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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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August 27, 2007

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Mr. Dennis G. Smith, Director
Center for Medicaid & State Operations
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Mr. Smith:

On May 2nd you testified before the Domestic Policy Subcommittee hearing regarding the inexcusable death of 12-year-old Medicaid-eligible child, Deamonte Driver. Driver died from a brain infection resulting from untreated tooth decay. One of the purposes of the hearing was to determine how federal and state management of the Medicaid program allowed this tragedy to occur. In furthering our attempt to learn what steps should be taken to prevent future unnecessary suffering or death due to untreated tooth decay among the 30 million low-income children that Medicaid covers, we sent you a letter on May 17th to which you responded on June 20th. Upon review, we have found that several of your answers are inadequate and very troubling.

In your June 20th response, you acknowledge that:

- 1) Your agency has not conducted a critical incident review of Deamonte Driver's death in order to determine what went wrong and to identify the steps that state Medicaid programs can take to avoid another such incident, and your agency has no intention of doing so;
- 2) Your agency has not made children's access to dental care an enforcement priority, has not clearly communicated this priority to all states, and has no plans to do so;
- 3) Your agency has no intention of improving the current CMS 416 reporting form so that you can better determine whether states are in compliance with the federal law and whether Medicaid children are receiving the dental services to which they are entitled;

Mr. Smith
August 27, 2007
Page 2

- 4) Your agency will not ask questions of those states that report on their CMS-416 forms that less than 50 percent of their Medicaid eligible children made a dental visit of any kind in the previous year in order to determine why the state's performance is inadequate;
- 5) Your agency will not revise the Guide to Children's Dental Care in Medicaid to incorporate information relating to provider reimbursement and managed care oversight that was edited out of the October 2004 version and it will not publish a version of the Guide with such revisions;
- 6) You have no plans to issue a letter to State Medicaid Directors reminding states of their obligation under federal law to make dental services available to Medicaid eligible children and asking them to submit "plans of action" for ensuring, within three years, that all Medicaid-eligible children have adequate access to dental services; and
- 7) You will not exercise your authority under current law to assess civil money penalties against any managed care organization (MCO) that has contracted with a state Medicaid agency to provide dental services and has substantially failed to do so, or that misrepresents or falsifies information to a state Medicaid agency regarding its performance under the contract.

These responses reflect a troubling abdication of responsibility for the oral health of 30 million American children who rely on Medicaid for access to dental services. If you believe that our preliminary conclusions from your answers deserve greater explanation, please do so.

Additionally, you failed to adequately respond to a number of our questions in the May 17th letter:

- 1) In question 3, we asked you about setting performance goals or standards similar to the existing CMS standard that 80 percent of Medicaid children receive the health screenings to which they are entitled. We asked whether or not you would set a similar standard for preventative and restorative dental treatments. Your response describes how you will improve oral health services by "making a substantial investment in quality improvement." Here we are not referring to the quality of services but rather to CMS's stated performance goals. Will you establish such a goal or performance standard for restorative and preventative treatment?
- 2) In response to number 7, you state that policy is not disseminated through "Guides produced by outside organizations." However in *Attachment B, Scope of Work and Schedule of Deliverables*, you indicate that in the "Background" section of the work requested that the "HCFA's State Medicaid Manual (SMM), provides policy guidance to the State Medicaid agencies about implementing and managing Medicaid's Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) system." Additionally, in

Attachment C, Justification for Other than Full and Open Competition, the American Academy of Pediatric Dentistry (AAPD), which was contracted to re-write the Guide, describes in its "Scope of Work" that "the information included [in the Guide] must focus on...organization, financing, oral health workforce, and delivery of care." These excerpts from *Attachment B & Attachment C* indicate that providing policy was part of the contractual agreement between HCFA and the AAPD. It is therefore perplexing that you would suggest that providing policy through a Guide is outside the AAPD's scope of work. Moreover, even if policy guidance is outside the scope of the Guide, what is impeding CMS from issuing a State Medicaid Director Letter or a policy manual on information relating to provider reimbursement and managed care oversight similar to what was edited out of the October 2004 version of the Guide?

- 3) In question number 6, we specifically asked you whether or not you will post a ranking of the states in order of performance according to the CMS-416s. We believe that doing so will provide an incentive to states to improve their utilization rates. Although you state that the "primary purpose for posting the data is to provide the public with information on the states' performance," you do not explain your opposition, if any, to posting a ranking of the states based on their performance. Please explain your position on this point.

In your letter you reference a "Value-Driven Health Care" (VDHC) initiative that you did not mention in your testimony before the Subcommittee. You state that under this initiative, "States are requested to move rapidly into using national performance measures and interoperable systems that will help improve reporting in all areas including EPSDT. CMS and the Agency for Healthcare Research and Quality (AHRQ) will provide support to states in these efforts." The Subcommittee would like to know how this VDHC initiative will improve access to dental care for, and oral health of, Medicaid-eligible children.

Specifically, under the VDHC initiative:

- 1) Please describe each of the "national performance measures" specific to oral health of Medicaid-eligible children.
- 2) Please describe each of the "national performance measures" specific to EPSDT dental screenings for Medicaid-eligible children.
- 3) Please describe each of the "national performance measures" specific to EPSDT dental services for Medicaid-eligible children.
- 4) Please identify each of the states that have implemented these "national performance measures," specifically the measures described above in questions 2 and 3.
- 5) How will the "interoperable systems" help improve reporting with respect to EPSDT dental screenings? Please give specific examples.
- 6) How will the "interoperable systems" help improve reporting with respect to EPSDT dental services? Please give specific examples.

Mr. Smith
August 27, 2007
Page 4

- 7) Please identify each of the states that have implemented such an “interoperable system” with respect to EPSDT dental screening and EPSDT dental services.
- 8) What will be the cost in each of the fiscal years 2007 through 2012 of developing, installing, and operating the “interoperable systems”? What percentage of this cost will be paid for by the federal government? Under what program authority will this federal cost be paid? What percentage will be the responsibility of state governments?

Additionally, the documents you provided to us, specifically the copies of the original guide and the subsequent draft and final guides, are very low quality and nearly impossible to read. Please send us better quality copies of the original guide; the draft guides dated 11/2001, 12/2002, 2/2003, 2/2003, and 12/2003; and the final guide dated 10/2004.

Please provide us with your response to these questions as well as the aforementioned documents no later than 5 P.M. on Friday September 14, 2007.

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.

If you have any question regarding this request, please contact Noura Erakat, Counsel, (202) 226-5867.

Sincerely,



Dennis Kucinich, Chairman
Domestic Policy Subcommittee



Elijah E. Cummings
Member of Congress

cc: Darrell Issa
Ranking Minority Member