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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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November 26, 2007

The Honorable Michael O. Leavitt
Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Dear Mr. Secretary:

On November 1, 2007, the Committee on Oversight and Government Reform held a hearing on the Administration's regulatory actions on Medicaid. The hearing focused on six regulatory proposals advanced by the Centers for Medicare & Medicaid Services (CMS) during the past year. Among these are proposed cost limits on Medicaid payments to public hospitals (CMS-2258-FC) and a proposed bar on Medicaid payments for graduate medical education (CMS-2279-P).

At that hearing, three expert witnesses—a public hospital administrator, the CEO of a teaching hospital and Level 1 Trauma Center, and an emergency physician—testified that rules proposed by CMS, particularly CMS-2258-FC and CMS-2279-P, will have a devastating impact on our nation's overstretched emergency care system. Because many of the hospitals that will be hardest hit by these rules serve as the cornerstone of their community's disaster response plan, implementing these rules could well harm homeland security.

One of the matters raised at the hearing was Homeland Security Presidential Directive-21, issued by President Bush on October 18.¹ The purpose of HSPD-21 is to establish a national strategy for public health and medical preparedness that will “transform our national approach to protecting the health of the American people against all disasters.”

Among the implementation actions specified in HSPD-21 is “to explore options to relieve the current pressures on our emergency departments and emergency medical systems so that they retain the flexibility to prepare for and respond to [catastrophic health] events.” In this regard, the President's directive reflects an understanding that our nation's emergency care system is in crisis, a matter on which the Committee heard testimony at its June 22, 2007, hearing on this subject.

¹ Homeland Security Presidential Directive/HSPD-21, October 18, 2007, (online at www.whitehouse.gov/news/releases/2007/10/print/20071018-10.html).

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Despite this presidential directive, CMS has proposed regulations that will increase, not reduce, the current pressures on our emergency departments and emergency medical systems. Specifically, proposed rules CMS-2258-FC and CMS-2279-P would result in the loss of hundreds of millions of federal Medicaid dollars by public and teaching hospitals that play a central role in furnishing emergency and trauma care, thereby degrading our nation's already limited surge capacity. You have the ability to eliminate these regulatory barriers by simply withdrawing the proposed rules, but have elected not to do so.

To assist the Committee in understanding the logic of these proposed Medicaid rules in light of the President's Homeland Security Directive, I request that you provide the Committee with the following information:

1. All documents created during calendar year 2007 by any employee of the Office of the Secretary (OS), the Office of the Assistant Secretary for Preparedness and Response (OASPR), the Centers for Medicare & Services (CMS), the Health Resources and Services Administration (HRSA), or the Centers for Disease Control and Prevention (CDC) relating to the potential impact of CMS-2258-FC on public or private providers of emergency care and trauma care services (including hospitals and physicians).
2. All documents created during calendar year 2007 by any employee of the OS, OASPR, CMS, HRSA, or CDC relating to the potential impact of CMS-2279-P on the emergency care and trauma care capacity of public or private teaching hospitals.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information about how to respond to the Committee's request.

Please submit all of these materials to the Committee by December 14, 2007. If you have any questions regarding this request, please feel free to contact Andy Schneider of the Committee staff at 202-225-5056.

Sincerely,



Henry A. Waxman
Chairman

Enclosure

cc: Tom Davis
Ranking Minority Member

Congress of the United States

House of Representatives

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Responding to Oversight Committee Document Requests

In responding to the document request from the Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information.
10. The Committee accepts electronic documents in lieu of paper productions. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page 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.
11. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
13. 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, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
15. All documents should be bates-stamped sequentially and produced sequentially. In the cover letter, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set should be delivered to the minority staff in Room B350A in the Rayburn House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
17. Upon completion of the document production, you should 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 which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided 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, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, 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). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, 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 “documents in your possession, custody, or control” means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. 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 face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.