



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Date: August 6, 2014

To: The National Archives and Records Administration
Records Management Service

From: Kathleen Cantwell **E&C Redaction**
Records Management Official
Director, Office of Strategic Operations and Regulatory Affairs
The Centers for Medicare & Medicaid Services

Subject: CMS Email Records

This memorandum is to formally notify the National Archives and Records Administration (NARA) that the Department of Health and Human Services (HHS) is taking several steps to gather email records belonging to Marilyn Tavenner, Administrator of the Centers for Medicare & Medicaid Services (CMS),¹ and to strengthen its existing records retention processes. After discussions of this issue with NARA's General Counsel, HHS believes that a report to NARA is not currently required, but, out of an abundance of caution, this memorandum is being filed.²

DESCRIPTION OF EMAILS THAT ARE THE SUBJECT OF THIS REPORT AND THE CIRCUMSTANCES SURROUNDING THEIR POSSIBLE LOSS

Upon arriving at CMS in February 2010, Administrator Tavenner used the current CMS system of recordkeeping for hard copy documents which is designed to ensure that the following documents are maintained in accordance with NARA document retention standards.

- A copy of the Administrator's Daily Briefing Notebook containing paper copies of her calendar, agency materials and policy papers;
- A copy of all internal memoranda signed by the Administrator;
- A copy of all correspondence (including reports to Congress) signed by the Administrator or submitted by the Administrator for signature by the Secretary; and

¹ Ms. Tavenner has served as the Administrator of CMS since May 17, 2013. From February 14, 2010 until May 16, 2013, Ms. Tavenner served as the Principal Deputy Administrator of CMS. During her tenure as Principal Deputy Administrator, she served as Acting Administrator from April 20, 2010 until July 11, 2010 and from December 2, 2011 until May 16, 2013.

² The General Counsel of NARA advised the HHS General Counsel that a report to NARA is not required if there is no evidence that records have been destroyed.

- A copy of agency documents that the Administrator approves by signature.

During her entire tenure at CMS, Ms. Tavenner's CMS email address, which is accessible to both colleagues and the public, has been subject to write-in campaigns involving thousands of emails from the public. Therefore, she receives an extremely high volume of emails that she manages daily. To keep an orderly email box and to stay within the agency's email system capacity limits, the Administrator generally copied or forwarded emails to immediate staff for retention and retrieval, and did not maintain her own copies. This continued until November 2013, when the Administrator began to maintain her own copies of her email records.

Based on a recent analysis of emails (which was completed on July 31, 2014) undertaken in connection with a request from a congressional committee, it appears that most, but not all, of the Administrator's email records were sent within HHS and therefore were likely saved within HHS records. While we have not identified any specific emails that we will be unable to retrieve, it is possible that some emails may not be available to HHS, and we are therefore filing this memorandum.

PLAN TO PREVENT ANY FUTURE LOSS OF EMAIL RECORDS

As noted above, since November 20, 2013, the Administrator has been retaining her emails and those files now are being backed up to a central server.

In addition, HHS records management officials have informed CMS that HHS is planning to take the following steps to strengthen existing records retention processes:

- HHS will remind all current employees and contractors of the requirements relating to the maintenance of Federal records. In that respect, the Deputy Secretary will send an email to all current HHS employees to remind them of the recordkeeping requirements, including the requirement to retain email records;
- HHS will continue its program of training new Department employees in recordkeeping requirements;
- HHS is taking steps to assure that employees are completing the required annual records retention training; and
- HHS will, as soon as feasible, implement procedures to automatically archive all of the emails of senior HHS officials.

Please know that at CMS we understand and take seriously the importance of managing the disposition of all records in accordance with the applicable Federal Records management requirements and policies. We would be happy to discuss these record-keeping issues with you. Should you have any questions concerning this incident, please feel free to contact me at (202)

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