

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

July 14, 2010

Senator Max Baucus  
Chairman, Senate Finance Committee  
219 Dirksen Senate Building  
Washington, DC

Dear Chairman Baucus:

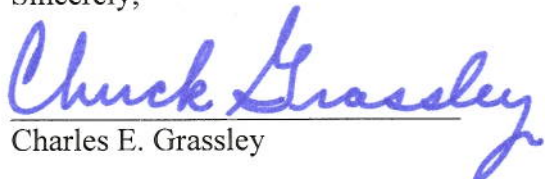
We write regarding the nomination of Dr. Donald Berwick to serve as the Administrator of the Centers for Medicare & Medicaid Service (CMS) in the Department of Health and Human Services (HHS). This appointment is subject to Senate confirmation under Article II, Section 2, clause 2 of the Constitution. Dr. Berwick's nomination has been referred to our Committee pursuant to its jurisdiction over the health programs under the Social Security Act for which the CMS administrator has direct responsibility and jurisdiction over the nomination itself.

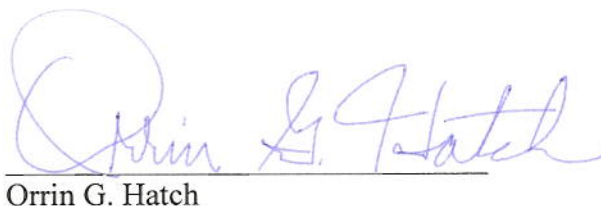
The President nominated Dr. Berwick on April 19, 2010, and his nomination has been undergoing the committee's usual and routine bipartisan nomination investigation and review process. That process had in fact proceeded to the point where a hearing had been recommended for the week of June 21 and, to our knowledge, no member of the committee had objected to the hearing. Unfortunately, the President circumvented the nomination process last week by using his authority to recess appoint Dr. Berwick to the position. We very much wanted to proceed with that hearing and are concerned about any implications that we were in any way trying to prevent that hearing from occurring.

To that end, we would request that the Committee call a hearing as soon as possible so that the President's recess appointment does not result in circumventing the open public review that should take place for a nomination of such importance. The need for Dr. Berwick to be considered in a transparent and deliberative manner is all the more important because the agency will be responsible for numerous and significant changes to federal health programs including the largest Medicaid coverage expansion since the program's creation. Furthermore, this recess appointment will have imposed an injustice on Dr. Berwick himself if it results in preventing him from being able to answer the legitimate questions raised about his nomination. If he is not provided opportunity to present his qualifications for the position in the usual process, it casts a shadow over his legitimacy and authority to serve as Administrator during a critical time for CMS.

We appreciate your consideration of this matter and appreciate your public statements concerning this recess appointment. The most obvious solution to this situation is to call on Dr. Berwick to testify before the Committee as soon as possible. We hope that you will give our request to do so positive consideration.

Sincerely,

  
Charles E. Grassley

  
Orrin G. Hatch

Olympia Snowe

Olympia J. Snowe

Jon Kyl

Jon Kyl

Jim Bunning

Jim Bunning

Mike Crapo

Mike Crapo

Pat Roberts

Pat Roberts

John Ensign

John Ensign

Michael B. Enzi

Michael B. Enzi

John Cornyn

John Cornyn