

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR
MARGARET E. DAUM, MINORITY STAFF DIRECTOR

April 30, 2018

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Verma:

The Committee on Homeland Security and Governmental Affairs is continuing to conduct oversight on the rising costs of the Medicaid program.¹ I respectfully request information about the practice of union “dues skimming” from home health care Medicaid recipients.

In 2016, American taxpayers spent \$565.5 billion on the Medicaid program.² Although this funding is intended to help low-income families and the disabled,³ eleven states allow unions to classify personal home health care workers—including family caregivers—as government employees for the purposes of collecting union dues.⁴ This classification allows states to skim an estimated \$200 million each year in union dues—taxpayer money that would otherwise go to the care of Medicaid recipients.⁵

Federal Medicaid law prohibits payments for care to any entity other than the individual providing the care.⁶ In addition, in 2014, the Supreme Court held that states may not collect union dues from home health care providers without their consent.⁷ Even so, some home health care workers say that unions have been skimming dues without their consent.⁸

¹ See letter from Ron Johnson, Chairman, S. Comm. on Homeland Security & Governmental Aff., to Seema Verma, Administrator, Cntrs. for Medicare & Medicaid Servs. (Sept. 27, 2017).

² Cntrs, for Medicare & Medicaid Srvs., NHE Fact Sheet, Mar. 21, 2017, *available at* <https://www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/nationalhealthexpenddata/nhe-fact-sheet.html>.

³ Letter from Lisa T. Spacapan, General Counsel, Office of the Governor of Illinois, to Eric Hargan, Acting Sec’y, Dep’t of Health and Human Serv. (Jan. 18, 2018).

⁴ Joseph Weber, *House GOP takes aim at union ‘dues skimming’ from family caregivers, Medicaid*, Fox News, Jan. 16, 2018.

⁵ Sam Han & Will Swaim, *How California skims federal Medicaid payments to fund a powerful union*, O.C. Reg., Oct. 30, 2017; Sam Adolphsen, *How to stop the ‘dues skim’ of federal home health care and child care funding*, Mackinac Center Policy Brief (2017), <https://www.mackinac.org/archives/2017/s2017-03.pdf>. Unions skim an additional \$50 million in Medicaid funding intended for in-home daycare providers. Adolphsen, *supra*.

⁶ 42 U.S.C. § 1396a(a)(32).

⁷ *Harris v. Quinn*, 134 S. Ct. 2618, 189 L. Ed. 2d 620 (2014).

⁸ See, e.g., Sean Higgins, *Fraud alleged in Minnesota homecare provider union*, Wash. Exam., Mar. 4, 2017.

I respectfully encourage CMS to review this practice and determine whether changes to law or regulation are necessary to ensure that Medicaid funds are provided to the program's intended beneficiaries. In addition, in order to assist the Committee's oversight of this issue, please provide the following information about the efforts of CMS to address "dues skimming" from home health care Medicaid recipients:

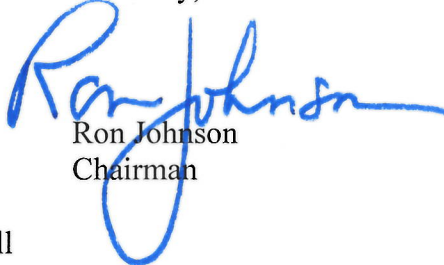
1. Please explain what actions CMS is taking to prevent states from "skimming" union dues from Medicaid payments without the consent of the home health care provider.
2. For each fiscal year since 2009, please provide the amount of Medicaid funds intended for home health care workers that states have diverted for union dues, organized by state and fiscal year.
3. Please produce all legal memoranda, guidance documents, or other written material referring or relating to the diversion of Medicaid funds for home healthcare services to third parties other than the healthcare provider.

Please respond as soon as possible but no later than 5:00 p.m. on May 14, 2018, so that the Committee may begin to receive responsive material.

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency, economy, and effectiveness of all agencies and departments of the Government."⁹ Additionally, S. Res. 62 (115th Congress) authorizes the Committee to examine "the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs."¹⁰

If you have any questions about this request, please ask your staff to contact Amber Selig of the Committee staff at (202) 224-4751. Thank you for your attention to this matter.

Sincerely,



Ron Johnson
Chairman

cc: The Honorable Claire McCaskill
Ranking Member

⁹ S. Rule XXV; *see also* S. Res. 445, 108th Cong. (2004).

¹⁰ S. Res. 62 § 12, 115th Cong. (2017).