid Redesign Team, the apparent involvement of the Governor's office with the audit, the lengthy hold-up of the audit, and the dramatic reduction of overpayment findings between 2011 and 2013, raise questions as to whether VNS has received favorable treatment due to its powerful political connections.

More recently, another VNS subsidiary, VNS Choice,¹² came under additional scrutiny for inappropriate Medicaid billing. According to the *New York Times*, VNS Choice appears to

³ Jacob Gershman, *State Probing Overbilling of Medicaid*, WALL ST. J. (Feb. 10, 2011) (copy with author).

⁴ Odat, *supra* note 2.

⁵ Transcribed Interview with James G. Sheehan, Deputy Comm'r, N.Y.C. Human Res. Admin., and Comm. Staff (June 20, 2013).

⁶ Corporate Information, VISITING NURSE SERV. OF N.Y., available at <http://www.vnsny.org/about-us/corporate-information/> (last accessed July 19, 2013).

⁷ Office of the N.Y. State Medicaid Inspector General, Exit Summary Conference, Visiting Nurse Serv. of N.Y. Home Care, Inc. Home Health Agency Audit, Exit Conference Summary (Feb. 27, 2011), at 16.

⁸ Letter from James C. Cox, Inspector General, Office of N.Y. State Medicaid Inspector General, to Joan Marren, Chief Operating Officer, Visiting Nurse Serv. of N.Y. Home Care, Inc. (May 29, 2013) (Audit Draft 08-4466), at 1.

⁹ *Id.* at 5.

¹⁰ Gershman, *supra* note 3.

¹¹ N.Y. State Bd. of Elections, "Campaign Financial Disclosure," available at <http://www.elections.ny.gov>.

¹² *supra* note 6.

Ms. Joan Marren

August 1, 2013

Page 3

have unlawfully enrolled many healthy individuals into its Medicaid managed care plan.¹³ As a result of the *New York Times* reporting, the New York State Health Department suspended new enrollments into VNS Choice and implemented a payment suspension of some Medicaid payments to VNS Choice.¹⁴ According to the Centers for Medicare and Medicaid Services (CMS), OMIG has also opened up an audit of VNS Choice's apparent enrollment of healthy seniors into its Medicaid managed care plans.

OMIG's large initial findings in its previous audit of VNS for Medicaid overpayments and these new reports of fraudulent enrollment into VNS Medicaid plans raise serious questions about the operation of VNS and related entities. 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 VNS on the outstanding audit.¹⁵ Additionally, federal taxpayers are liable for half of any additional VNS misspending in other areas. 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 information and documents, in electronic format, as soon as possible, but no later than 5:00 p.m. on August 15, 2013:

1. All documents and communications, including e-mails, between agents, contractors, or employees of the Visiting Nurse Service (VNS) 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 VNS audit, from January 1, 2008, to the present; and
2. All documents and communications, including e-mails, between agents, contractors, or employees of the Visiting Nurse Service (VNS) and officials and staff of the New York State Legislature, referring or relating to any VNS audit, from January 1, 2008, 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.

¹³ Nina Bernstein, *Day Centers Sprout Up, Luring Fit Elders and Costing Medicaid*, N.Y. TIMES (Apr. 23, 2013), at A1; See Nina Bernstein, *State Suspends Enrollment in an Adult Care Plan Amid Concerns Over Fraud*, N.Y. TIMES (Apr. 26, 2013), at A 27.

¹⁴Letter from Jason A. Helgerson, Medicaid Dir., N.Y. State; James C. Cox, Medicaid Inspector General, Office of N.Y. State Medicaid Inspector General; and Monica H. Hickey-Martin, Special Deputy Att'y General, Medicaid Fraud Unit, Office of the N.Y. State Att'y General, to Peggy Thompson, Deputy Ctr. Dir., Ctr. of Medicare & CHIP Servs. (July 8, 2013), at 3.

¹⁵ COMMITTEE REPORT, *supra* note 1, at 5.

Ms. Joan Marren

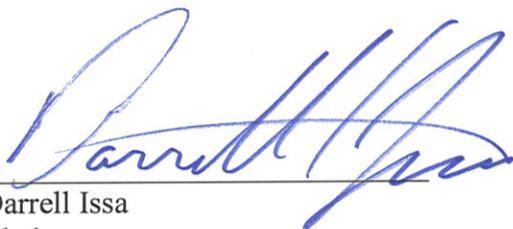
August 1, 2013

Page 4

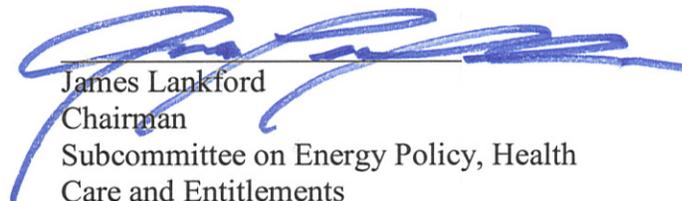
When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

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.

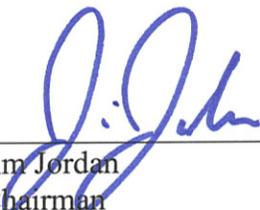
Sincerely,



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