

Congress of the United States

Washington, DC 20515

April 27, 2023

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Brooks-LaSure:

We write to continue our investigation into the Centers for Medicare and Medicaid Services (CMS) regarding the staggering rate of improper payments in the Medicaid program.¹ As we noted in our April 13, 2022 letter, the reported improper payments rate of 15.62 percent is likely an underestimate.² Some estimates show that 27 percent, or more than \$100 billion annually, could be improper.³ This alarming amount threatens the viability of a program designed for Americans in need. We write seeking additional information on what safeguards CMS has in place to address improper payments in the Medicaid program.

Despite our calls to action, the improper payment rate continues to increase.⁴ In 2019 Medicaid made \$57.36 billion in improper payments.⁵ In FY 2020, improper payments rose to \$86.49 billion, meaning more than one out of every five Medicaid payments were improper.⁶ In FY 2021, Medicaid improperly paid \$98.7 billion.⁷ In FY 2022 the Medicaid improper payment rate dropped slightly to \$80.57 billion.⁸

¹ Letter from Ron Johnson, United States Senator, to Seema Verma, Administrator, Ctr. for Medicare and Medicaid Serv. (Dec. 22, 2020); *see also* Letter from Rep. James Comer, Ranking Member, H. Comm. On Oversight and Reform, to Chiquita Brooks-LaSure, Administrator, Ctr. For Medicare and Medicaid Serv. (Aug. 17, 2021); Letter from Rep. James Comer, Ranking Member, H. Comm. On Oversight and Reform, to Chiquita Brooks-LaSure, Administrator, Ctr. for Medicare and Medicaid Serv. (Oct. 7, 2021); Letter from Rep. James Comer et al., Ranking Member, H. Comm. On Oversight and Reform, to Chiquita Brooks-LaSure, Administrator, Ctr. for Medicare and Medicaid Serv. (Apr. 13, 2022).

² *Federally-facilitated Exchange Improper Payment Rate Less Than 1% in Initial Data Release*, CENT. MEDICARE & MEDICAID SERV. (Nov. 15, 2022).

³ *Id.* *See also* Letter from Rep. James Comer et al., Ranking Member, H. Comm. On Oversight and Reform, to Chiquita Brooks-LaSure, Administrator, Ctr. for Medicare and Medicaid Serv. (Apr. 13, 2022).

⁴ Editorial, *Build Back Better? Fix Medicaid First*, THE WALL ST. J. (Jan. 23, 2022).

⁵ *2020 Estimated Improper Payment Rates for Centers for Medicare & Medicaid Services (CMS) Programs*, CTR. FOR MEDICARE AND MEDICAID SERV. (Nov. 16, 2020).

⁶ *Id.*

⁷ Andy Schneider, *The Proper Use of Medicaid Improper Payment Rates*, GEORGETOWN UNIVERSITY HEALTH POLICY INSTITUTE, (Jan. 26, 2022).

⁸ *Supra* n. 3.

As we explained in our April 13, 2022 letter, we are concerned with reports that as much as 95 percent of improper payments were a direct result of eligibility errors.⁹ These eligibility errors are exacerbated by inconsistent data collection and retention policies.¹⁰ Some states, like California, abuse the inconsistency, enabling artificially low error rates even though the Department of Health and Human Services (HHS) Inspector General (IG) found that more half of the enrollees in their Medicaid program were ineligible.¹¹

Your June 15, 2022 response to our letter failed to adequately address our requests for documents and information.¹² Therefore, we reiterate our five requests for documents and information contained in the April 13, 2022 letter, reproduced below for your convenience:

1. The underlying data and methodology used to determine improper payment rates for all 50 states and the District of Columbia, including the eligibility component of the rate, for each year;
2. The processes and procedures CMS uses to validate each state's improper payment rate. This includes sample data sets used by states or CMS to review eligibility determinations;
3. A list of CMS's efforts to recover the hundreds of billions of dollars in improper Medicaid payments;
4. The estimated improper payment rate due to the Medicaid expansion in response to COVID-19 and the number of Americans newly enrolled in the Medicaid program in response to COVID-19; and
5. The actions taken by CMS to date to ensure the program only enrolls those who meet eligibility requirements. Please provide this information on a state-by-state basis.

Additionally, we request that you provide the following additional documents and information, as soon as possible but no later than May 11, 2023:

1. A list of actions taken since January 20, 2021 to reduce the improper payment rate in the Medicaid program; and
2. All documents and communications between any employee at CMS with any state regarding eligibility related improper payments.

⁹ Letter from Rep. James Comer et al., Ranking Member, H. Comm. On Oversight and Reform, to Chiquita Brooks-LaSure, Administrator, Ctr. for Medicare and Medicaid Serv. (Apr. 13, 2022).

¹⁰ *Id.*

¹¹ U.S. Dep't of Health & Human Servs. Off. of Inspector Gen., A-09-17-02002, California Made Medicaid Payments on Behalf of Newly Eligible Beneficiaries Who Did Not Meet Federal and State Requirements (Dec. 2018). *See also* Data received from Ctr. For Medicare and Medicaid Services (Dec. 23, 2021) (on file with the Committee).

¹² Letter from Chiquita Brooks-LaSure, Administrator, Cent. Medicare & Medicaid Serv., to Sen. Ron Johnson, U.S. Senate (Jun. 15, 2022).

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To arrange for delivery of documents or ask any follow-up or related questions, please contact Committee on Oversight and Accountability staff at (202) 225-5074. The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry.

Sincerely,



Ron Johnson
United States Senator



James Comer
Chairman
Committee on Oversight and
Accountability

cc: The Honorable Jamie Raskin, Ranking Member
Committee on Oversight & Accountability