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CARPER, BAUCUS, MCCASKILL URGE ADMINISTRATION TO INVESTIGATE POTENTIAL CONFLICTS OF INTEREST AMONG MEDICARE CONTRACTORS

Senators Raise Concerns that Negligent Oversight of Medicare Contractors Could Lead to Overpayments

Washington, DC – Today, Sens. Tom Carper (D-Del.), Max Baucus (D-Mont.) and Claire McCaskill (D-Mo.), Chairs of the U.S. Senate Committee on Homeland Security and Governmental Affairs Subcommittee on Federal Financial Management, Committee on Finance and Committee on Homeland Security and Governmental Affairs Subcommittee on Contracting Oversight, wrote to the U.S. Department of Health and Human Services Inspector General to express their concern with potential conflicts of interest among the private-sector contractors that perform most of the payment, administration and oversight functions of Medicare. The Senators noted that a recent congressional survey of contractors within the Medicare program found several examples of potential conflicts that raise concerns about the integrity of the Medicare program, and requested that the Inspector General conduct a review of relevant contracts to ensure compliance with federal regulations.

"Those of us in government committed to reducing the misuse of scarce taxpayer dollars have to pay close attention to the operations of government programs, particularly programs like Medicare that the Government Accountability Office has long noted is at high risk for waste and fraud," said Sen. Carper. **"That's why I was troubled to learn of several examples of potential conflicts of interest among private-sector contractors that perform many of the payment, administration and oversight functions of Medicare. The responsible course of action is to further investigate these relationships to ensure that they are in compliance with the federal regulations we have put in place to reduce fraud. I hope that the Department of Health and Human Services Inspector General will do an extensive review of these Medicare contractors so that we can be confident that taxpayer dollars are being spent responsibly."**

"For every dollar spent on oversight and enforcement to fight fraud, waste and abuse in Medicare, American taxpayers can see up to \$17 in return, and last year enforcement efforts recovered a record four billion taxpayer dollars," said Sen. Baucus. **"The new health care law gave law enforcement officials unprecedented new tools to expand this work fighting fraud, waste and abuse in Medicare. Contractors on the front lines in this fight must not have conflicts of interest that prevent them from doing their jobs effectively. We need a thorough examination of relationships between the contractors paying Medicare claims and their related corporate entities in charge of overseeing those same payments to make sure taxpayer dollars aren't being wasted."**

"In these tough economic times, the first things we should be targeting in the federal budget are instances of waste or fraud," said Sen. McCaskill. "It was clear from the hearing last year in my Subcommittee on Contracting Oversight that the Medicare and Medicaid programs are at a high level of risk for problems with contract management that can lead to improper payments. It is important that the IG continues the work we did last April to help us better identify how and where we can save the taxpayers' money."

The Finance Committee, which is chaired by Sen. Baucus and includes Sen. Carper, will hold a hearing tomorrow, Wednesday, March 2, 2011, to examine the efforts in the new health care law to fight and prevent health care fraud. This hearing will include discussion of new screening and qualification tools in the Affordable Care Act that help create a proactive system to weed out criminals and prevent fraudulent claims from occurring in the first place. The new policies will reduce the loss of money from the Medicare and Medicaid programs by stopping repeat offenders, screening health care providers for histories of fraud or other crimes, accelerating fraud review processes, increasing funding to the Health Care Fraud and Abuse Control program and toughening penalties for those who commit fraud. Similarly, Sen. Carper's Subcommittee on Federal Financial Management will hold an additional hearing on Wednesday, March 9, 2011, to examine success stories in reducing waste, fraud and abuse in Medicare and Medicaid using the enhanced tools provided by the Affordable Care Act, as well as new policies and procedures now under consideration.

A copy of the letter to the Department of Health and Human Services follows here:

March 1, 2011

The Honorable Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
Room 5541 Cohen Building
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Inspector General Levinson:

As Chairs of the United States Senate Committee on Finance, and the Committee on Homeland Security and Governmental Affairs Subcommittees on Federal Financial Management and Contracting Oversight, we are committed to reducing fraud, waste and abuse within federal government programs. In an effort to fulfill this commitment, we are writing today to express our concern with potential conflicts of interest among the private-sector contractors that perform most of the payment, administration and oversight functions of Medicare.

As you know, last year the federal government spent over \$500 billion to provide health coverage to 47 million Americans through Medicare. However, an estimated \$47.9 billion, approximately 10% program-wide, was made in improper payments in 2010.^[1] In addition, the Government Accountability Office (GAO), which is responsible for evaluating the performance of the federal government and its programs, has had the Medicare program on its list of programs at high risk for waste and fraud since 1990.^[2]

A recent survey of contractors conducted by our staffs to examine problems within the Medicare program found several examples of potential conflicts that raise concerns over the integrity of the Medicare program. The survey identified several relationships between key Medicare contractors that raise questions about possible conflicts of interest, or at the very least, might present the appearance of a conflict of interest, between the companies responsible for approving and processing reimbursement claims, and those hired by the federal government to ensure claims are paid correctly. In some instances, an oversight contractor is a subsidiary of a company with a Medicare claims processing contract. In other instances, the claims contractor is a subsidiary of a parent company that also has a subsidiary with an oversight contract.

Since 1999, the Centers for Medicare & Medicaid Services has had to follow the guidelines under the Federal Acquisition Rules (or "FAR").^[3] The FAR requires contractors to be disqualified when they have an avoidable or unmitigated organizational conflict of interest (OCI).^[4] In defining an OCI, the GAO and federal case law have recognized three types of conflicts of interest: impaired objectivity, unfair access to non-public information, and biased ground rules.^[5] There would clearly be questions of impaired objectivity, or the appearance of impaired objectivity, when related companies are charged with both the administration of Medicare-related programs and oversight of that administration.

In light of the potential conflicts described in the staff memo, we urge you to conduct a review of the contractors and their subsidiary relationships to identify possible conflicts of interest. We recognize that a conflict of interest does not necessarily mean fraudulent or improper activity is occurring. However, this survey by our respective committee staffs strongly underscores the need for a more extensive review of relevant contracts to ensure compliance with federal regulations, and to promote a more efficient and transparent federal government.

Thank you for your attention to this important matter. Please send all correspondence to our staff.

Sincerely,

Chairman Max Baucus
Committee on Finance

Chairman Thomas R. Carper
Subcommittee on Federal Financial Management, Government Information, Federal Services,
and International Security

Chair Claire McCaskill
Subcommittee on Contracting Oversight

[1]

Annual U.S. federal government Improper Payment figures for fiscal year 2010. Figures include improper payments for Medicare Parts A, B & C, but do not include Medicare Part D prescription drug program which have not yet been estimated. see: <http://www.paymentaccuracy.gov/high-priority-programs>

[2]

Government Accountability Office, High Risks and Challenges, Medicare Program.
see: http://www.gao.gov/highrisk/risks/insurance/medicare_program.php

[3]

See the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), section 202(a).

[4]

OCI's may arise when "...factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required." 48 C.F.R w 9.502 (c) https://www.acquisition.gov/far/html/Subpart%209_5.html

[5]

Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress. January 2007, page 24. https://www.acquisition.gov/comp/aap/24102_GSA.pdf

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