

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

March 12, 2009

Via Electronic Transmission

Charlene Frizzera
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Frizzera:

As Ranking Member of the United States Senate Committee on Finance (Committee), I have a responsibility to the more than 80 million Americans who receive health care coverage under the Medicare and Medicaid programs to oversee the proper administration of these programs and ensure that taxpayer dollars are appropriately spent.

I am writing to express my concern about a report entitled “Improvements Needed to Address Improper Payments in Home Health” prepared by the Government Accountability Office (GAO) regarding the Medicare home health benefit (Report).

As you know, spending on this benefit grew approximately 44 percent from 2002 through 2006 while the number of Medicare beneficiaries using the home health benefit increased by approximately 17 percent during the same time period. Also, the number of home health agencies increased from 6,553 to 8,463 during this five-year time period and Medicare spent almost \$13 billion in 2007 on this benefit.

In the Report, GAO not only looked at this increase in spending and utilization growth, but also to what extent the Medicare home health benefit is vulnerable to improper payments, and more specifically, to fraud and abuse. GAO found that inadequate screening, monitoring, investigation and enforcement procedures leave the home health benefit vulnerable to, among other things, improper payments.

The vulnerability of the Medicare home health benefit to improper payments, especially to fraud and abuse, has long been documented. Despite numerous findings by GAO over the years regarding the lack of Federal government controls over the Medicare home health benefit and its susceptibility to improper payments, these problems unfortunately still persist. In its Report, the GAO discussed a registered nurse who owned two large home health businesses and pled guilty to defrauding Medicare of \$40 million by billing for “services not rendered or medically unnecessary; falsifying medical records

to support fraudulent claims; and paying kickbacks.” In yet another case, the GAO discussed a home health agency that agreed to pay \$300,000 to resolve its liability for alleged kickbacks to doctors in the form of, among other things, loans and consulting fees. GAO also identified a number of Federal government initiatives to combat fraud and abuse and protect the Medicare home health benefit from improper payments.

In addition the GAO made the following recommendations for the Centers for Medicare & Medicaid Services (CMS/Agency) to implement to strengthen controls on improper payments:

1. Provide physicians whose identification number was used to certify or recertify a plan of care with a statement of services the home health agency (HHA) provided to the beneficiary based on the physician’s certification.
2. Amend current regulations to expand the types of improper billing practices that are grounds for revocation of billing privileges.
3. Assess the feasibility of verifying the criminal history of all key officials named on a HHA enrollment application.
4. Direct CMS contractors to conduct post payment medical reviews on claims submitted by HHAs with high rates of improper billing identified through prepayment review.

It is my understanding that CMS will be considering the first two GAO recommendations, but has not indicated whether or not the Agency will consider the latter two recommendations. As Ranking Member of the Committee, I request that you consider implementing all four GAO recommendations to improve controls on improper payments. I also request that your staff provide my staff with regular briefings on the progress of your consideration of the GAO recommendations as well as final disposition.

Next, I would appreciate receiving the following information for the last five fiscal years:

1. How many home health agencies had their respective Medicare billing privileges revoked.
2. How many home health agencies and/or individuals associated with home health agencies have been excluded from Medicare.

I regret to say that it seems to me that CMS is just out of touch with the home health benefit and has yet to recognize the vulnerabilities inherent in the system. In order to bring much needed integrity into this program, CMS needs to stop dropping the ball.

Fraud and abuse is an issue that undoubtedly will be considered as Congress explores reforming the health care delivery system. In the meantime, it is crucial that all possible means, statutory or regulatory, to curb improper payments be explored. It is especially appropriate given the longstanding vulnerability of the Medicare home health benefit to improper payments, especially fraud and abuse.

Please contact Christopher Armstrong or Michael Park of my staff should you have any questions or need additional information.

Sincerely,



Charles E. Grassley
Ranking Member