

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

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October 8, 2020

The Honorable Alex M. Azar II
Secretary of Health and Human Services
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

The Economic and Consumer Policy Subcommittee seeks information on reported plans by the Department of Health and Human Services (HHS) and its sub-agency, the Centers for Medicare and Medicaid Services (CMS), to impose draconian penalties—the loss of Medicare and Medicaid funding—against hospitals that do not satisfactorily comply with new COVID-19 reporting requirements.¹ The action will potentially strip millions of Americans of health care, since they receive inpatient and outpatient care at hospitals that accept Medicare and Medicaid.

Virtually every hospital in America will potentially be subject to the new penalty. According to CMS, this action will apply to the “approximately 6,200 Medicare- and Medicaid-participating hospitals and CAHs [critical access hospitals] nationwide.”² Millions of Americans who are eligible for Medicare or Medicaid seek their health care at these hospitals. According to the latest CMS figures, at least 12.4 million Americans annually rely on Medicare or Medicaid for inpatient hospital services. Around 25 million Americans receive outpatient hospital care through Medicaid. Another 25 million received outpatient services, including at hospitals, through Medicare. And, those staggering figures do not include everyone who relies on these essential services, since this CMS data does not include Medicaid data for six states and reports only partial data for 16 other states.³

The threatened penalty is unreasonable, since the Trump Administration has substantially changed reporting protocols in the middle of the pandemic. In July, HHS ordered hospitals to

¹ *Trump Administration Plans Crackdown on Hospitals Failing to Report COVID-19 Data*, National Public Radio (Sept. 24, 2020) (online at www.npr.org/sections/health-shots/2020/09/24/916310786/trump-administration-plans-crackdown-on-hospitals-failing-to-report-covid-19-dat).

² Centers for Medicare and Medicaid Services, *Medicare and Medicaid Programs, Clinical Laboratory Improvement Amendments (CLIA), and Patient Protection and Affordable Care Act; Additional Policy and Regulatory Revisions in Response to the COVID-19 Public Health Emergency*, 85 Fed. Reg. 54820 (Sept. 2, 2020) (interim final rule).

³ Centers for Medicare and Medicaid Services, *CMS Fast Facts* (July 2020) (online at www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/CMS-Fast-Facts).

stop their long-standing practice of reporting data to the Centers for Disease Control and Prevention (CDC), and instead report data to HHS using new protocols that provided no discernible benefits. HHS's new guidance reportedly requires hospitals to collect and report more new information, including information on influenza cases to be reported seven days a week.⁴ We wrote to you on July 17, 2020, about the problems created by switching data reporting mid-pandemic.⁵ Over two months later, you have failed to address any of our concerns.

While we all want the most accurate and up-to-date COVID-19 data, HHS is going about getting it in the wrong way. It is unacceptable to jeopardize Americans' health care during a pandemic. But it appears to fit a pattern of hostility to universal health care. The Trump Administration is also trying to strip health insurance from millions more Americans by asking that federal courts overturn the Affordable Care Act, without offering a comprehensive replacement.⁶

I call on you to announce that HHS will not withhold Medicare and Medicaid funding from any hospital during the COVID-19 crisis for not complying with HHS's new COVID-19 reporting requirements.

In order to assist the Subcommittee in its review of this matter, please provide the following information by October 20, 2020:

1. A list of all hospitals enrolled in the Medicare and/or Medicaid programs that have failed to meet HHS's new reporting requirements, and whether the hospitals have partially met HHS's new reporting requirements;
2. For each hospital listed in Request 1, the amount it received in federal funding from Medicare and Medicaid for each of the past three years and the number of beneficiaries, broken out by program; and
3. For hospitals enrolled in Medicare and/or Medicaid that have complied with HHS's new reporting requirements, the average funding from Medicare and

⁴ *Trump Administration Plans Crackdown on Hospitals Failing to Report COVID-19 Data*, National Public Radio (Sept. 24, 2020) (online at www.npr.org/sections/health-shots/2020/09/24/916310786/trump-administration-plans-crackdown-on-hospitals-failing-to-report-covid-19-dat).

⁵ Letter from Chairs Carolyn B. Maloney, James E. Clyburn, and Raja Krishnamoorthi, Committee on Oversight and Reform, to Alex Azar, Secretary, Department of Health and Human Services and Dr. Robert Redfield, Director, Centers for Disease Control and Prevention (July 17, 2020) (online at <https://coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-07-17.Clyburn%20CBM%20RK%20to%20Azar-%20HHS%20and%20Redfield-CDC%20re%20Hospitalization%20Data.pdf>).

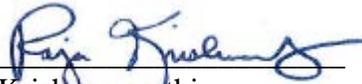
⁶ *Trump Administration Asks Supreme Court to Strike Down Affordable Care Act*, New York Times (updated Sept. 24, 2020) (online at www.nytimes.com/2020/06/26/us/politics/obamacare-trump-administration-supreme-court.html).

Medicaid for each of the past three years and the number of beneficiaries, broken out by program.

Please contact Subcommittee staff by October 12, 2020 to schedule a staff briefing on this matter to take place no later than October 20, 2020.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

Sincerely,



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer Policy

Enclosure

cc: The Honorable Michael Cloud, Ranking Member

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.