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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 21, 2014

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Ms. Tavenner:

The Committee on Oversight and Government Reform continues to conduct oversight of Medicaid program integrity. During a July 29, 2014, hearing of the Committee's Subcommittee on Energy Policy, Health Care and Entitlements, Katherine Iritani, a Health Care Director at the Government Accountability Office, testified that two New York City government hospitals received Medicaid payments well in excess of their cost of delivering services in 2011. According to GAO:

[T]he state's own estimate of what Medicare would have paid these hospitals for similar services was \$100 million, much less than the \$416 million in supplemental Medicaid payments and \$70 million in regular payment that the hospitals received. Documentation from the Centers for Medicare and Medicaid Services' (CMS) payment review process did not identify the actual supplemental payments these hospitals received.<sup>1</sup>

GAO has identified the two hospital facilities as Coler Memorial and Coler Goldwater,<sup>2</sup> and estimates that the State likely began paying these hospitals large supplemental payments more than a decade ago.<sup>3</sup> The large payments received by these hospitals raise serious questions about State and City decision-making and about the competency of CMS oversight.

<sup>1</sup> *Examining the Federal Government's Failure to Curb Wasteful State Medicaid Financing Schemes: Hearing Before the Sub. On Energy Policy, HealthCare and Entitlements, of the H. Comm. on Oversight & Gov't Reform, 113<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (statement of Katherine M. Iritani, Director, Health Care, Government Accountability Office (Jul 29, 2014, at 1).*

<sup>2</sup> Telephone briefing by GAO to Committee staff (Jul 24, 2014).

<sup>3</sup> See Supra note 1.

The Committee has documented that New York State, like many other states, has a long history of inappropriately, and at times unlawfully, shifting Medicaid costs to federal taxpayers. In March 2013, the Committee released a bipartisan Committee report which documented tens of billions of dollars of New York State Medicaid misspending.<sup>4</sup> The report built upon previous Committee work that estimated the State received \$15 billion in overpayments in a two-decade period because of excessive payment rates to State-operated developmental centers.<sup>5</sup> The March 2013 Committee report urged CMS to end those overpayments and to recover an appropriate amount on behalf of federal taxpayers.

We are encouraged by your announcement on July 25, 2014, that CMS has decided to disallow \$1.26 billion in the developmental center overpayments received by the State in fiscal year 2010-2011.<sup>6</sup> CMS also stated that it is undertaking studies to determine if similar disallowances are appropriate for fiscal years 2011-2012 and 2012-2013.<sup>7</sup> We continue to urge CMS to recover as much as possible of the \$15 billion in past overpayments. The slush fund that New York was able to generate through these excessive rates is patently unfair to taxpayers and Medicaid patients throughout the rest of the country.

Over the past year, the Office of Inspector General (OIG) at the Department of Health and Human Services has determined that the State received similar overpayments through State-operated residential habilitation centers.<sup>8</sup> According to the OIG, the State received federal payments in excess of costs equal to \$666 million in 2010 and 2011.<sup>9</sup> The OIG has uncovered that the State employed a similar scheme with the residential habilitation centers as it did with the developmental centers.<sup>10</sup> As such, we recommend that CMS investigate whether New York State underreported costs or violated any other Medicaid program rules and that you recover the full amount of overpayments paid by federal taxpayers for the State-operated residential habilitation centers.

As a result of New York State's long history of Medicaid mismanagement that inappropriately pass costs to federal taxpayers, we urge you to fully investigate the excessive Medicaid payments received by the two New York City hospitals identified by GAO and determine how long these hospitals have received inflated payment rates. Additionally, CMS should recover additional overpayments owed federal taxpayers. At the July 29, 2014, hearing,

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<sup>4</sup> H. Comm. on Oversight and Gov't Reform, BILLIONS OF FEDERAL TAX DOLLARS MISSPENT ON NEW YORK'S MEDICAID PROGRAM, Mar. 5, 2013, available at <http://oversight.house.gov/wp-content/uploads/2013/03/Bipartisan-Medicaid-Oversight-Report-Final.pdf>.

<sup>5</sup> H. Comm. on Oversight & Gov't Reform, THE FEDERAL GOVERNMENT'S FAILURE TO PREVENT AND END MEDICAID OVERPAYMENTS, Sep. 20, 2012, available at <http://oversight.house.gov/wp-content/uploads/2012/09/Developmental-Center-Staff-Report-for-Hearing-9-20-12.pdf>.

<sup>6</sup> Letter from Michael J. Melendez, Associate Regional Director, Division of Medicaid and Children's Health Operations, Dep't. of Health & Human Svcs., Centers for Medicare & Medicaid Svcs., to Dr. Howard A. Zucker, Acting Commissioner, NYS Dep't of Health, Jul. 25, 2014.

<sup>7</sup> *Id.*, at 2.

<sup>8</sup> Office of Inspector General, Dep't of Health and Human Svcs, MEDICAID RATES FOR RESIDENTIAL HABILITATION SERVICES PROVIDED AT NEW YORK STATE-OPERATED RESIDENCES ARE EXCESSIVE, Mar. 11, 2014.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

GAO reiterated its long-standing recommendation that CMS maintain accurate and reliable provider-specific payment data.<sup>11</sup> The example of these two New York City government hospitals shows the need for CMS to adopt GAO's recommendation without delay.

Further, in April 2014, CMS issued an \$8 billion waiver to New York for the purpose of restructuring aspects of its Medicaid program.<sup>12</sup> Because of New York's track record of abusing and mismanaging federal Medicaid dollars and CMS's failure to identify and halt outrageous payments made by the State for years or decades after they have started, we are concerned that the State will misspend the \$8 billion in funds. Already, New York has announced that it is bailing out several hospitals throughout the State with these funds, particularly in Brooklyn.<sup>13</sup> While we disagree with CMS's decision to award the \$8 billion waiver to New York State, we now urge you to carefully review the appropriateness of the State's disbursement of these funds. Of particular concern is that Governor Cuomo has appointed former health care lobbyist Jim Introne to oversee the disbursal of the Medicaid waiver money.

According to a recent news story, after Mr. Introne retired from the New York State Department of Health in 2013, he went to work "for Sachs Consulting, a firm headed by Jeffrey Sachs, a close friend and ally of Governor Andrew Cuomo. Sachs is Introne's former employee and protégé, and his firm counts among its clients some of New York state's most powerful health care industry players..."<sup>14</sup> According to a June 6, 2011, *New York Times* story, "[a] number of Mr. Sachs's clients are hospitals that serve low-income populations and rely heavily on Medicaid payments and other forms of state aid. According to people familiar with his business, Mr. Sachs advises such institutions in part on **how to maximize those streams of money.**"<sup>15</sup> [emphasis added] The news account also discussed how Mr. Sachs advised the Greater New York Health Association, a hospital trade group, and the S.E.I.U. 1199, the health care workers' union, on their "effort to obtain a federal waiver [the one issued by CMS in April 2014] that would bring more Medicaid money to New York State."<sup>16</sup>

According to the *Capital New York* story, "[m]any of [Sachs' firms'] clients have much at stake in the coming waiver process, and Introne will have a key role in deciding which hospitals ultimately receive funding from the waiver..."<sup>17</sup> The news report also stated that Introne "attended a meeting with Cuomo and a delegation of Brooklyn lawmakers where they

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<sup>11</sup> See Supra note 1.

<sup>12</sup> Letter from Cindy Mann, Director, Center for Medicaid & CHIP Services, Centers for Medicare & Medicaid Services, Dep't of Health and Human Svcs, to Dr. Nirav R. Shah, Commissioner, NYS Dep't of Health, Apr. 14, 2014.

<sup>13</sup> Dan Goldberg, *CNY: State Announces \$100m for Brooklyn in First Waiver Awards*, NEW YORK STATE ASSOCIATION OF PSYCHIATRIC REHABILITATION SERVICES, available at <http://www.nyaprs.org/e-news-bulletins/2014/006432.cfm>.

<sup>14</sup> Laura Nahmias, *After consulting, Cuomo ally to oversee Medicaid money*, CAPITAL NEW YORK, <http://www.capitalnewyork.com/article/albany/2014/06/8546737/after-consulting-cuomo-ally-oversee-medicaid-money>.

<sup>15</sup> Nicholas Confessore, *Cuomo Health Adviser Absolved in Ethics Inquiry*, NEW YORK TIMES, Jun. 6, 2011.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

discussed the fate of Brooklyn hospitals, despite the fact that Sachs' firm counts as clients existing Brooklyn hospitals and some trying to break into the Brooklyn market.”<sup>18</sup>

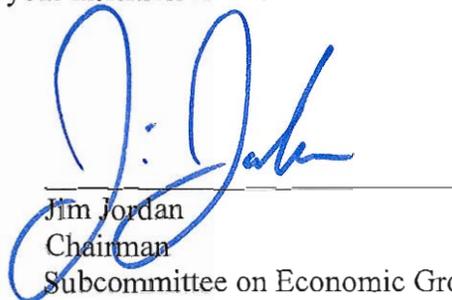
We are concerned that the State has decided to put former health care lobbyists with current conflicts in a decision-making position with regard to these funds. As such, the Committee will continue to monitor this situation very closely moving forward, including CMS's oversight of the disbursement of these funds. We ask that you have appropriate CMS personnel provide a briefing to Committee staff by September 5, 2014, for how CMS intends to oversee the appropriateness of the State's use of the \$8 billion.

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. If you have any questions about this request, please contact Meinan Goto of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa  
Chairman



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

cc: The Honorable Elijah Cummings, Ranking Minority Member

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

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<sup>18</sup> *Id.*