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# United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, DC 20510-6200

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June 29, 2017

Ms. Elizabeth J. Fischmann  
Designated Agency Ethics Official  
Department of Health & Human Services  
Room 710-E  
200 Independence Ave SW  
Washington, DC 20201

Dear Ms. Fischmann:

I write to request information about any determination you made with regard to a communication that Seema Verma reportedly had on March 17, 2017 with Dennis Smith, Special Advisor on Medicaid for the Arkansas Department of Human Services.<sup>1</sup> I am growing increasingly concerned that the Department of Health and Human Services (HHS) is not effectively implementing its process to enforce Administrator Verma's ethics agreement and the standards of ethical conduct.

The standards of ethical conduct make clear that, absent authorization, an employee of the Executive Branch "shall not participate in a particular matter involving specific parties when he or the agency designee has concluded . . . that . . . the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality."<sup>2,3</sup> Administrator Verma acknowledged that she has "covered relationships" with the States of Arkansas, Indiana, Iowa, Kentucky, Ohio, South Carolina, and Virginia.<sup>4</sup> Likewise, she committed to seeking written authorization to participate in matters involving specific parties in which she knows these states are a party or represent a party. In a letter to the U.S. Office of Government Ethics (OGE) dated June 12, 2017 addressing her compliance with her ethics agreement, you stated that "[t]o help ensure that Dr. Verma does not become involved in matters in which she is recused, matters directed to her will be screened. Should such matters arise, these matters will be referred to the appropriate person for action."

Recently released copies of Administrator Verma's calendar reveal she had a call scheduled with Dennis Smith from Arkansas on March 17, 2017.<sup>5</sup> Last year, the state's medical school

<sup>1</sup> Adam Cancryn, *Verma called GOP governors during first days at CMS, records show*, POLITICO Pro Health care, June 15, 2017.

<sup>2</sup> 5 C.F.R. § 2635.502(e).

<sup>3</sup> "Person" is defined broadly to include not only the person or entity, but also "any officer, employee, or agent of such person or entity." *Id.* § 2635.102(k).

<sup>4</sup> Letter from Seema Verma, Administrator, Centers for Medicare & Medicaid Services (CMS), HHS, to Elizabeth Fischmann, Designated Agency Ethics Official, HHS (Jan. 31, 2017).

<sup>5</sup> See *supra* note 1.

announced that Mr. Smith would join its faculty as a visiting professor, but would spend a majority of his time advising the Director of the Arkansas Department of Human Services on Medicaid issues.<sup>6</sup> Arkansas is listed repeatedly in Administrator Verma's ethics materials as a state with which she has a covered relationship, and yet there does not appear to be any authorization for her participation in the March 17 call based upon the approved waivers released to and by OGE in response to its data call.<sup>7</sup> To be sure, Administrator Verma and HHS knew about the authorization process because she received approval from you for a different call with state officials three days earlier.<sup>8</sup>

On March 20, 2017, a second waiver was issued to Administrator Verma by Secretary Price that included the State of Arkansas, a copy of which was provided in response to the OGE data call.<sup>9</sup> Regardless of whether this March 20, 2017, waiver would have allowed Administrator Verma to conduct a call with the State of Arkansas at a future date, it appears that there was no authorization for a call with the state prior to that waiver. If the call occurred, either HHS's screening process for Administrator Verma failed or HHS is not using the screening process it says is in place. Moreover, if she did lack required authorization, Administrator Verma may be in violation of the terms of her ethics agreement and the standards of ethical conduct.

In light of the significant issues raised by this matter, I am renewing my request for responses from HHS to my letters dated March 17, 2017, April 7, 2017, and June 1, 2017. All of these letters ask for a description of the process that will be followed to ensure Administrator Verma's compliance with her ethical obligations, but HHS has yet to provide any substantive response to the issues raised therein. In addition, I request that you provide the Committee with the following information related to the reported communication with Mr. Smith:

- 1) Did Administrator Verma schedule and participate in a call with Mr. Smith on March 17, 2017 as her schedule indicates?

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<sup>6</sup> The website for the Arkansas Department of Human Services currently lists Mr. Smith as a Special Advisor on Medicaid within the Office of the Director. In a press release announcing his appointment as a visiting professor in 2016, the University of Arkansas for Medical Sciences said that Smith would "report directly to Director Cindy Gillespie. He will advise [Department of Human Services] during negotiations with the federal government, draft and review waiver applications and help design health-care reforms." Compensation records maintained by the school show a Dennis G. Smith was paid \$140,371.46 during fiscal year 2017 and that his position was "professor." Taken together, this information strongly suggests that Mr. Smith meets the definition of "person" in 5 C.F.R. § 2635.102(k), and therefore would fall within the scope of Administrator Verma's "covered relationship" with the State of Arkansas.

<sup>7</sup> Office of Government Ethics, Certain Agency Records Received in Response to OGE's Data Call for Waivers and Authorizations, PA-17-02, available at [https://www.oge.gov/web/OGE.nsf/0/67460009B646BBF88525813800566276/\\$FILE/Certain%20agency%20records%20recd%20in%20response%20to%20PA-17-02.pdf](https://www.oge.gov/web/OGE.nsf/0/67460009B646BBF88525813800566276/$FILE/Certain%20agency%20records%20recd%20in%20response%20to%20PA-17-02.pdf); Memorandum from Walter M. Shaub, Jr., Director, United States Office of Government Ethics, to Chief of Staff to the President, Agency Heads, Designated Agency Ethics Officials, Inspectors General, and Appointees (Apr. 28, 2017), available at <https://www.oge.gov/web/OGE.nsf/All%20Advisories/5B5DECAECC6CB8185258110007ADC76/%24FILE/PA-17-02.pdf?open>.

<sup>8</sup> Email from Elizabeth Fischmann, Designated Agency Ethics Official, HHS, to Seema Verma, Administrator, CMS, HHS, and Brady Brookes (Mar. 14, 2017), available at [https://www2.oge.gov/web/OGE.nsf/0/67460009B646BBF88525813800566276/\\$FILE/Certain%20agency%20records%20recd%20in%20response%20to%20PA-17-02.pdf](https://www2.oge.gov/web/OGE.nsf/0/67460009B646BBF88525813800566276/$FILE/Certain%20agency%20records%20recd%20in%20response%20to%20PA-17-02.pdf).

<sup>9</sup> See *supra* note 7.

- 2) If the call did occur, please provide records of all documentation and communications related to any request by Administrator Verma to authorize her participation in the March 17, 2017, discussion with Mr. Smith.
- 3) If the call did occur, please provide records of all documentation, communications, and analyses related to any ethics authorization of Administrator Verma's participation in the March 17, 2017, discussion with Mr. Smith.
- 4) If such authorization was given, please provide the rationale for the authorization. In addition, please explain why documentation of such authorization was not provided to OGE in response to its April 28, 2017 request.
- 5) If appropriate authorization was not given, please explain why this does not reflect a decision by HHS not to enforce the ethics agreements, the standards of ethical conduct, and the President's Executive Order dated January 28, 2017 ("Ethics Commitments by Executive Branch Appointees")?
- 6) If appropriate authorization was not given, how will HHS remedy the effects of the unapproved meeting held by Administrator Verma?
- 7) Please describe how HHS will improve its processes to prevent future violations of ethics agreements, the standards of ethical conduct, and the President's Executive Order for all HHS employees.

Please provide your responses to these questions as soon as possible, but no later than July 17, 2017.

Sincerely,



Ron Wyden  
Ranking Member  
U.S. Senate Finance Committee

cc: Walter M. Shaub, Jr.  
Director, U.S. Office of Government Ethics