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October 2, 2018

Michael C. Burgess, M.D.
Chairman, Subcommittee on Health
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515-6115

Dear Chairman Burgess:

Please find attached my response to the Additional Questions for the Record transmitted to me in your letter dated September 26, 2018. Insofar as some questions request information that is beyond my personal knowledge, please be advised that I have consulted with staff at the National Association of Attorneys General and, through them, the National Association of Medicaid Fraud Control Units. As indicated below, my responses are reliant upon advice they have provided to me.

I appreciated the opportunity to testify and provide this additional information in support of H.R. 3891. Please let me know if I may be of further assistance.

Sincerely,

A handwritten signature in blue ink that reads "Derek Schmidt".

Derek Schmidt
Kansas Attorney General

cc: Hon. Gene Green, Ranking Member, Subcommittee on Health

Attachment

Additional Questions for the Record

1. What protections do patients currently have when Medicaid Fraud Control units detect abuse in a non-institutional setting?

a. Are there any other settings that Medicaid Fraud Control Units are prohibited from addressing patient abuse?

If a facility receives Medicaid funds, it will be included in a MFCU's jurisdiction when investigating patient abuse. Neither a facility that is not a Medicaid funded nor a non-institutional setting would fall under the jurisdiction of a MFCU for patient abuse cases.

b. Can Medicaid Fraud Control Units detect, investigate and prosecute fraud in Indian Health Service Facilities?

I am advised that a MFCU would not typically investigate an IHS facility due to jurisdictional issues. A federal agency could investigate an IHS facility with support from a state MFCU, but the MFCU would generally not be able to conduct the investigation on its own. This question might better be addressed to HHS-OIG, which is charged with enforcing the limitations on MFCU jurisdiction through administration of Federal Financial Participation.

c. Can Medicaid Fraud Control Units pursue cases of patient abuse in IHS facilities?

I am advised that if an IHS facility were funded by Medicaid, a MFCU could pursue the case though it would have to be acting jointly with federal agencies due to jurisdictional issues over the IHS. This question might better be addressed to HHS-OIG, which is charged with enforcing the limitations on MFCU jurisdiction through administration of Federal Financial Participation.

d. Does the jurisdiction of the Medicaid Fraud Control Unit change dependent upon if the hospital is a direct service hospital versus a 638-contract hospital?

I am advised that there are many factors regarding jurisdiction over both 638-contract hospitals and direct service hospitals. Regardless of either type of hospital, a MFCU would examine each situation on a case by case basis and coordinate an investigation with appropriate federal authorities. This question might better be addressed to HHS-OIG, which is charged with enforcing the limitations on MFCU jurisdiction through administration of Federal Financial Participation.

e. Do you believe that MFCU's should be able to investigate federally run direct service facilities?

I have no opinion on this question.

f. Do you believe that MFCU's should be able to investigate 638 contract facilities?

I have no opinion on this question.