

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

March 17, 2017

Mr. Jeffery S. Davis
Acting General Counsel
Department of Health & Human Services
Room 713-F
200 Independence Ave. SW
Washington, DC 20201

Dear Mr. Davis:

In one of her first official acts as the Administrator of the Centers for Medicare and Medicaid Services (CMS), Ms. Seema Verma co-signed an undated letter to each of the Nation's governors with Secretary Price signaling their intention to "revamp the federal and state Medicaid partnership."¹ As you know, Ms. Verma signed an ethics agreement that includes provisions related to future interactions with states for which she did consulting work before her appointment. In light of her announced intentions to begin discussions with states regarding changes to the Medicaid programs they carry out, I am writing today to obtain a description of the procedures and safeguards that the Department intends to put in place to ensure that her prior associations with a number of states are properly reviewed and in full compliance with her ethics agreement and the Department's and Federal ethics rules.

The March 14, 2017 letter to the governors signed by Administrator Verma and Secretary Price identified a range of Medicaid programs and policies that they intended to revamp. For example, the first such area identified was an specific invitation to Governors to engage their states "in a bilateral process" to change the way State Plan Amendments are processed, including creation of a "fast-track" process for approval of waiver and demonstration project extensions." Ms. Verma was involved not only in the development of Indiana's waiver, but those of other states through her consulting firm, SVC, Inc.

Administrator Verma's January 31, 2017 signed agency ethics agreement makes specific provision for situations related to consulting services she and SVC, Inc. provided to seven states

¹ Available at <https://www.hhs.gov/about/news/2017/03/14/secretary-price-and-cms-administrator-verma-take-first-joint-action.html>.

– Arkansas, Indiana, Iowa, Kentucky, Ohio, South Carolina and Virginia. The agreement states “(p)ursuant to 5 C.F.R. 2635.502(d), I will seek a written authorization to participate personally and substantially in particular matters involving specific parties in which I know the States of Arkansas, Indiana, Iowa, Kentucky, Ohio, South Carolina and Virginia are a party or represents a party.” In addition, in Part 4 of Administrator Verma’s OGE Form 278, Ms. Verma also disclosed a consulting relationship with the State of Tennessee. Finally, as noted in the final paragraph of her agency ethics agreement, Administrator Verma is also bound by the requirements and restrictions of the President’s Executive Order dated January 28, 2017 (“Ethics Commitments by Executive Branch Appointees”). The Executive Order states, in the pertinent part, that covered officials “...will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and ² substantially related to my former employer or former clients, including regulations and contracts.”

Given the Secretary’s and Administrator stated intention to work directly with Governors from the states designated in her ethics agreement to initiate significant changes to Medicaid policies and practices as well as to the individual state programs, including state plan amendments, waivers, amendments, and extensions, including discussions on a bilateral basis, please describe the following:

- 1) The process that will be put in place to ensure that the terms and provisions of Administrator Verma’s ethics agreement are fully complied with by her with regard to any involvement with or decisions made relating to or impacting the States of Arkansas, Indiana, Iowa, Kentucky, Ohio, South Carolina and Virginia, or the discussions related thereto. Please include in this description the procedures for initiating a review, the standards that will be used to determine conflicts, the criteria by which a waiver will be granted, the identity of the official or officials who will be responsible for such review including the required written authorizations, and the process for disclosing any such authorizations to the Committee and to the public.
- 2) The process that will be put in place to ensure that Administrator Verma fully complies with the Department’s ethics regulations with regard to any modifications or additions to the Medicaid Program in the State of Tennessee or discussions related thereto. Please include the identity of the official or officials who will be responsible for such review including any required written authorizations, and the process for disclosing any such authorizations to the Committee and to the public.
- 3) The process that will be put in place to ensure that the requirements and restrictions of the January 28th Executive Order on ethics will be fully complied with by Administrator

² The definition of “any particular matter involving specific parties” is more expansive in scope than that contained in the Federal ethics regulations. For the purposes of the Executive Order, it shall have “the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or communication relating to the performance of one’s official duties with a former employee or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.”

Letter to Acting General Counsel Davis re ethics procedures 03/17/2017

Verma with regard to the Medicaid Program and her consulting work for any state including the process for disclosing such compliance to the Committee and to the public.

Because the joint letter soliciting discussions on changes to state Medicaid programs has already been sent to the governors, I request your response no later than close of business on March 31, 2017.

Sincerely,



Ron Wyden
Ranking Member
U.S. Senate Finance Committee