



November 23, 2020

**VIA MAIL**

Office of the Governor of Oklahoma  
ORA office  
Room 212  
2300 North Lincoln Boulevard  
Oklahoma City, OK, 73105

**Re: Open Records Act Request**

Dear Records Access Officer:

Pursuant to the Oklahoma Open Records Act, O.S. tit. 51, §§ 24A.1 et seq., American Oversight makes the following request for records.

In January 2020, the Trump administration introduced the Healthy Adult Opportunity Initiative, which allows states to experiment with block-grant funding in their Medicaid programs.<sup>1</sup> Subsequently, in April, Oklahoma became the first state to submit an application, which proposed a per-person spending cap, premiums based on income, and work requirements.<sup>2</sup> Later, in August, Oklahoma withdrew this application, without providing a reason for the reversal.<sup>3</sup>

American Oversight seeks records with the potential to shed light on Oklahoma's waiver application, including its development, submission to and review by the federal government, and withdrawal.

**Requested Records**

American Oversight requests that your office produce the following records within five business days:

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<sup>1</sup> Selena Simmons-Duffin, *Trump Administration Clears the Way For Medicaid Block Grants*, NPR (Jan. 30, 2020, 1:15 PM), <https://www.npr.org/sections/health-shots/2020/01/30/800841612/trump-administration-offers-states-a-way-to-block-grant-medicaid>.

<sup>2</sup> Rebecca Pifer, *Oklahoma 1st to Seek Waiver to Block Grant Medicaid, Despite Pandemic*, Healthcare Dive, Apr. 21, 2020, <https://www.healthcaredive.com/news/oklahoma-1st-to-seek-waiver-to-block-grant-medicaid-despite-pandemic/576460/>.

<sup>3</sup> Hailey Mensik, *Oklahoma Pulls Medicaid Block Grant Application*, Healthcare Dive, Aug. 14, 2020, <https://www.healthcaredive.com/news/oklahoma-pulls-medicaid-block-grant-application/583553/>.



All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) sent by Deputy Secretary of Health and Mental Health Carter Kimble to the Centers for Medicare and Medicaid Services (CMS) (email addresses ending in @cms.hhs.gov) regarding Oklahoma’s application for a waiver under Section 1115 of the Affordable Care Act.

Please provide all responsive records from April 10, 2020, to August 20, 2020.

American Oversight has limited its request to messages sent by the specified official in an effort to reduce the volume of potentially responsive records. However, American Oversight still requests complete email chains. So, for example, if Deputy Secretary Kimble sent a response to an incoming message from CMS, the complete email chain containing the initially received message and the response is responsive to this request.

### **Fee Waiver Request**

In accordance with 51 O.S. tit. 51, § 24A.5(4), American Oversight requests that your office charge no search fees in connection with processing this request for records. Release of the requested records “is in the public interest,” because American Oversight, in accordance with its organizational mission, makes this request “to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants.”<sup>4</sup> Specifically, the requested records have the potential to shed light on the considerations involved in the submission and subsequent withdrawal of Oklahoma’s application for a waiver under the Healthy Adult Opportunity Initiative. Records with the potential to shed light on this matter would contribute significantly to public understanding of how public servants are fulfilling their duties, including their efforts to ensure insurance coverage for low-income Americans during a global pandemic.<sup>5</sup>

American Oversight’s work is aimed solely at serving the public interest.<sup>6</sup> *See id.* As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. Rather, American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. Similar to members of the news media, American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms,

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<sup>4</sup> O.S. tit. 51, § 24A.5(4).

<sup>5</sup> *See, e.g.,* Sara Rosenbaum & Maria Velasquez, *In the Middle of a Pandemic, Oklahoma Pursues a Medicaid Funding Cap*, Health Affairs, May 9, 2020, <https://www.healthaffairs.org/doi/10.1377/hblog20200507.187701/full/>.

<sup>6</sup> *See* 51 O.S. tit. 51, § 24A.5(4).

such as Facebook and Twitter.<sup>7</sup> American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.<sup>8</sup>

American Oversight is committed to transparency and makes the responses public bodies provide to public records requests publicly available, and the public's understanding of the government's activities—including whether public servants are honestly, faithfully, and competently performing their duties—would be enhanced through American Oversight's analysis and publication of these records.

Therefore, in accordance with O.S. tit. 51, § 24A.5(4), American Oversight respectfully requests that you limit any copying fees to the reasonable, direct costs of record copying, or mechanical reproduction, if any such costs are incurred.

American Oversight asks that if its request for a fee waiver is denied in whole or in part, that you contact us prior to incurring any costs.

### **Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or

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<sup>7</sup> American Oversight currently has approximately 16,400 page likes on Facebook and 106,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Nov. 19, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Nov. 19, 2020).

<sup>8</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; *State Accountability Project*, American Oversight, [https://www.americanoversight.org/areas\\_of\\_investigation/state-local-investigations](https://www.americanoversight.org/areas_of_investigation/state-local-investigations); see also, e.g., *State Government Contacts with Voting-Restriction Activists*, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Georgia's Voting Machines and Election Security*, American Oversight, <https://www.americanoversight.org/investigation/georgias-voting-machines-and-election-security>; *Tulsa Health Officials Initially Estimated Trump Rally Would Directly Lead to 2 to 9 Deaths*, American Oversight, <https://www.americanoversight.org/tulsa-health-officials-initially-estimated-trump-rally-would-directly-lead-to-2-to-9-deaths>.

Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records.<sup>9</sup> If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

## **Conclusion**

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a

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<sup>9</sup> O.S. tit. 51, § 24A.5(2).

USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Christine Monahan at [records@americanoversight.org](mailto:records@americanoversight.org) or 202.869.5244.

Sincerely,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers  
Executive Director  
American Oversight