



Dear Mr. Nobles,

We are requesting your assurances that our scheduled Office of the Legislative Auditor (OLA) audit of health plan Medicaid and MinnesotaCare funding in Minnesota will produce usable information and insight into the operations of our publicly funded health care programs.

We have strong expectations for a robust, rigorous and thorough audit investigation as required by **Federal and State law***. As you know, our constituents expect us to understand what our tax dollars are spent on. We are very uncomfortable just taking the word of the health plans who have their own vested interests to protect.

We request you include the following questions as part of your auditing task:

- 1) Whether or not the reported reserves of the HMOs actually exist or, if as the former executive director of the Minnesota Council of Health Plans claimed, they exist only on paper because the money has been "shifted" to the state of Minnesota.
- 2) If the HMOs are engaging in hidden internal cost inflation of the type discovered in the case of Hi-Lex vs Blue Cross of Michigan. (In this case Blue Cross argued that all managed care organizations do this.) Shouldn't we see if our HMOs are guilty of this fraud in their operation of our Medicaid program?
- 3) Determine if paid claims data (as examined by audit and not self-reported) supports the HMOs' assertion that health care costs are out of control, or if the HMOs' own price inflation and administrative expense and profitability are the real cost drivers in the system.
- 4) What circumstances justify Medica transferring \$90 million out of its non-profit HMO to its Wisconsin operation, curiously very soon after terminating its MN Medicaid operation due to reported large losses?
- 5) Are administrative costs being inflated in the medical expense category to manipulate medical loss ratio? This is not to be confused with whether self-reported administrative expense is "proper and reasonable".

6) If federal funds are being diverted to subsidize nonfederal qualifying activities (as Ucare admitted doing in March of 2011).

7) What will settle the paradox created by your statement that you have unfettered authority to audit and inspect whatever you chose and require no legislative authority; yet now in the case of HMO audits you claim your hands are tied by the precise wording of the statute apparently designed to prevent an effective audit. How do we deal with this paradox? Does the final bill language passed by the legislature need to be altered so the audit will be done properly?

8) What will guarantee that the OLA will examine claims paid data?

9) Is it true that the methodology of the audit is a secret pursuant to the Minnesota Data Practices Act? If so, how will the public have any confidence in the audit result if that is the case?

*as required by the Single Audit Act (OMB A-133) and by the 2012 Minnesota legislation.

Respectfully

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Background References for Legislators' Letter

To Jim Nobles (December 2017)

This sheet provides background information for numbered items appearing in the letter to Mr. Nobles from Legislators.

1) HMO reserves. On January 9, 2015, Julie Brunner (of the MN Council of Health Plans) published an op-ed in the Star Tribune which disclosed existence of a \$1.3 billion dollar shift between the plans and state government instead of a hard cash reserve. (<http://www.startribune.com/counterpoint-a-factual-understanding-of-hmo-finances/288113291/>) On April 5, 2017, sixteen members of a citizens group met with the OLA. One of their requests was for a specific explanation of the nature of that shift which the OLA has yet to provide.

2) Hidden internal cost inflation in the Hi-Lex case. On May 14, 2014, the U.S. Court of Appeals, Sixth District, upheld a verdict against Blue Cross Blue Shield of Michigan. The court found Blue Cross Blue Shield of Michigan guilty of defrauding funds from the ERISA account of its client, Hi-Lex Controls, Inc. The court affirmed (page 2) that “. . . Blue Cross Blue Shield of Michigan (BCBSM) breached its fiduciary duty under the Employee Retiree Income Security Act of 1974 (ERISA) by inflating hospital claims with hidden surcharges in order to retain additional administrative compensation. . . . BCBSM’s actions amounted to self-dealing . . . BCBSM had violated ERISA’s fiduciary obligations [to Hi-Lex Controls, Inc.] . . .” (<http://www.opn.ca6.uscourts.gov/opinions.pdf/14a0100p-06.pdf>)

3) Self-reported paid claims data. The March 2013 report to the Legislature by the Segal Company, a national actuarial firm, reported that Minnesota was making a mistake by failing to independently examine the original paid receipts for patient care (a.k.a. paid claims data). From page 4 of Segal’s report: “Intuitively, we do not believe it is best actuarial practice to use self-reported data supplied by the MCOs for analyses that could directly affect their capitation revenue.” (<https://www.leg.state.mn.us/docs/2013/other/130616.pdf>)

4) Medica transfer of tax funds. The October 20, 2017, StarTribune reported, "One of Minnesota's biggest health insurers is catching flak from Gov. Mark Dayton and consumer advocates for transferring \$120 million from its nonprofit Minnesota HMO to other operations, including a for-profit insurance unit. Medica Health Plans transferred the money this month to shore up the finances of its for-profit and Wisconsin insurance businesses, using reserves from its nonprofit HMO." (<http://www.startribune.com/dayton-consumer-advocates-blast-minnesota-hmo-for-money-transfer/451740733/>)

5) HMO medical costs in the public health program. In 2015, the OLA only examined self-reported HMO administrative costs (<https://www.auditor.leg.state.mn.us/ped/pedrep/mcoadminexp.pdf>), not medical costs. See item 2 above regarding hidden internal cost inflation in a medical expense—in that Michigan case, hidden surcharges were applied to hospital costs.

6) Federal funds subsidizing expenses in Minnesota which do not qualify for federal subsidies. In March 2011, UCare sent a letter, accompanied by a \$30 million refund check, to the Chairperson of the MN State Senate Committee of Health and Human Services. The letter explained UCare was returning this overpayment the company received from the state for a state-level health program, GAMC, which no longer existed as of mid-2010. [GAMC, being a state program, did not qualify to receive any federal money.] After scrutinizing this unusual letter and refund, the U.S. House of Representatives Committee on Oversight and Government Reform issued a declaration (April 24, 2012): "UCare's letter shows that it was losing money on its GMAC plan but that these losses were recouped by the state paying more than the actuarially appropriate amount for Medicaid enrollees."

(<https://oversight.house.gov/wp-content/uploads/2012/04/Uncovering-Waste-Fraud-and-Abuse-in-the-Medicaid-Program-Final-3.pdf>) Subsequently, Congress forced Minnesota to give back half of the UCare refund to the federal government, the lawful owner of half of the \$30 million. Lacking a proper audit, we cannot know whether any violation of using federal money to subsidize other state-level programs continues.

7) Unfettered authority. The powers of the OLA are specified in Minnesota statutes.

"3.978 Auxiliary Powers.

Subdivision 1. Subpoena power. In all matters relating to official duties, the legislative auditor has the powers possessed by courts of law to issue and have subpoenas served.

Subd. 2. Inquiry and inspection . . . all corporation . . . having business involving the receipt, disbursement, or custody of public funds shall . . . produce and exhibit all books, accounts, documents, data of any classification, and property that the legislative auditor may need to inspect . . . “ (<https://www.revisor.mn.gov/statutes/?id=3.978>)

8) Examination of paid claims data. No evidence exists that the OLA, or any other state agency, has examined original receipts paid by HMOs in the Medical Assistance program. Evidence exists that the HMOs refuse to supply these original documents to the state. The 2013 Segal report observed that DHS, the agency responsible for regulating the health programs, failed to obtain this essential data. Page 16 of the report states, “Segal briefly reviewed the MCO contract and we believe DHS had the authority and should have collected data over the period being reviewed. We were told that DHS did not push for this data and it was met with significant resistance from the MCOs.”

(<https://www.leg.state.mn.us/docs/2013/other/130616.pdf>)

This document was produced in December 2017 by Health Policy Advocates,

a grassroots group of health care activists.

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