

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

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February 15, 2018

The Honorable Alex M. Azar  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Azar:

As Ranking Member of the House Energy and Commerce Committee, which maintains jurisdiction over the U.S. Department of Health and Human Services (HHS or Department) and each of its operating divisions, I write to you seeking information about how you intend to confront the ethical lapses and conflicts of interest that have plagued the Department over the past year. The Department's mission touches the lives of every person in this country, and the American people deserve to be served by public officials who have the highest regard for ethics, transparency, and accountability.<sup>1</sup>

In the past year, a number of ethical issues have hampered the ability of the Department to perform its crucial mission, resulting in the resignation of multiple senior HHS officials and raising serious concerns about the Trump Administration's commitment to transparency and accountability. In addition, reports of conflicts of interest within HHS have drawn into question the ability of Trump Administration officials to fulfill their obligations free of undue influence.

*Improper Use of Taxpayer Dollars*

For example, in September 2017, *Politico* reported that your predecessor, former HHS Secretary Tom Price, took at least 26 flights on private charter planes in just five months.<sup>2</sup>

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<sup>1</sup> U.S. Department of Health and Human Services, About HHS ([www.hhs.gov/about/index.html](http://www.hhs.gov/about/index.html)).

<sup>2</sup> *Scoop: Tom Price's travel costs exceed \$1 million since May*, *Politico* (Sept. 29, 2017).

According to reports, Secretary Price's exorbitant trips cost taxpayers more than \$1 million.<sup>3</sup> On multiple occasions, HHS political staff apparently advised Secretary Price to take these charter flights despite knowing that less costly travel options were available.<sup>4</sup> It seems likely that Secretary Price and political staff at HHS were in violation of federal travel regulations.<sup>5</sup> This lapse in judgment and respect for taxpayer dollars is troubling, and I remain concerned that the failure to comply with federal travel guidelines may be a broader problem throughout the Department.

In addition, the use of federal resources to advance partisan legislation to repeal the Affordable Care Act (ACA) last year warrants concern that HHS is not serving as a responsible steward of taxpayer dollars. Under the leadership of Secretary Price, official HHS social accounts (specifically the @HHSGov and @HHSMedia Twitter accounts) were used to promote the American Health Care Act (AHCA) while it was pending before Congress. These accounts used the hashtag "#RepealAndReplace," which linked to a number of trending tweets that urged individuals to, for example, "Call Congress at (202) 234-3121 and demand full repeal of ObamaCare" and also posted video testimonies of individuals speaking out against the ACA that appear to have been produced by the Department using taxpayer dollars. These posts may have been in violation of federal laws that prohibit the use of federal funds to publish materials, including electronic communications, urging support of legislation before Congress and draw into question the Department's commitment to the ethical and transparent use of American taxpayer dollars.<sup>6</sup>

### Conflicts of Interest

Equally concerning are reports that HHS political appointees may be affected by conflicts of interest that inhibit their ability to carry out all of their responsibilities in an impartial manner. For example, just last week, Brenda Fitzgerald, the former Director of the Centers for Disease Control and Prevention (CDC), stepped down from her position following reports that she purchased shares of tobacco, drug, and food companies – including Japan Tobacco International, Merck & Co., and US Food Holding Co. – one month into her tenure as the head of the agency.<sup>7</sup> Prior to her resignation, former Director Fitzgerald's tenure at the helm of CDC was marked by ongoing issues with her ethics recusal, which prevented her from working on issues pertaining to

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<sup>3</sup> *Scoop: Tom Price's travel costs exceed \$1 million since May*, Politico (Sept. 29, 2017).

<sup>4</sup> *Price traveled by private plane at least 24 times*, Politico (Sept. 21, 2017).

<sup>5</sup> 41 C.F.R. § 301-10.260; 41 C.F.R. § 301-10.403; U.S. Department of Health and Human Services, *HHS Travel Policy Manual* (Nov. 1, 2014), Section 3.1.1.

<sup>6</sup> Section 503(a) of the Consolidated Appropriations Act, Pub. L. No. 115-13; 18 U.S.C. § 1913.

<sup>7</sup> *Trump's top health official traded tobacco stock while leading anti-smoking efforts*, Politico (Jan. 30, 2018).

cancer detection and certain aspects of the opioid crisis.<sup>8</sup> On numerous occasions, former Director Fitzgerald was unable to testify before Congress on the agency's work as a result of her ethics recusal.<sup>9</sup>

Furthermore, the possibility that Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma is reviewing state waivers in violation of her ethics agreement raises serious concerns regarding the Department's commitment to faithfully implementing ethics rules and regulations. Prior to Senate confirmation, Administrator Verma agreed to recuse herself from the review and authorization of waivers for clients that she formerly consulted in her role as President and CEO of SVC, Inc.<sup>10</sup> However, statements made by the Governors of Arkansas, Kentucky, and Iowa on their states' waivers during the past six months indicate that Administrator Verma may have been involved in the review and approval processes, which would appear to place her in violation of her ethics agreement. For example, on January 16, 2018, an aide to Arkansas Governor Asa Hutchinson told the *Arkansas Times*: "The Gov [sic] spoke with both the acting HHS Secretary and Administrator Verma last week re: Arkansas's waiver and the guidance from CMS last week," despite the Administrator's agreement not to weigh in on Arkansas waiver activity on the basis of her prior consulting work.<sup>11</sup> The possibility that Administrator Verma is failing to properly recuse herself raises serious concerns regarding the extent to which HHS honors its obligation to serve the American people in a manner that is free of undue influence.

#### Questionable Contracting Practices

Finally, recent reports have prompted questions regarding the integrity of the contracting and subcontracting processes taking place at CMS and the Department more broadly. *The Washington Post*, for example, recently reported that CMS awarded a \$485,000 contract—without undergoing a competitive bidding process—to Myriddian, a consulting company led by Merlynn Carson, the daughter-in-law of U.S. Department of Housing and Urban Development (HUD) Secretary Ben Carson. According to press reports, the \$485,000 contract, which was for career-development services for CMS contracting staff, was awarded to Myriddian following efforts by Ben Carson, Jr. (the son of HUD Secretary Carson who serves on the board of Myriddian) and Merlynn Carson to invite Administrator Verma to attend a HUD listening tour event in Baltimore that Carson, Jr. was involved in organizing.<sup>12</sup> Although the award of this contract may have been in compliance with rules and regulations regarding federal contracting,

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<sup>8</sup> *Why the CDC director had to resign*, Politico (Jan. 31, 2018).

<sup>9</sup> *CDC director's conflicts keep her from testifying*, Politico (Jan. 18, 2018).

<sup>10</sup> *CMS Chief To Sit Out Watershed Decision On Medicaid Work Mandate In Kentucky*, Kaiser Health News (Apr. 5, 2017).

<sup>11</sup> *Governor optimistic on Medicaid work waiver*, Arkansas Times (Jan. 16, 2018).

<sup>12</sup> *'Using his position for private gain': Ben Carson was warned he might run afoul of ethics rules by enlisting his son*, The Washington Post (Jan. 31, 2018).

the award of a no-bid contract to the relative of an agency head certainly raises questions and merits further scrutiny and review.

The numerous ethical lapses and potential conflicts of interest described above deserve your immediate attention as the newly-confirmed HHS Secretary. To ensure that adequate measures are taken to restore the integrity of the Department so that it can perform its crucial mission, I request that you commit to performing a top-down review of HHS and each of its operating divisions to determine the extent to which the Department is abiding by all applicable federal ethical regulations and policies, as well as a response to the following questions by March 8, 2018:

1. What measures has the Department taken since Secretary Price's resignation to ensure compliance with federal travel regulations and the ethical stewardship of American taxpayer dollars at HHS and each of its operating divisions? What additional measures are you planning to institute going forward? Please provide a detailed plan describing these measures.
  - a. Has the Department conducted an internal audit to identify additional instances when travel arrangements for HHS officials were in violation of federal travel regulations?
  - b. Is the Department currently requiring HHS employees responsible for booking and coordinating travel to undergo training regarding federal travel regulations?
  - c. Has the Department instituted a review process to assess whether travel arrangements for HHS officials comply with federal travel regulations in advance of their travel?
2. What measures has the Department taken since Secretary Price's resignation to ensure that HHS and each of its operating divisions are complying with federal laws, regulations, and departmental guidelines prohibiting the use of federal resources to advocate in favor or against legislation pending before Congress? What additional measures are you planning to institute going forward? Please provide a detailed plan describing these measures.
  - a. Has the Department conducted an internal audit to identify any additional instances when restrictions on federal resources being used to produce public materials that advocate in favor or against legislation pending before Congress were violated?
  - b. Has the Department instituted a review process to assess whether or not official electronic communications over HHS social media accounts comply with federal restrictions on advocating in favor or against legislation pending before Congress?

3. What measures are you taking to ensure that public officials at HHS and each of its operating divisions are not subject to conflicts of interest or undue influence as a result of investments, prior work, or affiliation with other Administration officials? Please provide a detailed plan describing these measures.
  - a. How was it possible that former CDC Director Fitzgerald was able to purchase shares of companies that were stakeholders in work she oversaw as the head of the agency? What measures are you planning to institute to prevent this from happening going forward?
    - i. How will you ensure that the next CDC Director is able to perform his or her job responsibilities free of conflicts of interest?
  - b. What steps will HHS commit to taking to ensure that all political appointees report potential conflicts of interest in a timely and accurate manner?
  - c. What controls does HHS have in place to ensure that Department officials are not weighing in on issues for which they have recused themselves?
    - i. Has the Department conducted a review to determine whether Administrator Verma's actions on state waivers are in compliance with her ethics agreement?
  - d. What controls does the Department have in place to ensure that the process by which federal contracts are awarded is transparent and free of undue influence?
    - i. Has the Department conducted a review to determine whether the process by which CMS awarded the \$485,000 contract to Myriddian was in compliance with applicable ethics and transparency regulations?

The American public is entitled to be served by public officials who maintain the highest regard for ethics, transparency and accountability. Thank you for your prompt attention to this matter. Should you have any questions, please contact Miles Lichtman of the Democratic Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.  
Ranking Member