

Message

From: Howe, Rory (CMS/CMCS); (b)(6)
(b)(6)
Sent: 4/11/2023 4:10:02 PM
To: Fan, Kristin (CMS/CMCS); (b)(6)
(b)(6); Bonelli, Anna
(CMS/CMCS); (b)(6)
(b)(6); Arnold, Charlie
(CMS/CMCS); (b)(6)
(b)(6); Clark, Jennifer
(CMS/CMCS); (b)(6)
(b)(6); Goldstein, Stuart
(CMS/CMCS); (b)(6)
(b)(6); Cuno, Richard
(CMS/CMCS); (b)(6)
(b)(6); Endelman (he/him),
Jonathan (CMS/CMCS); (b)(6)
(b)(6); Ferguson, Dorothy
(CMS/CMCS); (b)(6)
(b)(6); Curry, Celestine
(CMS/CMCS); (b)(6)
(b)(6); Boston, Beverly
(CMS/CMCS); (b)(6)
(b)(6); adams, lia (CMS/CMCS)
(b)(6)
(b)(6)
CC: Maccarroll, Amber (CMS/CMCS); (b)(6)
(b)(6); Silanskis, Jeremy D.
(CMS/CMCS); (b)(6)
(b)(6)
Subject: New Texas Lawsuit
Attachments: 1.pdf; 1-2.pdf

Hi everyone,

Please see below, for awareness, an OGC summary of a new lawsuit Texas filed last week challenging CMS's February 17, 2023 CMCS Informational Bulletin. I am talking with OGC this week. As soon as I have more information to share on next steps, I will reach back out to the team.

Thanks,
Rory

From: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>
Sent: Sunday, April 9, 2023 11:08 AM
To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Cc: Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Lyons, Susan (HHS/OGC) <Susan.Lyons@HHS.GOV>
Subject:

Good morning Rory,

(b)(5)

(b)(5)

Best,

Garrett

Message

From: Howe, Rory (CMS/CMCS); (b)(6)
(b)(6)
Sent: 4/10/2023 8:56:30 PM
To: Vogel, Jeremy (HHS/OGC) [Jeremy.Vogel@hhs.gov]; Mannchen, Garrett (HHS/OGC); (b)(6)
(b)(6)
CC: Campbell, Matthew (HHS/OGC) [Matthew.Campbell@hhs.gov]; Kaiser, Bridgette (HHS/OGC)
(b)(6)
Subject: RE: RE:

I could also do 11 tomorrow or 1PM on Wednesday if that would work for others.

From: Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>
Sent: Monday, April 10, 2023 4:48 PM
To: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>; Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Cc: Campbell, Matthew (HHS/OGC) <Matthew.Campbell@hhs.gov>; Kaiser, Bridgette (HHS/OGC) <Bridgette.Kaiser@hhs.gov>
Subject: Re:

Unfortunately I am not available tomorrow afternoon I could be available in the morning, or later in the week.

Jeremy Vogel (he/him)
Attorney, DHHS/OGC/CMSD
(202) 205-8778 | Jeremy.Vogel@hhs.gov

From: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>
Sent: Monday, April 10, 2023 4:46:12 PM
To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Cc: Campbell, Matthew (HHS/OGC) <Matthew.Campbell@hhs.gov>; Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Kaiser, Bridgette (HHS/OGC) <Bridgette.Kaiser@hhs.gov>
Subject: RE:

Adding Matthew Campbell to this email. Matthew has just joined our office and has been assigned as the lead CMSD attorney in this litigation. I'll still be available to consult and help out while Matt is getting up to speed.

Matt—Rory is the Director of the Financial Management Group in CMS and has been working closely with Jeremy and me (among others in our office) on this hold harmless issue.

Jeremy & Matt—are you both available tomorrow at 2 or 2:30 to meet with Rory to discuss the case?

From: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Sent: Monday, April 10, 2023 3:49 PM
To: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>
Subject: RE:

Hi, Garrett. Tomorrow afternoon works great. Would 2 or 2:30 work?

From: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>
Sent: Monday, April 10, 2023 1:24 PM

To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>

Subject: Re:

Is tomorrow afternoon ok with you, or do you need to meet with us before then?

Garrett

From: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>

Sent: Sunday, April 9, 2023 1:39:37 PM

To: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>

Cc: Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Lyons, Susan (HHS/OGC) <Susan.Lyons@HHS.GOV>

Subject: Re:

(b)(5)

Rory

From: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>

Sent: Sunday, April 9, 2023 11:07:41 AM

To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>

Cc: Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Lyons, Susan (HHS/OGC) <Susan.Lyons@HHS.GOV>

Subject:

Good morning Rory,

(b)(5)

Best,

Garrett

Message

From: Howe, Rory (CMS/CMCS) (b)(6)
(b)(6)
Sent: 1/25/2023 5:03:29 PM
To: Bonelli, Anna (CMS/CMCS) (b)(6)
(b)(6)
Subject: RE: RE: (b)(5) questions

Thanks!

From: Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>
Sent: Wednesday, January 25, 2023 12:02 PM
To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Subject: RE: (b)(5) questions

It's in this folder:

(b)(5)

You can't miss it.

From: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Sent: Wednesday, January 25, 2023 12:01 PM
To: Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>
Subject: RE: (b)(5) questions

Sounds good. Can you share the link to the latest version of the NPRM? Thanks.

From: Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>
Sent: Wednesday, January 25, 2023 12:00 PM
To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Subject: FW: (b)(5) questions

Looks like this is late breaking: focus of call today is likely to be on (b)(5)

From: Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>
Sent: Wednesday, January 25, 2023 11:51 AM
To: Bonelli, Anna (CMS/CMCS) <Anna.Bonelli@cms.hhs.gov>
Subject: FW: (b)(5) questions

FYI – ahead of today's call in case you are joining.

From: Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>
Sent: Wednesday, January 25, 2023 11:40 AM
To: Arroyo, Anna R. EOP/OMB (b)(6); Burch Mack, Rebecca (CMS/CMCS) <Rebecca.BurchMack@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>
Cc: Duguay, Vanessa J. EOP/OMB (b)(6); Giles, John (CMS/CMCS)

<John.Giles1@cms.hhs.gov>; Gentile, Amy (CMS/CMCS) <Amy.Gentile@cms.hhs.gov>

Subject: RE: (b)(5) questions

Hi Anna –

DMCP and OGC have reviewed these questions, and below are our responses:

CMS Response to (b)(5) Questions:

(b)(5)

CMS Response to (b)(5) Questions:

(b)(5)

Happy to talk at noon. Thank you!

John Giles, MPA
Director, Division of Managed Care Policy
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Phone: 240-904-2341
E-mail: John.Giles1@cms.hhs.gov

From: Arroyo, Anna R. EOP/OMB (b)(6)

Sent: Tuesday, January 24, 2023 1:38 PM

To: Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Burch Mack, Rebecca (CMS/CMCS) <Rebecca.BurchMack@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

Cc: Duguay, Vanessa J. EOP/OMB (b)(6)

Subject: (b)(5) questions

Hi John, Rebecca, and Laura—

Vanessa and I have been thinking about (b)(5) We drafted a few questions (see below) for your team and CMCS OGC. Would it be possible for you to consult with counsel to answer these questions? It would be great if we could have responses by tomorrow at noon so we can discuss during the call, but we understand that may not be possible given timing. Please let us know if we can clarify anything.

Thanks!

-Anna

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Message

From: Costello, Anne Marie (CMS/CMCS); (b)(6)
(b)(6)
Sent: 4/9/2023 9:27:07 PM
To: Howe, Rory (CMS/CMCS); (b)(6)
(b)(6) Tsai, Daniel (CMS/CMCS)
(b)(6) Vitolo, Sara (CMS/CMCS)
CC: Maccarroll, Amber (CMS/CMCS); (b)(6)
(b)(6) Silanskis, Jeremy
(CMS/CMCS); (b)(6)
(b)(6)
Subject: Re: Re: New TX Lawsuit

Thank you for flagging. Would be great to talk after you meet with OGC.

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From: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Sent: Sunday, April 9, 2023 1:47:16 PM
To: Tsai, Daniel (CMS/CMCS) <Daniel.Tsai@cms.hhs.gov>; Costello, Anne Marie (CMS/CMCS) <AnneMarie.Costello@cms.hhs.gov>; Vitolo, Sara (CMS/CMCS) <Sara.Vitolo@cms.hhs.gov>
Cc: Maccarroll, Amber (CMS/CMCS) <Amber.MacCarroll@cms.hhs.gov>; Silanskis, Jeremy (CMS/CMCS) <Jeremy.Silanskis@cms.hhs.gov>
Subject: Fwd: New TX Lawsuit

I hope you all are having a good weekend. Sorry for sending on a holiday weekend, but sharing the attached lawsuit (and OGC's summary below) recently filed by TX relating to our 2008 hold harmless rule and this year's CIB. It is not surprising to see, but I thought it was likely that Texas wait until after the upcoming OIG audit release/possible complaint enforcement action. I plan to meet with OGC this week to discuss next steps, then will provide an update/options. Please let me know if you need anything in the interim.

Rory

From: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>
Sent: Sunday, April 9, 2023 11:08 AM
To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>
Cc: Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Lyons, Susan (HHS/OGC) <Susan.Lyons@HHS.GOV>
Subject:

Good morning Rory,

(b)(5)

(b)(5)

Best,

Garrett

Message

From: Burch Mack, Rebecca (CMS/CMCS); (b)(6)
(b)(6)
Sent: 1/25/2023 1:54:14 PM
To: Giles, John (CMS/CMCS); (b)(6)
(b)(6) Gentile, Amy (CMS/CMCS)
(b)(6)
Subject: RE: RE: (b)(6) questions

Minor edits frankly just to quote the NPRM language and also just put in in black. I also slightly framed the intro as I worried that Anna may be your initial write-up inferred the responses were from OGC directly.

Hi Anna –

DMCP and OGC have reviewed these questions, and below are our responses:

CMS Response to (b)(5) Questions:

(b)(5)

CMS Response to (b)(5) Questions:

(b)(5)

Rebecca M. Burch Mack, M.P.P.

Technical Director – Medicaid Managed Care

Division of Managed Care Policy | Disabled and Elderly Health Programs Group | Centers for Medicare & Medicaid Services

Mailstop S2-14-26, 7500 Security Blvd., Baltimore, MD 21244

☎ (303) 844-7355 | ✉ rebecca.burchmack@cms.hhs.gov

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to persons not authorized to receive the information. Unauthorized disclosure may result in prosecution to the full extent of the law.”

From: Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>
Sent: Wednesday, January 25, 2023 6:49 AM
To: Burch Mack, Rebecca (CMS/CMCS) <Rebecca.BurchMack@cms.hhs.gov>; Gentile, Amy (CMS/CMCS) <Amy.Gentile@cms.hhs.gov>
Cc: Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>
Subject: RE: (b)(5) questions

Hi Anna –

OGC was able to quickly review your questions. Here are the responses:

On (b)(5)

(b)(5)

On (b)(5)

(b)(5)

John Giles, MPA
Director, Division of Managed Care Policy
Disabled and Elderly Health Programs Group
Center for Medicaid and CHIP Services
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Phone: 240-904-2341
E-mail: John.Giles1@cms.hhs.gov

From: Arroyo, Anna R. EOP/OMB (b)(6)
Sent: Tuesday, January 24, 2023 1:38 PM
To: Giles, John (CMS/CMCS) <John.Giles1@cms.hhs.gov>; Burch Mack, Rebecca (CMS/CMCS)

<Rebecca.BurchMack@cms.hhs.gov>; Snyder, Laura (CMS/CMCS) <Laura.Snyder1@cms.hhs.gov>

Cc: Duguay, Vanessa J. EOP/OMB (b)(6)

Subject: (b)(5) questions

Hi John, Rebecca, and Laura—

Vanessa and I have been thinking about (b)(5) We drafted a few questions (see below) for your team and CMCS OGC. Would it be possible for you to consult with counsel to answer these questions? It would be great if we could have responses by tomorrow at noon so we can discuss during the call, but we understand that may not be possible given timing. Please let us know if we can clarify anything.

Thanks!

-Anna

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Appointment

From: Howe, Rory (CMS/CMCS) (b)(6)
(b)(6)
Sent: 4/11/2023 5:19:24 PM
To: Howe, Rory (CMS/CMCS) (b)(6)
(b)(6); Campbell, Matthew
(HHS/OGC) [Matthew.Campbell@hhs.gov]; Maccarroll, Amber (CMS/CMCS) (b)(6)
(b)(6)
Silanskis, Jeremy D. (CMS/CMCS) (Jeremy.Silanskis@cms.hhs.gov) (b)(6)
(b)(6); Fan, Kristin (CMS/CMCS) (b)(6)
(b)(6)
CC: Kaiser, Bridgette (HHS/OGC) (b)(6)
(b)(6); Vogel, Jeremy
(HHS/OGC) (b)(6)
(b)(6); Mannchen, Garrett
(HHS/OGC) (b)(6)
(b)(6)

Subject: Texas v. Brooks-LaSure, No. 6:23-cv-161

Location: <https://cms.zoomgov.com/> (b)(6)

Start: 4/12/2023 5:00:00 PM

End: 4/12/2023 5:45:00 PM

Show Time As: Busy

Required Attendees: Campbell, Matthew (HHS/OGC); Maccarroll, Amber (CMS/CMCS); Silanskis, Jeremy D. (CMS/CMCS)

(Jeremy.Silanskis@cms.hhs.gov); Fan, Kristin (CMS/CMCS)

Optional Attendees: Kaiser, Bridgette (HHS/OGC); Vogel, Jeremy (HHS/OGC); Mannchen, Garrett (HHS/OGC)

Rory Howe is inviting you to a scheduled ZoomGov meeting.

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From: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>

Sent: Sunday, April 9, 2023 11:07:41 AM

To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>

Cc: Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Lyons, Susan (HHS/OGC) <Susan.Lyons@HHS.GOV>

Subject:

Good morning Rory,

(b)(5)

Best,

Garrett

Appointment

Sent: 4/11/2023 4:54:31 PM

To: Howe, Rory (CMS/CMCS) (b)(6)
(b)(6) Campbell, Matthew
(HHS/OGC) [Matthew.Campbell@hhs.gov]; Maccarroll, Amber (CMS/CMCS) (b)(6)
(b)(6)
Silanskis, Jeremy D. (CMS/CMCS) (Jeremy.Silanskis@cms.hhs.gov) (b)(6)
(b)(6) Fan, Kristin (CMS/CMCS) (b)(6)
(b)(6)
CC: Kaiser, Bridgette (HHS/OGC) (b)(6)
(b)(6) Vogel, Jeremy
(HHS/OGC) (b)(6)
(b)(6) Mannchen, Garrett
(HHS/OGC) (b)(6)
(b)(6)

Subject: Texas v. Brooks-LaSure, No. 6:23-cv-161

Start: 4/12/2023 5:00:00 PM

End: 4/12/2023 6:00:00 PM

Show Time As: Busy

From: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>

Sent: Sunday, April 9, 2023 11:07:41 AM

To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>

Cc: Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Lyons, Susan (HHS/OGC) <Susan.Lyons@HHS.GOV>

Subject:

Good morning Rory,

(b)(5)

(b)(5)

Best,

Garrett

Appointment

From: Howe, Rory (CMS/CMCS); (b)(6)
(b)(6)
Sent: 4/11/2023 5:19:28 PM
To: Campbell, Matthew (HHS/OGC) [Matthew.Campbell@hhs.gov]; Maccarroll, Amber (CMS/CMCS)
(b)(6); Silanskis, Jeremy D.
(CMS/CMCS) (Jeremy.Silanskis@cms.hhs.gov); (b)(6)
(b)(6); Fan, Kristin (CMS/CMCS); (b)(6)
CC: Kaiser, Bridgette (HHS/OGC); (b)(6)
(b)(6) Vogel, Jeremy
(HHS/OGC); (b)(6)
(b)(6) Mannchen, Garrett
(HHS/OGC); (b)(6)
(b)(6)

Subject: Texas v. Brooks-LaSure, No. 6:23-cv-161

Location: <https://cms.zoomgov.com/join/9212345678> (b)(6)

Start: 4/12/2023 5:00:00 PM

End: 4/12/2023 5:45:00 PM

Show Time As: Tentative

Required Attendees: Campbell, Matthew (HHS/OGC); Maccarroll, Amber (CMS/CMCS); Silanskis, Jeremy D. (CMS/CMCS)

(Jeremy.Silanskis@cms.hhs.gov); Fan, Kristin (CMS/CMCS)

Optional Attendees: Kaiser, Bridgette (HHS/OGC); Vogel, Jeremy (HHS/OGC); Mannchen, Garrett (HHS/OGC)

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+1 646 828 7666 US (New York)

833 568 8864 US Toll-free

Meeting ID: (b)(6)

Password: (b)(6)

Find your local number: <https://cms.zoomgov.com/u/adK0TicHPm>

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Password: (b)(6)

sig (b)(6)

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From: Mannchen, Garrett (HHS/OGC) <Garrett.Mannchen@hhs.gov>

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To: Howe, Rory (CMS/CMCS) <Rory.Howe@cms.hhs.gov>

Cc: Vogel, Jeremy (HHS/OGC) <Jeremy.Vogel@hhs.gov>; Lyons, Susan (HHS/OGC) <Susan.Lyons@HHS.GOV>

Subject:

Good morning Rory,

(b)(5)

Best,

Garrett