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STAFF DIRECTOR

October 19, 2012

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue
Washington D.C. 20515

Dear Madam Secretary:

I am writing to you in response to the Department's October 18, 2012, letter and document production in response to the Committee's letters of May 23, 2012, August 1, 2012, September 27, 2012, and October 17, 2012. Your response and production of some 1,300 pages was delivered to the Committee's offices only after I notified you that continued obstruction of the Committee's efforts to obtain information about the Department's Medicare Advantage Demonstration Project (Demonstration) would result in the Committee's use of compulsory process. However, although the Committee received confirmation several weeks ago from Health and Human Services (HHS) staff that HHS was hard at work on the document production, it is obvious that was not the case from the documents you provided today.

The Department's production is not organized in any discernible fashion, does not include Bates stamps, and was not provided in electronic format as requested by the Committee. More than half of the 1,300 pages delivered to my offices contain nothing more than rows of numeric data or nearly blank spreadsheet run-on pages that are of no assistance to the Committee's investigation, nor could they reasonably be believed to be of use to the Committee. Most importantly, you failed to provide documents and communications responsive to our request.

In the August 1, 2012, letter, the Committee requested all documents and communications referring or relating to limits on what the Secretary of HHS can spend on demonstration projects under Section 402(a)(1)(A) of the Social Security Act. You failed to produce a single document or communication responsive to this request.

In the August 1, 2012, letter, the Committee requested all documents and communications referring or relating to the decision to exempt this Demonstration from the Center for Medicare and Medicaid Services (CMS) own budget neutrality rules. You failed to produce a single document or communication responsive to this request.

The Honorable Kathleen Sebelius

October 19, 2012

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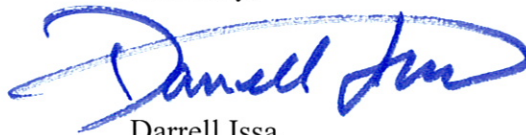
In the August 1, 2012 letter, the Committee requested all documents and communications referring or relating to Section 402(b)'s requirement that CMS obtain the evaluation of a statistical expert for demonstration projects. You failed to produce a single document or communication responsive to this request.

It stretches believability for the Department to assert that these 1,300 pages (including, again, more than 600 sheets that include nothing more than numeric data) are the only responsive documents you have been able to identify and produce in the nearly five months since the Committee first began requesting them, particularly given the Department's repeated assertions about the vigorous compiling and photocopying being conducted by your staff in response to the Committee's requests.

The Committee requested documents and communications related to this Demonstration because of the highly unusual nature of this Demonstration. This is the first time ever that GAO recommended a demonstration be canceled. GAO's recommendation was based on several grounds. First, past demonstrations contained incentives for plans to improve; the bonuses in this Demonstration are mostly based on pre-demonstration data. Second, past demonstrations have had adequate control groups to measure the demonstration's impact; this Demonstration has no such control group. Third, past demonstrations have been budget neutral; this Demonstration costs seven times more than the combined cost of the 85 other demonstrations conducted since 1995. Fourth, past demonstrations were required to be approved by an independent statistical expert; the Administration waived this requirement for this Demonstration. Fifth, GAO's legal experts believe that you lacked the legal authority to implement this Demonstration.

Given the Department's response, I am writing to notify you that I intend to move forward with the use of compulsory process to obtain a comprehensive response to the Committee's request.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member