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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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October 25, 2011

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

As the Ranking Members of the Senate Finance and Judiciary Committees, we are writing to request that as Secretary of the Department of Health and Human Services (HHS), you exercise the discretionary authority granted to you through Section 6401(a)(6) of the Patient Protection and Affordable Care Act (PPACA) regarding the imposition of temporary moratorium on the enrollment of new providers and suppliers. Specifically, we urge you to determine why the Centers for Medicare & Medicaid Services (CMS) is failing to use this tool provided in PPACA to prevent waste, fraud and abuse.

On February 2, 2011, CMS published a final rule with comment entitled, "Medicare, Medicaid, and Children's Health Insurance Programs (CHIP); Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers" in the Federal Register. In part, this regulation allows CMS to impose a temporary enrollment moratorium on new Medicare providers and suppliers when CMS determines that there is a significant potential for fraud, waste or abuse with respect to a particular provider or supplier type, geographic area or both.

Today, more than year after the publication of a proposed rule and more than 8 months after publishing the aforementioned final rule with comment, CMS has still not imposed a single temporary moratorium. In addition, despite a specific recommendation by the HHS Office of the Inspector General (HHS-OIG) to impose a temporary moratorium on independent diagnostic testing facilities in Los Angeles, California, CMS refused.

Additionally, the Department of Justice (DOJ) and the HHS-OIG are operating strike force initiatives in seven States (California, Florida, Illinois, Louisiana, Michigan, New York, and Texas), including Miami, Florida. All of these areas, particularly Miami, have historically been vulnerable to Medicare fraud and are high risk areas for programmatic vulnerability. Therefore, it is deeply disconcerting that CMS has failed to act in the best interest of the American taxpayers and Medicare beneficiaries and prevent fraud before it occurs by exercising its moratoria authority in some of these areas. It is not reasonable to suggest that CMS needs more time to study whether there is need to impose a temporary moratoria in certain geographical

areas for certain provider and supplier types when ample evidence exists from the strike force activities to justify moratoria in these high fraud areas. To better understand CMS's failure to act, please:

1. Explain why CMS decided not to impose a temporary moratorium on independent diagnostic testing facilities (IDTFs) in Los Angeles, California despite the OIG recent recommendation and previous work by the OIG that indicated \$71.5 million in improper payments to IDTFs.
2. Explain what steps CMS is taking to address the concerns raised by the OIG with respect to IDTFs in Los Angeles, California. Please include a detailed timeline.
3. Explain why CMS has not imposed a temporary moratorium of "high" or "moderate" categorical risk providers/suppliers in HHS-OIG strike force cities or other high-risk areas.
4. Explain why CMS decided not to impose a temporary moratorium for durable medical equipment suppliers in south Florida when Daniel R. Levinson, the Inspector General for HHS-OIG, stated in his March 9, 2011 Congressional Testimony that there is "rampant fraud" among durable medical equipment suppliers in south Florida.
5. Describe the program changes that CMS is considering to strengthen the provider enrollment process for "moderate" and "high" screening risk providers and suppliers, such as IDTFs, home health agencies, and suppliers of durable medical equipment, orthotics, prosthetics, and supplies.
6. Provide all materials used to develop and finalize the temporary moratorium provisions found in CMS-6028-P and CMS-6028-IFC.
7. Consistent with 42 CFR 424.570(a)(2)(i)(A), provide a list of providers and suppliers with a highly disproportionate number of providers and suppliers in a category relative to the number of beneficiaries for each State.
8. Consistent with 42 CFR 424.570(a)(2)(i)(B), provide a list of providers and suppliers and location (city and state) where a rapid increase in the number of enrollment applications has occurred within the past twelve months.
9. Consistent with 42 CFR 424.570(a)(2)(ii), provide a list of State Medicaid programs who have imposed a moratorium on a group of Medicaid providers or suppliers that are also eligible to enroll in Medicare.
10. Consistent with 42 CFR 424.570(a)(2)(iii), provide a list of State-imposed moratoria on enrollment in particular geographic areas or on a particular providers, supplier types, or both.

We understand that we are requesting a substantial amount of information, but appreciate your understanding Congress' role in overseeing that taxpayer dollars are carefully spent. Thank you for your timely attention to this matter and we request a response by December 2, 2011. Should

you have questions please do not hesitate to contact Kim Brandt with the Senate Finance Committee at (202) 224-5367 or Erika Smith with the Senate Judiciary Committee at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Orrin Hatch". The signature is fluid and cursive, with a large initial "O".

Orrin G. Hatch
U.S. Senator

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is fluid and cursive, with a large initial "C".

Charles E. Grassley
U.S. Senator

cc:

Administrator Donald Berwick, M.D., Centers for Medicare & Medicaid Services

Principal Deputy Administrator and Chief Operating Officer Marilyn Tavenner, Centers for Medicare & Medicaid Services