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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

A. JAY KHOSLA, STAFF DIRECTOR
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January 19, 2018

The Honorable Robert Charrow
General Counsel
U.S. Department of Health and Human Services
200 Independence Ave. S.W.
Washington, D.C. 20201

Dear Mr. Charrow:

I am writing concerning possible violations by Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma of her ethics agreements. Recent statements by governors representing multiple states indicate that Administrator Verma has personally and substantially participated in waivers submitted to CMS by states that were clients of her previous consulting business. Such participation appears to violate Administrator Verma's ethics agreement, absent the issuance of written waivers for each of her interactions on a case-by-case basis. Administrator Verma's actions also appear to violate self-imposed ethics pledge that the Trump Administration requires its appointees to sign pursuant to Executive Order 13770.

I request that you immediately investigate whether Administrator Verma's actions comply with her agreements and the Federal ethics requirements. I also am seeking information about the steps that Office of General Counsel has taken to ensure that Administrator Verma is complying with her ethics agreements as well as applicable federal laws and regulations.

Prior to being confirmed to her current position, Administrator Verma headed a consulting firm, SVC, Inc., a role in which she provided services to the states of Arkansas, Indiana, Iowa, Kentucky, Ohio, South Carolina and Virginia. Federal ethics officials deemed her consulting work with these seven states as significant, and included a provision in her Ethics Agreement requiring special review of future matters involving those seven States.¹ Specifically, pursuant to 5 C.F.R. 2635.502(d), Administrator Verma agreed to "seek a written authorization to participate personally and substantially in particular matters involving specific parties" in which those states would be "a party or represents a party."² Furthermore, the Trump Administration's self-imposed ethics pledge provides that a nominee "will not for a period of 2 years from the date of [their] appointment participate in any particular matter involving specific parties that is directly and substantially related to [their] former employer or former clients, including regulations and contracts."³

¹ Letter from Seema Verma to Elizabeth J. Fischmann, January 31, 2017.

² *Id.*

³ Executive Order 13770.

Recent statements by the governors of three states specifically designated in Administrator Verma's ethics agreement – Arkansas, Kentucky, and Iowa – strongly suggest she was personally and substantially involved in matters those states brought before CMS. Two of the governors represent states that have submitted Section 1115 waivers seeking to impose work requirements on Medicaid recipients – Arkansas and Kentucky. The third relates to a separate Section 1332 waiver submitted by the State of Iowa.

Arkansas

On January 16th, an aide to Arkansas Governor Asa Hutchinson told the *Arkansas Times* in a written statement:

The Gov [sic] spoke with both the acting HHS Secretary and Administrator Verma last week re: Arkansas's waiver and the guidance from CMS last week. We should hear something soon, in terms of Arkansas's work requirement. ... To our knowledge CMS has placed no restrictions on Administrator Verma's involvement with Arkansas in these negotiations. It's on CMS to do so.⁴

Such a conversation appears to show that Administrator Verma was personally and substantially involved in the state's efforts to gain approval for its waiver to impose work requirements on individuals in its Medicaid program.

Gov. Hutchinson separately emailed a statement to an Arkansas press outlet in December stating that he had "personally visited with numerous [Trump] Administration officials making the case for Arkansas' innovative Medicaid waiver request that would continue the reform efforts to control costs and to put into place work and responsibility requirements."⁵ Given her position within the Administration, and the recent acknowledgement by the governor's office that a conversation took place this month between the Administrator Verma and Gov. Hutchinson, it is reasonable to ask whether the "Administration officials" referenced in his statement included Administrator Verma.

Kentucky

During a press conference on January 12, 2018, Kentucky Governor Matt Bevin said that Administrator Verma personally informed state officials that Kentucky's Medicaid waiver, which includes unprecedented work requirements, had been approved by CMS:

We received this information directly from Health and Human Services, specifically from CMS, and the commissioner – the administrator, I'm sorry – at CMS, Seema Verma, who is the one who oversees this for the U.S., is the one who contacted ... our cabinet at the state level.⁶

⁴ Max Brantley, "Governor optimistic on Medicaid work waiver," *Arkansas Times*, January 16, 2018,

<https://www.arktimes.com/ArkansasBlog/archives/2018/01/16/governor-optimistic-on-medicaid-work-waiver>.

⁵ David Ramsey, "Arkansas' Medicaid changes still on hold," *Arkansas Nonprofit News Network*, December 6, 2017,

<http://www.hopestar.com/news/20171206/arkansas-medicaid-changes-still-on-hold>.

⁶ Facebook, "Kentucky HEALTH Announcement," January 12, 2018,

<https://www.facebook.com/GovMattBevin/videos/1795376177428934/?fref=ts>, at 45:08.

Such a communication between Administrator Verma and the Commonwealth of Kentucky not only represents a potential violation of her ethics agreement, but contradicts previous assurances that she would be recused from participating in matters related to Kentucky's waiver.⁷

Iowa

Iowa Governor Kim Reynolds indicated last year that Administrator Verma had personally and substantially worked with the state regarding a Section 1332 waiver application that the State of Iowa submitted to CMS. During opening remarks at a press conference on October 23, 2017, the governor thanked the Administrator for her involvement with the waiver:

I want to thank President Trump and his administration, and especially I want to thank the Centers for Medicare and Medicaid Services' Administrator, Seema Verma. Administrator Verma has worked with Iowa to the greatest extent possible.⁸

Later in the press conference, Gov. Reynolds more explicitly said that Administrator Verma had worked directly with the state on its waiver:

When I say we're working around the clock, we've been working around the clock. We've been working with Seema. Not only are we working with HHS; we're working with Treasury – bureaucracy at its best. We're trying to navigate two different agencies.⁹

Gov. Reynolds subsequently elaborated on the substance of a conversation she had with Administrator Verma earlier that day:

I mean they're gonna [sic] operate within the law. I talked to Seema Verma this morning and she reiterated to me her disappointment that we couldn't get this done in a timely manner. I talked to her about the executive order with short-term insurance as possibly something – if we can get some expedited rulemaking done – that will be – could potentially be – something moving forward.¹⁰

Gov. Reynolds invoked Administrator Verma's name and conversations the two had had several more times during the press conference. In addition, the governor's office issued a press release on the same date that not only contained a joint statement by the governor and Administrator Verma, but again thanked Administrator Verma for her work on the issue.¹¹

⁷ Phil Galewitz, "CMS Chief to Sit Out Watershed Decision on Medicaid Work Mandate in Kentucky," *Kaiser Health News*, January 17, 2018, <https://khn.org/news/cms-chief-to-sit-out-watershed-decision-on-medicaid-work-mandate-in-kentucky/>.

⁸ YouTube, "Gov. Reynolds, IID commissioner hold press conference on Iowa's stopgap measure," October 23, 2017, <https://www.youtube.com/watch?v=Zi2eVQvk7yc>, at 3:22.

⁹ *Id.*, at 15:02.

¹⁰ *Id.*, at 17:24.

¹¹ Office of the Governor of Iowa, "IID commissioner: Iowa to withdraw stopgap measure from federal consideration," October 23, 2017, <https://governor.iowa.gov/2017/10/iid-commissioner-iowa-to-withdraw-stopgap-measure-from-federal-consideration>.

The governor's description of Administrator Verma's involvement, when coupled with the joint press release strongly suggest that she was personally and substantially in the consideration of Iowa's Medicaid waiver, which was submitted to CMS on August 21, 2017.¹²

Additional Past Clients of Administrator Verma

Administrator Verma's commitment to recuse herself from work with former clients appears to have fallen short of the mark thus far, which is extremely concerning given that many of her former clients have sought – or plan to seek – waivers to impose unprecedented work requirement in state Medicaid programs.

In addition to Medicaid waivers noted above regarding Arkansas and Kentucky, the State of Indiana has also submitted a Medicaid waiver to impose work requirements; state officials expect the state's submission to be approved, according to press reports.¹³ Likewise, last week, the governor of South Carolina announced his intention to seek to impose work requirements in the state's Medicaid program.¹⁴ Meanwhile, in Iowa, Gov. Reynolds said the state may consider imposing Medicaid work requirements "down the road."¹⁵ These are all states specifically covered by Administrator Verma's ethics agreement, raising additional potential compliance concerns.

Last year, I sent a letter to Secretary Price requesting that HHS provide the Finance Committee with copies of any ethics waivers issued subsequent to a data call by the Office of Government Ethics.¹⁶ When such waivers are granted subject to 18 U.S.C. §208(b) or 5 C.F.R. §2635.502(d), they allow federal employees to work on issues where there might be a real or perceived conflict of interest. Review of these waivers is critical to the Committee's understanding as to whether the Department's political appointees are appropriately recused from issues that former clients or employers may bring before the Department. During the Senate confirmation process, you committed to "promptly respond to any committee requests for waviers [sic] granted by the Department" and "[y]es, consistent with all applicable laws and privileges, if asked by the Committee, I will provide any ethics waivers issued subsequent to July 27."

Given the concerns outlined in this letter, and similar concerns I have identified in past correspondence,¹⁷ it is important to know if Administrator Verma was granted waivers for each of her actions and contacts with the aforementioned states. I ask that you promptly provide any and all ethics waivers that have been granted to Administrator Verma since July 27, 2017. Please provide these waivers no later than January 27, 2018.

¹² Letter from Governor Kim Reynolds and Lieutenant Governor to Secretary Steve Mnuchin and Secretary Tom Price, August 21, 2017, <https://iwd.iowa.gov/documents/state-of-iowa-1332-waiver-submission>.

¹³ Maureen Groppe, "Trump administration appears to clear way for Indiana to force some Medicaid recipients to work," *Indianapolis Star*, January 11, 2018, <https://www.indystar.com/story/news/politics/2018/01/11/state-expects-green-light-require-some-medicaid-recipients-work/1023775001/>.

¹⁴ Jamie Self, "SC Gov. McMaster wants to require some Medicaid recipients to work," *The State*, January 11, 2017, <http://www.thestate.com/news/politics-government/article194150929.html>

¹⁵ O. Kay Henderson, "Reynolds says new Medicaid restrictions may be considered 'down the road,'" *Radio Iowa* <https://www.radioiowa.com/2018/01/16/reynolds-says-new-medicaid-restrictions-may-be-considered-down-the-road/>

¹⁶ Letter from Senator Ron Wyden to Secretary Tom Price, June 15, 2017

¹⁷ e.g., Letter from Senator Ron Wyden to Elizabeth J. Fischmann, July 27, 2017.

Please also answer the following questions no later than February 10, 2018:

1. Please provide a detailed description of the role that Administrator Verma played in the agency's consideration of the Section 1115 and Section 1332 waivers submitted by the states of Arkansas, Kentucky, and Iowa, respectively.
2. Please provide a list of communications that Administrator Verma has had with each of the states listed in her ethics agreement – including elected officials and their appointees, state employees, state contractors, state subcontractors, lobbyists or other representatives – including but not limited to Arkansas, Kentucky, and Iowa. For each communication, please include the name of the person with whom she communicated, the date of the communication and the subject of the communication.
3. Please indicate whether Administrator Verma sought approval or waivers from the Office of General Counsel and/or the Designated Agency Ethics Official (DAEO) prior to any action or communication referenced in Question 1 and Question 2 of this letter.

If you or your staff has any questions regarding this matter, please contact Peter Gartrell on my staff at (202) 224-4515.

Sincerely,



Ron Wyden
Ranking Member
U.S. Senate Committee on Finance

Cc: The Hon. Orrin Hatch, Chairman, U.S. Senate Committee on Finance
David J. Apol, Acting Director, Office of Government Ethics
Elizabeth J. Fischmann, Associate General Counsel for Ethics, Department of Health and Human Services