

~ United States Congress ~

For Immediate Release

Tuesday, March 6, 2007

Baucus, Grassley, Stark hold officials accountable for improper approval of specialty hospital in West Texas

WASHINGTON — Sens. Max Baucus and Chuck Grassley and Rep. Pete Stark are asking more questions about how a specialty hospital in West Texas was allowed to participate in the Medicare program despite an enrollment suspension on specialty hospital participation. They also want to know about this hospital, which Medicare now says doesn't meet necessary standards for hospital care, receiving accreditation from the Joint Commission, the entity the government relies on to determine hospital fitness.

In a letter sent today to the Acting Administrator of the Medicare program, these members of Congress pressed for information about the actions of a Medicare contractor in making West Texas Hospital eligible for Medicare dollars and the response of Medicare officials to the contractor's failure to comply with the ban. The Centers for Medicare and Medicaid Services uses contractors to enroll Medicare providers and to process and pay over \$300 billion in claims annually. "Given the significant responsibilities delegated to these contractors and the enormous amount of federal money they manage, it is reasonable to expect that CMS would take steps to ensure that their instructions are followed and that there is accountability among the contractors when these instructions are not followed," Baucus, Stark and Grassley wrote.

The lawmakers also wrote to the President of The Joint Commission for information about its oversight of the West Texas Hospital. An independent, not-for-profit organization, The Joint Commission is the nation's predominant standards-setting and accrediting body in health care. According to the Social Security Act, the Medicare program deems hospitals that are accredited by the Joint Commission to be compliant with Medicare Conditions of Participation.

"CMS has a serious responsibility to keep Medicare beneficiaries safe, and in this situation it is clear that they failed," said Baucus. "Congress passed a moratorium on physician-owned specialty hospitals because of serious concerns that these facilities don't meet the safety standards and expectations hospitals should. CMS imposed the ban on all new facilities because it agreed with our concerns. It is unacceptable to me that the contractor hired by CMS failed to uphold their ban, and approved the West Texas hospital, but it is even more outrageous that CMS has not sanctioned this contractor. I also wonder why West Texas Hospital failed to comply with four Medicare participation standards less than two years after it was accredited by the Joint Commission. I am going to keep very close watch to ensure that the Joint Commission, CMS and the contractors it hires are holding physician-owned specialty hospitals up to the high safety standards patients expect and deserve."

"Medicare officials are responsible for making sure their contractors execute their

instructions. When the contractors don't meet their responsibilities, the ramifications are enormous given what's at stake, both for patients and taxpayers. So it's very necessary for Medicare officials to aggressively oversee the contractors and hold them accountable when they drop the ball," Grassley said.

"The regulatory process Congress was told was in place to prevent specialty hospitals from entering Medicare didn't work," said Stark. "Perhaps it should come as no surprise that the Joint Commission – which accredited California's Redding Medical Center despite years of deadly heart surgeries – is partly responsible for this breakdown and for the death of a patient at a physician-owned facility in West Texas. I expect more from CMS and its fiscal intermediaries."

Baucus is Chairman and Grassley is Ranking Republican of the Senate Finance Committee, which oversees Medicare and Medicaid. Stark is the Chairman of the Ways and Means Health Subcommittee.

The text of those letters, along with the text of the inquiry sent last month by Stark, Grassley and Baucus regarding this hospital receiving Medicare payments while it was ineligible for Medicare payments, follows here. On January 23, a patient of the West Texas hospital died after suffering respiratory arrest after spinal surgery and being transferred by ambulance to a local community hospital when emergency services weren't available at the specialty hospital.

March 6, 2007

Leslie V. Norwalk, Esq.
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Norwalk:

The Committee on Finance has exclusive jurisdiction over the Medicare and Medicaid programs in the Senate, and the Committee on Ways and Means has jurisdiction over the Medicare program in the House of Representatives. Accordingly, we have a responsibility to the more than 40 million Americans who receive health care under the program. We take this responsibility seriously and conduct oversight into the activities of executive branch agencies, including the Centers for Medicare and Medicaid Services (CMS), to ensure that program dollars are spent on the best care available to beneficiaries.

We write today to express our concern about the apparent lack of oversight and accountability of the contractors that CMS entrusts to operate the Medicare program. On February 26, your staff provided a briefing to our staff regarding events surrounding the death that occurred at West Texas Hospital, a specialty hospital, in Abilene, Texas. During the briefing, it was revealed that a Medicare contractor known as a fiscal intermediary, TrailBlazer

Health Enterprises, LLC (Trailblazers), approved West Texas Hospital's Medicare enrollment application despite CMS instructions to temporarily suspend the processing of applications from hospitals that met the federal definition of a physician-owned specialty hospital. As a result, this physician-owned specialty hospital was issued a provider agreement despite the suspension on enrollment and received Medicare payments during a period of time it should not have. It is unclear from the briefing whether TrailBlazers was or will be sanctioned for their failure to comply with CMS' express instructions.

We find these events deeply troubling because of CMS' heavy reliance upon contractors like TrailBlazers not only for services such as enrolling providers, but also for processing and paying over \$300 billion in claims annually. Given the significant responsibilities delegated to these contractors and the enormous amount of federal money they manage, it is reasonable to expect that CMS would take steps to ensure that their instructions are followed and that there is accountability among the contractors when these instructions are not followed. Accordingly, we request detailed written responses to the following:

- (1) Describe in detail all actions CMS has taken or will take in response to TrailBlazer's processing of West Texas Hospital's Medicare enrollment application.
- (2) In addition to serving as a fiscal intermediary for the state of Texas, identify all other CMS contracts TrailBlazers currently holds and provide a copy of those contracts. In addition, provide responses to the following questions:
 - a. Describe in detail any other incidents since 2003 in which TrailBlazers failed to follow CMS instructions, how the noncompliance was discovered and what actions CMS took in response to these incidents.
 - b. Describe in detail any actions taken by CMS to recoup monies paid to TrailBlazers for failed and/or poor performance within the last four years. In complying with this request state the reason for the recoupment and the amount recovered.
- (3) Describe in detail all CMS policies and procedures for ensuring contractor compliance with CMS instructions for the last four years and provide copies of all documentation of these policies and procedures.
- (4) Describe in detail all CMS policies and procedures for addressing contractor noncompliance with CMS instructions/contracts for the last four years and provide copies of all documentation of these policies and procedures.
- (5) Describe in detail all CMS policies and procedures for evaluating contractor performance and provide copies of all documentation of these policies and procedures.
- (6) Describe in detail all CMS policies and procedures for addressing poor contractor performance and provide copies of all documentation of these policies and procedures.
- (7) Describe in detail all CMS policies and procedures in place for recovering any payments

made by CMS that result in incomplete and/or substandard performance by CMS contractors and provide copies of all documentation of these policies and procedures.

We thank you in advance for your cooperation and request that your staff provide a point of contact for this matter no later than March 20, 2007. In complying with this request for information, please respond to each enumerated question by repeating the questions, followed by CMS's response.

Sincerely,

Max Baucus
Chairman
Senate Committee on Finance

Charles E. Grassley
Ranking Member
Senate Committee on Finance

Pete Stark
Chairman, Subcommittee on Health,
House Committee on Ways and Means

March 6, 2007

Dennis S. O'Leary, M.D.
President
The Joint Commission
One Renaissance Blvd.
Oakbrook Terrace, IL 60181

Dear Dr. O'Leary:

The Committee on Finance has exclusive jurisdiction over the Medicare program in the Senate, and the Committee on Ways and Means has jurisdiction over the Medicare program in the House of Representatives. Accordingly, we have a responsibility to the more than 40 million Americans who receive health care under the program. We take this responsibility seriously and conduct oversight into the activities of executive branch agencies, including the Centers for Medicare and Medicaid Services (CMS), to ensure that program dollars are spent on the best care available to beneficiaries.

We have been outspoken critics of the conflicts created by physician-owned specialty hospitals. Together, we have held hearings, conducted oversight, commissioned studies, and even passed legislation regarding these facilities. One of the overriding concerns that spurred our involvement in this issue is the risk of harm these facilities pose to patients.

A recent example of this risk is the death of a patient at West Texas Hospital in Abilene, Texas. It was reported that on January 23, 2007, staff at this physician-owned specialty hospital placed an emergency call to 911 after a patient went into respiratory arrest several hours following spinal surgery. Following the emergency call, the patient was transferred to a community hospital, Abilene Regional Medical Center, where he later passed away.

It is alarming that this physician-owned facility holds itself out as a "hospital" yet called 911 to transfer a surgical patient to another hospital in an emergency situation. This practice appears to be the hospital's standing policy in light of CMS' finding that there were 15 instances from May 2005 to February 2007 in which West Texas Hospital called 911 to transfer patients to other hospitals in emergency situations.

West Texas Hospital has since been notified of its termination from the Medicare program "because of deficiencies that represent an immediate and serious threat to patient health and safety." The facility was out of compliance with Medicare Conditions of Participation including "Governing Body," "Patient Rights," "Nursing Services," and "Emergency Services."

West Texas Hospital received accreditation from the Joint Commission in May 2005. According to the Social Security Act, the Medicare program deems hospitals that are accredited by the Joint Commission to be compliant with Medicare Conditions of Participation and thus eligible to treat Medicare patients and be reimbursed by Medicare for doing so. CMS therefore relies on the Joint Commission's judgment that a hospital it accredits is in compliance with Medicare's Conditions of Participation, which aim to ensure that Medicare beneficiaries receive hospital care without risks to their health and safety.

We find it disturbing that a Joint Commission accredited hospital has been found to be out of compliance with Medicare Conditions of Participation less than two years after receiving your accreditation. As part of our investigation, we accordingly request detailed written responses to the following:

- (1) Describe in detail the events surrounding the application for and granting of Joint Commission accreditation for West Texas Hospital.
- (2) Describe in detail all activities the Joint Commission conducted with regard to West Texas Hospital after accrediting the facility. In complying with this request, describe the number and nature of reviews the Joint Commission made of West Texas Hospital during its tenure and the results of each review.
- (3) Describe in detail how the Joint Commission learned of the January 23, 2007 patient death and any actions the Joint Commission took in response to this notice.
- (4) What is the current status of West Texas Hospital's Joint Commission accreditation?
- (5) Provide copies of all the Joint Commission issued reviews or reports of West Texas Hospital for the last three years.

We thank you in advance for your cooperation and request that your staff provide a point of contact for this matter no later than March 20, 2007. In complying with this request for information, please respond to each enumerated question by repeating the questions, followed by the Joint Commission's response.

Sincerely,

Max Baucus
Chairman
Senate Committee on Finance

Charles E. Grassley
Ranking Member
Senate Committee on Finance

Pete Stark
Chairman, Subcommittee on Health,
House Committee on Ways and Means

Cc: Dr. David L. Lakey
Commissioner
Texas Department of State Health Services

West Texas Hospital
5602 Health Center Drive
Abilene, Texas 79606

For Immediate Release
Thursday, February 8, 2007

DEATH IN WEST TEXAS SPECIALTY HOSPITAL
RAISES QUESTIONS ABOUT MEDICARE PAYMENTS

WASHINGTON - U.S. Sens. Max Baucus (D-MT) and Chuck Grassley (R-IA) and U.S. Rep. Pete Stark (D-CA) today reiterated their concerns about physician-owned specialty hospitals.

In a letter to Leslie Norwalk, Acting Administrator for the Centers for Medicare and Medicaid Services (CMS), they asked officials to account for any Medicare dollars that may have gone to a physician-owned specialty hospital in West Texas during a congressionally imposed 18-month moratorium on Medicare payments to these hospitals. Baucus is Chairman and Grassley is Ranking Republican of the Senate Finance Committee, which oversees Medicare and Medicaid. Stark is the Chairman of the Ways and Means Health Subcommittee.

The legislators are making their inquiry following the January 23 death of a patient at the West Texas hospital. The patient suffered respiratory arrest after an elective spinal surgery and, after a 911 call by the specialty hospital, had to be transferred by ambulance to a local community hospital for emergency services.

The government "clearly must take action and ensure that physician-owned facilities that hold themselves out to the public as 'hospitals' have the requisite staff and abilities to ensure that basic lifesaving measures can be employed," wrote Grassley, Baucus and Stark in a letter sent today to CMS.

Working together, Baucus, Grassley and Stark have tried to stem the growth of physician-owned specialty hospitals. The legislators have criticized these facilities because, motivated by profit, they focus on only the most profitable services, without providing the full range of services hospitals are expected to provide. In 2003, Congress approved a moratorium on Medicare payments to new physician-owned specialty hospitals as part of the Medicare Prescription Drug, Improvement, and Modernization Act. When this statutory moratorium expired in June 2005, Baucus and Grassley pressed CMS to suspend its enrollment of new facilities. Subsequently, in the Deficit Reduction Act of 2005, Congress prohibited CMS from approving new specialty hospitals until August 2006, when CMS delivered a plan for addressing this issue.

In May 2006, the Senate Finance Committee held a hearing about the dangers posed by specialty hospitals and heard testimony about the death of a patient at a physician-owned surgical hospital in Oregon that had also opened during the statutory moratorium. There, too, the specialty hospital requested 911 emergency services following a surgery. A March 2005 hearing highlighted a report from the Medicare Payment Advisory Commission and prompted Grassley and Baucus to introduce the Hospital Fair Competition Act of 2005. This bill would have prohibited physicians from referring Medicare and Medicaid patients to new specialty hospitals in which they have an ownership interest.

With their request for detailed information from CMS about any Medicare dollars that may have illegally gone to the West Texas hospital, Baucus, Grassley and Stark said that they are trying to set the payment situation right and to further assess CMS' actions with regard to specialty hospitals.

"I am deeply saddened and also completely outraged to hear of another death of a patient at a specialty hospital," said Baucus. "It really seems to me that if you call a place a hospital, it should have the facilities to handle an emergency, but all this facility could do was call 911. This is a strong reminder that doctors' financial stakes in a hospital can cloud judgment and blur priorities, and we can't let that happen. Patient safety is my number one priority and I am going to continue to work to make sure that when patients enter a hospital, they can be certain they will receive the care they need."

"The fundamental problem with physician-owned specialty hospitals is that decision-making is more likely to be driven by financial interest rather than what is best for the

patient," Grassley said. "You see that in the cherry picking of patients and policies where emergencies are to be dealt with by calling 911 to get to the local community hospital. The Centers for Medicare and Medicaid Services have identified some steps they can take to require the disclosure of physician investment, and that should give the agency the basis to take action against doctors who violate physician referral laws. But the law needs to go further. Patients should be informed when their physician's ownership interest in a specialty hospital may influence what type of treatment is provided and where. And going forward, doctors shouldn't be allowed to refer patients to hospitals where those same doctors have an ownership interest."

"The tragic death of another 'specialty hospital' patient highlights the manner in which physician-owned facilities seem to be eroding the quality of health care in America," said Stark. "These facilities present themselves as 'hospitals,' but perform only the most profitable of operations. In so doing, they suck money out of already-strapped community hospitals. When one of their customers demands emergency care, 'specialty hospitals' dump the unprofitable patient back onto the very community hospitals they're helping to bankrupt. If 'specialty hospitals' are unable to provide adequate care to Medicare beneficiaries, we should shut them down."

The text of the letter follows here:

February 8, 2007

Leslie V. Norwalk, Esq.
Acting Administrator
Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Administrator Norwalk:

The Committee on Finance has exclusive jurisdiction over the Medicare program in the Senate, and the Committee on Ways and Means has jurisdiction over the Medicare program in the House of Representatives. Accordingly, we have a responsibility to the more than 40 million Americans who receive health care under the program. We take this responsibility seriously and conduct oversight into the activities of executive branch agencies, including the Centers for Medicare and Medicaid Services (CMS), to ensure that program dollars are spent on the best care available to beneficiaries.

The Medicare and Medicaid programs spend in excess of \$120 billion for inpatient healthcare services at thousands of American hospitals annually-including payments made to physician-owned specialty hospitals. For years, we have been outspoken critics of the conflicts created by physician-owned specialty hospitals. Together, we have held hearings, conducted oversight, commissioned studies, and even passed legislation regarding these facilities. We write today to renew our concerns and to inquire about yet another disturbing patient death at a physician-owned specialty hospital.

As you are aware, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) imposed an 18-month moratorium on Medicare payments to new physician-owned specialty hospitals. The statutory moratorium expired in June 2005. Through administrative action, CMS began a suspension on enrollment of new facilities from June 2005 through August 2006, when CMS released the final Strategic and Implementing Plan for Specialty Hospitals that was mandated by the Deficit Reduction Act of 2005 (DRA). The difference between the statutory moratorium and the administrative suspension on enrollment took center stage at a Finance Committee hearing held May 17, 2006.

The May 2006 Finance Committee hearing focused on the death of a patient at a physician-owned surgical hospital in Oregon that had opened for business during the MMA moratorium. The tragic death at the Oregon facility was even more egregious because the staff at the physician-owned hospital called 911 for an ambulance to transport the patient from the physician-owned hospital to a community hospital with an emergency room. We remain dismayed that a physician-owned hospital's standing policy in treating a patient in an emergency situation is to call 911.

We are even more troubled today, after learning of this same scenario playing out again at another physician-owned specialty hospital-this time in Texas. It has been reported that on January 23, 2007, staff at West Texas Hospital-a physician-owned specialty hospital-placed an emergency call to 911 after a patient went into respiratory arrest several hours following an elective spinal surgery. Following the emergency call, the patient was transferred to a community hospital, Abilene Regional Medical Center, where he later passed away.

We are deeply disturbed by these events and want to find out more about what transpired. It is utterly unacceptable to us that we now have witnessed two separate incidents where patients were treated at "hospitals" that maintained a policy of calling 911 for emergency resuscitation of a patient following major elective surgery. CMS clearly must take action and ensure that physician-owned facilities that hold themselves out to the public as "hospitals" have the requisite staff and abilities to ensure that basic lifesaving measures can be employed.

From a review of previous records requests made by the Finance Committee to CMS regarding physician-owned specialty hospitals, it appears that West Texas Hospital was granted its Medicare provider number on May 20, 2005, making it another physician-owned facility granted a Medicare provider number during the MMA moratorium. Further, these records show that West Texas Hospital has been reimbursed \$4,193,702 by Medicare since it was granted its Medicare provider number in 2005. While we recognize it is CMS's position that the granting of a provider number during the moratorium was acceptable, CMS has stated that any Medicare payments made to hospitals during the moratorium are subject to review and possible recovery by CMS. We are concerned with the fact that West Texas Hospital appears to have opened during the moratorium and that it appears to have received Medicare funding for procedures performed during this timeframe.. Accordingly, we request detailed written responses to the following:

- (1) Why did West Texas Hospital receive a Medicare provider number from CMS during the

MMA mandated moratorium on physician-owned specialty hospitals?

a. Did West Texas Hospital file a request for an advisory opinion to determine if it qualified for the "under development" exception to the MMA moratorium? If so, please provide any documentation.

b. Please describe in detail the events surrounding the application for and granting of a Medicare provider number for West Texas Hospital.

(2) Provide a list of all Medicare and Medicaid reimbursements paid to West Texas Hospital or any provider affiliated with West Texas Hospital from 2005 to the present.

a. Were any of the Medicare payments made during the statutorily mandated moratorium on payments?

b. If so, has CMS initiated any action to collect the payments made during this period? If not, why?

(3) Provide a list of all physician owners of West Texas Hospital?

(4) Has CMS conducted any surveys of West Texas Hospital? If so, provide a copy of all such surveys.

(5) Did West Texas Hospital provide responses to CMS's survey on physician-owned specialty hospitals that was sent in an effort to collect information for the Strategic and Implementing Plan for Specialty Hospitals? If so, please provide a copy of West Texas Hospital's responses.

(6) Does West Texas Hospital provide notification to patients prior to surgery that in the event of an emergency, they may be transferred to another hospital and that the facility may not have a physician on site during the post-operative recovery period?

(7) How many times in the past has West Texas Hospital called 911 to transfer a patient to another hospital in an emergency situation?

We thank you in advance for your cooperation and request that your staff provide a point of contact for this matter no later than February 12, 2007. Additionally, we request that CMS provide a briefing on this matter as soon as all written responses are available, not later than February 21, 2007. In complying with this request for information, please respond to each enumerated question by repeating the questions, followed by CMS's response.

Should you have any questions regarding this matter please contact David Schwartz or Billy Wynne of Senator Baucus' staff or Michael Park or Nick Podsiadly of Senator Grassley's staff at (202) 224-4515 or Debbie Curtis of Representative Stark's staff at (202) 225-5065.

Sincerely,

Max Baucus
Chairman
Senate Committee on Finance

Charles E. Grassley
Ranking Member
Senate Committee on Finance

Pete Stark
Chairman, Subcommittee on Health,
House Committee on Ways and Means

Cc: Dr. David L. Lakey
Commissioner
Texas Department of State Health Services

West Texas Hospital
5602 Health Center Drive
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