



For Immediate Release
Friday, Oct. 30, 2009

Grassley Intends to Carefully Monitor New HHS Commitment
to Focus More Intently on Health Care Fraud

WASHINGTON – Sen. Chuck Grassley today said he welcomed a commitment from the secretary of Health and Human Services to respond more quickly to fraud alerts involving federal health care programs, a commitment that came after Grassley wrote a detailed letter outlining the agency’s failure to respond to fraud reports.

“The secretary committed to respond to these fraud alerts within 60 days,” Grassley said. “It shouldn’t have taken congressional scrutiny to get HHS’ attention to handle these alerts responsibly. I don’t doubt Secretary Sebelius’ intent to fix the problem, but given HHS’ track record, I plan to carefully monitor the agency’s responsiveness under this new timeline.”

A month ago, Grassley wrote to Health and Human Services Secretary Kathleen Sebelius, expressing concern that the agency, through its division, the Centers for Medicare and Medicaid Services, either ignores or responds slowly to fraud alerts called Management Implication Reports, issued by the agency’s inspector general. The inadequate response is of concern because of the prevalence of fraud in Medicare and Medicaid. A “60 Minutes” story last Sunday reported that Medicare fraud is an estimated \$60 billion a year, and that federal health fraud is so pervasive in south Florida that it has exceeded the illegal drug trade as a high-dollar crime there.

In his letter to the secretary, Grassley said when the government “is hemorrhaging money in its federal health programs, and when those programs are facing staggering budgetary shortfalls in the coming years, it shocks the conscience to hear that CMS is ignoring these alerts of fraud.” He added that in addition to the unrecoverable losses to the taxpayer, “this inactivity by CMS only emboldens those that would steal from the American people through defrauding the federal health programs.”

Responding to Grassley’s letter, Sebelius acknowledged that some reports are outstanding and committed to meeting Grassley’s requested timeline of 60 days to respond to all future Management Implication Reports. She also said “CMS is instituting a new process for tracking and responding” to the reports. Some of the pending reports are three years old.

The text of Grassley’s letter follows here. The text of the Sebelius response is posted with this news release at <http://grassley.senate.gov> and <http://finance.senate.gov>.

Grassley is ranking member of the Committee on Finance, which is responsible for Medicare legislation and oversight. Amendments he authored in 1986 to the federal False Claims Act have resulted in the federal Treasury recovering \$21 billion that would otherwise have been lost to fraud. The vast majority of that recovery has come from settlements of cases involving charges of Medicare fraud.

September 29, 2009

Via Electronic Transmission

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

Dear Secretary Sebelius:

As a senior member of the United States Senate and Ranking Member of the Senate Committee on Finance (Committee), it is my duty to conduct oversight into the actions of the executive branch, including the activities of the Department of Health and Human Services (HHS or Department). This duty includes the responsibility to monitor the Centers for Medicare and Medicaid Services (CMS or Agency) and ensure that proper programmatic oversight is in place to protect taxpayer dollars from waste, fraud, and abuse.

I write today concerning Management Implication Reports (MIRs) sent by the HHS Office of Inspector General (OIG) to HHS headquarters. A MIR is a document OIG produces identifying systematic weaknesses or vulnerabilities in federal programs to fraud, waste, or abuse, and recommending ways to correct or minimize them. Often detected in the course of an investigation, these identified weaknesses can exceed the parameters of the investigation and represent fraud, waste, or abuse across the federal healthcare system. If the Department quickly responds to them, there is the opportunity to save significant taxpayer dollars.

OIG has identified thirty MIRs for which the Department has failed to respond in recent years, including 21 at CMS. Many of these MIRs date back to 2006, and more identify serious weaknesses to fraud, waste, or abuse. For instance, on March 14, 2006, OIG Director of Investigations wrote to Kim Brandt, CMS's then-Acting Director of the Program Integrity Group, alerting her to patterns of fraudulent billing for psychiatric therapy at nursing homes. This MIR outlined four recommendations that would prevent such fraudulent billing in the future. CMS ignored these recommendations and failed to respond to the fraud alert. OIG requested a response on July 23, 2007, and again CMS ignored the alert. OIG requested a response again on April 12, 2008. CMS ignored that, too. This year, OIG again requested a response on May 8, 2009. You can guess CMS's response.

I wish this were a lone example, but there are 20 more for CMS and an additional 9 elsewhere in the Department. Here are a handful of other exasperating examples:

- 3/9/06 MIR to the CMS's Program Integrity Group alerting them to Medicare fraud and billing by non-licensed individuals: CMS ignores the report.

- 7/23/07 follow-up memo requesting action: CMS ignores.
- 4/12/08 follow-up memo requesting action: CMS ignores.
- 5/8/09 follow-up memo requesting action: CMS ignores.
- 5/17/06 MIR to CMS's Program Integrity Group alerting them to illegal kickbacks among Ophthalmologists and Optometrists: CMS ignores the report.
 - 7/23/07 follow-up memo requesting action: CMS ignores.
 - 4/12/08 follow-up memo requesting action: CMS ignores.
 - 5/8/09 follow-up memo requesting action: CMS ignores.
- 8/22/08 MIR to CMS's Program Integrity Group alerting them to fraudulent billing for power wheelchairs in federal disaster areas: CMS ignores the report.
 - 5/8/09 follow-up memo requesting action: CMS ignores.

Again, these are only a handful of the many instances that were brought to my attention. These are all cases where OIG has identified fraud, waste, and abuse, alerted CMS of continuing threats to taxpayer dollars, and been utterly ignored. I have attached these alerts and memos for your review. Of 35 total MIRs sent to CMS from 2006 to 2009, CMS responded to 9, was unresponsive to 3, provided no response to 21, and has 2 with responses not yet due.

At a time when our government is hemorrhaging money in its federal health programs, and when those programs are facing staggering budgetary shortfalls in the coming years, it shocks the conscience to hear that CMS is ignoring these alerts of fraud, waste, and abuse. This inactivity shows contempt for the American taxpayer and all of those committed to fighting healthcare fraud. In addition to unrecoverable losses to the taxpayer, this inactivity by CMS only emboldens those that would steal from the American people through defrauding the federal health programs.

I know that this inactivity did not begin with your tenure at the Department. However, the American people look to you to end it and make CMS more responsive to MIRs and healthcare fraud generally. In addition to ending this irresponsibility by CMS, I make the following requests:

- 1) Please explain what led to the problems described above, and what will change to prevent them from happening in the future.
- 2) Please provide a timeline in which CMS will commit to adequately responding to all outstanding MIRs.
- 3) Please provide a commitment that CMS will adequately respond to all future MIRs within a 60-day timeline. If this timeline is not feasible, please explain why and to what timeline CMS will commit.

Thank you for your attention to this important matter. Please respond to the questions set forth in this letter no later than October 13, 2009. We look forward to your cooperation in this matter and if you have any questions or concerns, please feel free to contact Christopher Armstrong of my Committee Staff at (202) 224-4515. All formal correspondence should be sent

electronically in PDF format to Brian_Downey@finance-rep.senate.gov or via facsimile to (202) 228-2131.

Sincerely,

Charles E. Grassley
Ranking Member