

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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<https://oversight.house.gov>

July 17, 2024

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare & Medicaid Services
7500 Security Blvd.
Baltimore, MD 21244

Dear Administrator Brooks-LaSure:

The Committee on Oversight and Accountability (The Committee) is investigating allegations of Medicaid fraud involving irreversible gender transition care for minors. **According to whistleblower allegations,¹ medical providers in at least the state of Texas, specifically Texas Children’s Hospital (TCH), are fraudulently billing Medicaid for pediatric gender transition care in violation of state law² and state Medicaid policies.³** We are concerned that the Biden Administration is targeting individuals who expose unlawful practices while turning a blind eye to underlying Medicaid fraud. Deprioritizing the investigation and prosecution of Medicaid fraud could have a chilling effect, intentional or otherwise, on whistleblowers bringing forward further evidence of fraudulent billing. We therefore request documents and information to understand what actions Centers for Medicare & Medicaid Services (CMS) is taking with regard to these allegations and any similar instances that may be occurring across the nation.

The Committee has a robust track record conducting oversight of waste, fraud, and abuse in the Medicaid program.⁴ Improper payments in the Medicaid system totaled an estimated \$50 billion in fiscal year 2023, accounting for 21 percent of improper payments in all federal

¹ Documents on file with the Comm.

² S. B. 14, 88th Tex. Legislature (2023).

³ Tex. Medicaid & Health Partnership Medicaid Provider Manual, *available at* <https://www.tmhp.com/resources/provider-manuals/tmppm/tmppm-archives>.

⁴ *See* Letter from Hon. James Comer, Chair, H. Comm. on Oversight & Accountability & Hon. Ron Johnson, to Hon. Chiquita Brooks-LaSure, Adm’r, Ctrs. for Medicare & Medicaid Servs. (Apr. 27, 2023); Letter from Hon. James Comer et al., to Hon. Chiquita Brooks-LaSure, Adm’r, Ctrs. for Medicare & Medicaid Servs. (Apr. 13, 2022); Letter from Hon. James Comer, Chair, H. Comm. on Oversight & Accountability, to Hon. Gene L. Dodaro, Comptroller Gen., U. S. Gov’t Accountability Off. (Apr. 12, 2023); Letter from Hon. James Comer, Ranking Member, H. Comm. on Oversight & Reform, to Hon. Chiquita Brooks-LaSure, Adm’r, Ctrs. for Medicare & Medicaid Servs. (Oct. 7, 2021); Letter from Hon. James Comer, Ranking Member, H. Comm. on Oversight & Reform, to Hon. Chiquita Brooks-LaSure, Adm’r, Ctrs. for Medicare & Medicaid Servs. (Aug. 17, 2021).

programs.⁵ The U. S. Government Accountability Office (GAO) has identified Medicaid as a High-Risk program since 2003 due to the size and growth of the program and its high improper payment rate.⁶ At the request of Chairman Comer, GAO examined the relationship between CMS and state Medicaid auditors, finding that CMS could improve its oversight and program integrity efforts by better utilizing state auditor findings to identify trends and reduce improper payment rates.⁷

According to CMS, Medicaid fraud is the intentional providing of false information to get Medicaid to pay for medical care or services.⁸ Additionally, under the False Claims Act, it is illegal to submit claims for payment under Medicaid known to be false or fraudulent.⁹ Documents reviewed by the Committee appear to demonstrate that medical providers at TCH knowingly falsified diagnosis codes for patients insured by state Medicaid health plans.¹⁰

Under Texas Medicaid, all gender transition care was ineligible for Medicaid coverage at the time of these allegations.¹¹ **We are concerned that medical providers at TCH are falsifying diagnosis codes for patients seeking gender transition care to obtain Medicaid approval and payment for noncovered services.**¹² For example, we understand a TCH provider seeking to ensure Medicaid coverage of gender transition care appears to have fraudulently diagnosed a biologically female patient with testosterone deficiency and hypogonadism in order to obtain Medicaid approval for testosterone treatment that would otherwise be denied under Texas Medicaid regulations if prescribed for the purpose of gender transition.¹³

Further, pediatric gender transition care at TCH was purportedly on hold due to a legal opinion by the Texas Attorney General in 2022.¹⁴ Yet, evidence reviewed by the Committee supports that this hospital was not only sponsoring lectures on “Medical and Psychological Care of Gender-Diverse Youth” for medical students and physicians practicing at the hospital, but

⁵ U. S. GOV'T ACCOUNTABILITY OFF., GAO-24-106927, IMPROPER PAYMENTS: INFORMATION ON AGENCIES' FISCAL YEAR 2023 ESTIMATES, 2 (Mar. 26, 2024); U. S. GOV'T ACCOUNTABILITY OFF., GAO-24-107487, MEDICARE AND MEDICAID: ADDITIONAL ACTIONS NEEDED TO ENHANCE PROGRAM INTEGRITY AND SAVE BILLIONS (Apr. 16, 2024).

⁶ U. S. GOV'T ACCOUNTABILITY OFF., GAO-23-105881, MEDICAID PROGRAM INTEGRITY: OPPORTUNITIES EXIST FOR CMS TO STRENGTHEN USE OF STATE AUDITORY FINDINGS AND COLLABORATION, 1 (Sept. 21, 2023).

⁷ U. S. GOV'T ACCOUNTABILITY OFF., GAO-23-105881, MEDICAID PROGRAM INTEGRITY: OPPORTUNITIES EXIST FOR CMS TO STRENGTHEN USE OF STATE AUDITORY FINDINGS AND COLLABORATION, 1 (Sept. 21, 2023).

⁸ Ctrs. for Medicare & Medicaid Servs., There are Many Types of Medicaid Fraud, *available at* <https://www.cms.gov/medicare-medicare-coordination/fraud-prevention/medicaid-integrity-education/downloads/infograph-there-are-many-types-medicare-fraud-%5Bmay-2016%5D.pdf>.

⁹ U. S. Dept. of Health & Human Servs. Off. of Inspector Gen., Fraud & Abuse Laws, *available at* <https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/>; False Claims Act, 31 U. S. C. §§ 3729 – 3733.

¹⁰ Document on file with the Comm.

¹¹ Texas Medicaid & Health Partnership Medicaid Provider Manual Archives, *available at* <https://www.tmhp.com/resources/provider-manuals/tmppm>.

¹² Document on file with the Comm.

¹³ Document on file with the Comm.

¹⁴ Anne Branigin, *In Texas, the Nation's Largest Children's Hospital is Halting Gender-Affirming Care for Trans Youths*, WASH. POST (Mar. 8, 2022).

providers actively scheduled gender transition care such as placing long-acting puberty blocking hormone implants in pediatric patients after publicly stating that it was ceasing the practice in March 2022.¹⁵ Effective September 1, 2023, all gender transition care for minors was banned in Texas under S.B. 14.¹⁶

Lastly, we are alarmed by evidence that the Biden Administration has prioritized action against individuals who have exposed unlawful practices over stopping Medicaid fraud at hospitals.¹⁷ Moreover, we are aware of retaliation against medical providers who brought forward evidence of individuals and entities continuing to perform banned gender-affirming care procedures on minors at TCH.¹⁸ Dr. Ethan Haim has been pursued by investigators from your office and Federal Bureau of Investigation (FBI),¹⁹ and was recently indicted for alleged violations of the Health Insurance Portability and Accountability Act (HIPAA).²⁰ But to date, we have seen no evidence that your office has addressed or taken action based on evidence of Medicaid fraud associated with gender transition care at TCH. At this hospital and elsewhere, potential whistleblowers seeking to disclose Medicaid fraud and other unlawful behavior have seemingly been put on notice: the federal government will target individuals looking to expose illegal actions at hospitals while turning a blind eye to Medicaid fraud and other wrongful hospital conduct they seek to expose.

CMS has a duty to monitor states' Medicaid program integrity and combat waste, fraud and abuse. To assist our investigation of this matter, please provide the following documents and information as soon as possible, but not later than July 31, 2024:

1. All CMS Medicaid program integrity guidance related to fraudulent Medicaid billing for gender transition care, including but not limited to improper gender-specific diagnostic coding and/or medical care that does not match the patient's biological sex;
2. All documents and information related to any audit or investigation related to fraudulent Medicaid billing for gender transition care, including but not limited to improper gender-specific diagnostic coding and/or medical care that does not match the patient's biological sex;
3. All documents and information related to completed or in progress audits or investigations of Texas Medicaid claims, including but not limited to, fraudulent billing for improper gender-specific diagnostic coding and/or medical care that does not match the patient's biological sex;

¹⁵ Documents on file with the Comm.

¹⁶ S. B. 14, 88th Tex. Legislature (2023).

¹⁷ Video on file with the Comm.

¹⁸ Emily Yoffe, *A Doctor Told the Truth. The Feds Showed Up at His Door*, THE FREE PRESS (Jun. 10, 2024); Documents on file with the Comm.

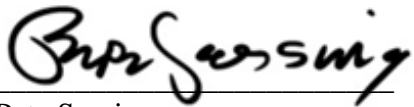
¹⁹ Documents on file with the Comm.

²⁰ Press Release, U.S. Attorney's Off., S. Dist. of Tex., Doctor charged for unauthorized access to personal information for pediatric patients at Texas Children's Hospital (Jun. 17, 2024).

4. All documents and information related to completed or in progress audits or investigations of any other states' Medicaid claims, including but not limited to, fraudulent billing for improper gender-specific diagnostic coding and/or medical care that does not match the patient's biological sex; and
5. A total accounting of improper payments recouped as a result of criminal enforcement actions against individuals or entities engaging in fraudulent Medicaid billing for improper gender-specific diagnostic coding and/or medical care that does not match the patient's biological sex.

To make arrangements to deliver documents or ask any related follow-up questions, please contact Committee on Oversight and Accountability Majority Staff at (202) 225-5074. The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Thank you for your cooperation.

Sincerely,



Pete Sessions
Chairman
Subcommittee on Government Operations
and the Federal Workforce



Lisa McClain
Chairwoman
Subcommittee on Health Care and
Financial Services

cc: The Honorable Kweisi Mfume, Ranking Member
Subcommittee on Government Operations and the Federal Workforce

The Honorable Katie Porter, Ranking Member
Subcommittee on Health Care and Financial Services