Senate

State of Minnesota

August 9, 2011

Richard Jensen
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Keri Toback
Centers for Medicare & Medicaid Services
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Dear Richard, Angela, Jessica and Keri:

Thank you for taking the time to talk with us via telephone on August 2. We sincerely appreciate the opportunity to discuss with you our thoughts and concerns about Minnesota's Prepaid Medical Assistance Program and renewal of the state's 1115 waiver.

Additionally, we would like to thank you for taking our concerns into consideration when drafting the renewal conditions for Minnesota's 1115 waiver. We were pleased to see the additional requirements in section 8, 41, 51 and 52 of the Special Terms and Conditions. In an effort to continue our dialogue and reach the mutually beneficial goal of an efficiently run, transparent program that serves the most vulnerable Minnesotans, we have outlined below a review of our discussion from last week. We ask that you take some time to review the summary below and respond to some remaining concerns.

Question 1: Is there ever going to be a true independent audit of Minnesota's 1115 waiver programs?

The group in Minnesota explained that while the new reporting requirements included in the STCs were an improvement over current practice, they do not provide for any independent verification of the data and information provided to CMS. The new reporting requirements are akin to someone self-reporting their taxes on their 1040 form—it provides plenty of information, but it is not an audit, an independent verification of the information provided. This is a problem as Minnesota's Department of Human Services (DHS) has testified that current practice in Minnesota has MCOs self-certifying the data they provide to DHS and, subsequently, CMS. The group pointed out this is an issue outlined in a recent GAO report.

> "CMS's efforts to ensure the quality of the data used to set rates were generally limited to requiring assurances from states and health plans—efforts that did not provide the agency with enough information to ensure the quality of the data used…With limited information on data quality, CMS cannot ensure that states' managed care rates are appropriate, which places billions of federal and state dollars at risk for misspending…CMS could conduct or require periodic

audits of data used to set rates; CMS is required to conduct such audits for the Medicare managed care program." *Medicaid Managed Care: CMS's Oversight of States' Rate Setting Needs Improvement. August, 2010.*

The Minnesota group strongly agrees with the GAO recommendation that the data used to certify rates should be audited. To the best of our knowledge, CMS has never audited Minnesota's PMAP program, nor has the State of Minnesota ever fully audited the program. In fact, the State of Minnesota never even audited the veracity or reliability of the data used to set capitation rates, nor the reasonableness of health plan spending. In a letter to the Minnesota Department of Human Services, Milliman, the actuary hired by the state, said their financial analysis of health plan data not only does not include an independent audit, it does not include "a detailed, systematic review and comparison of the data to search for data values that are questionable or for relationships that are materially inconsistent."

Furthermore, the group recommends that the audit be conducted by an independent, third party entity, similar to the requirements in the Sarbanes-Oxley Act, to avoid any potential conflicts of interest. CMS said they were not sure when and if an audit would be conducted, but assured the group they were receptive to the concerns voiced by the group. CMS said they will check into this, as well as revisit the findings of the GAO report. The Minnesota group would appreciate a response from CMS on whether or not an independent audit will be conducted in Minnesota. If not, why not?

Question 2: What sort of discussions have you had with the Minnesota Department of Human Services regarding the renewal of the 1115 waiver?

CMS explained to the Minnesota group that the renewal process is intensive and long, involving many months of communication with DHS. They had discussions with DHS regarding section 41 of the STCs and recommended that we contact the state's Medicaid director, David Godfrey, directly with questions regarding the agency's actions around the waiver renewal. When asked if they could assess the strength and weaknesses of Minnesota's waiver programs, CMS said it was unable to comment, but that each state is evaluated individually and the new reporting requirements are intended to create a base-line by which to evaluate the programs.

Question 3: Were any of the changes in Minnesota's 1115 waiver renewal related to any of the questions/concerns we raised here when we spoke with you the first time?

CMS said that the new reporting requirements in section 41 of the STCs were a direct result of previous correspondence they had with various groups in Minnesota.

In regards to verifying MCO reporting requirements, a dentist in the Minnesota group said health plans have been reporting that there are enough dental practitioners per federal requirements, but this is not true. There is a dearth of providers, particularly dental providers, who participate in these programs. (It should be noted, however, that Minnesota's county-based purchasers seem to have adequate networks. Many providers say Prime West, for example, has better reimbursement rates than the HMOs, particularly for dental services.) Senate staff from the Minnesota group echoed this, and said they frequently hear concerns about the 1115 programs from providers, especially around MCO payment rates, but they are afraid to speak out for fear of retribution. There should be a "safe place" for providers to voice their concerns. CMS said they would talk with agency staff at Minnesota DHS about this. The Minnesota group would like to hear back from CMS regarding actions taken to address health care provider concerns, and what is being done to ensure that the information provided by the plans is accurate.

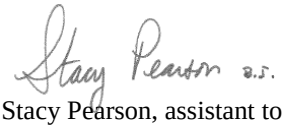
Question 4: What is the significance with MN HMO filing financial statements with CMS?

We did not have time to discuss this question. The Minnesota group would like CMS to answer this question. CMS said they would review our follow up questions/ concerns.

We look forward to continuing this conversation, and would like to continue to work with you to find solutions to the concerns voiced in questions 1, 3 and 4. Barb Jacobs, from Senator Marty's office, will be your contact as indicated in the phone discussion. Please feel free to contact her with questions ([redacted] Otherwise, she will follow up with you shortly regarding the contents of this letter.

Sincerely,

Senator Sean Nienow



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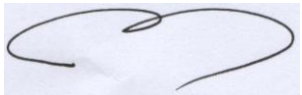
Carrie Mortrud, RN, Minnesota Nurses Association

Buddy Robinson, Greater MN Health Care Coalition

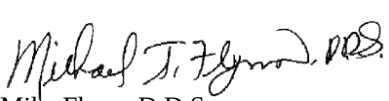
Dave Feinwachs

David Mair MD, Practicing Psychiatrist

Dick Diercks, Minnesota Dental Association



Tom Day, Minnesota Dental Association



Mike Flynn, D.D.S.

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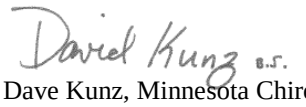
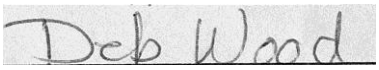


Dave Kunz, Minnesota Chiropractic Association

Michelle Barrett, Minnesota Podiatry Association



Deb Wood, RN, Minnesota Nurses Association