

## FINANCE COMMITTEE QUESTIONS FOR THE RECORD

**United States Senate Committee on Finance**  
**Subcommittee on Fiscal Responsibility and Economic Growth**  
**Hearing to “Consider the Nominations of Robert Michael Gordon, of the District of Columbia, to be an Assistant Secretary of Health and Human Services, January Contreras, of Arizona, to be Assistant Secretary for Family Support, Department of Health and Human Services, and Rebecca E. Jones Gaston, of Oregon, to be Commissioner on Children, Youth, and Families, Department of Health and Human Services”**  
**February 09, 2022**

### **Questions for the Record for Mr. Robert Gordon**

#### **Senator Cantwell**

##### **Question 1**

The broad support for the premium tax credits provided in the American Rescue Plan demonstrates the need for more affordable options for those who are seeking health insurance. These subsidies directly lowered the out-of-pocket expenses for families across the country.

The House-passed Build Back Better Act contains provisions that would extend these premium tax credits to 2025, ensuring that no one has to spend more than 8.5 percent of household income on insurance premiums. Yet, there is a need to look at additional options to keep costs low for patients, states, and the Federal government. The Basic Health Plan is an option that has shown to produce these savings.

Thanks to language I fought for in the Affordable Care Act, we have two states that are using the Basic Health model to make coverage more affordable for people earning under 200% of the Federal poverty level. We've seen incredible outcomes in New York and Minnesota. Savings for the states, savings for the federal government, and savings for individuals.

In New York, approximately 800,000 people are enrolled in the Essential Plan that cost less than \$500 annually for a family of four buying separate coverage, saving \$1,000 in premiums compared to Silver plans on the exchange. The state saved nearly \$1 billion by transitioning individuals from state funded plans to the Basic Health Plan.

Now is the time to expand the Basic Health Plan option to encourage more states to administer the plan, just as we have improved access to affordable options in the American Rescue Plan.

***Do you agree that there is a need to lower health care costs for people in the United States? At the same time, do you think there is a need to explore options that would also lower health care expenditures for the government?***

**Answer:** Making sure that all Americans have access to quality, affordable health care is one of the Biden-Harris Administration's top priorities. The Basic Health Program is an important option for states to provide comprehensive health coverage to low- and moderate-income families. If confirmed, I look forward to working with Congress, and in concert with the Centers for Medicare & Medicaid Services, on a bipartisan basis to address this. At the same time, I also look forward to looking at short- and long-term strategies – including delivery system reform – to make sure that our federal health programs like Medicare remain a bedrock of our health care system.

***If confirmed, would you work with me to secure sustained funding for the Basic Health Plan and help encourage more states to adopt the program?***

**Answer:** The Basic Health Program is an innovative option for States to improve access to care and in line with the Biden-Harris Administration goals of affordability and coverage for all. The American Rescue Plan made additional investments in the Basic Health Program last year and if confirmed, I would be happy to work with you on this issue.

## **Question 2**

Home and community based services have become extremely popular in Washington state and across the country. I have worked with my colleagues on both sides of the aisle to increase support for home and community based care.

These services help millions of older adults and people with disabilities avoid high-cost institutional care, while letting them live in the comforts of a surrounding that they are familiar with. People want to stay in their own homes as they age, and home and community-based care can cost as little as one-third the amount of nursing home care.

This shows that there is a need to innovate healthcare delivery for seniors and people with disabilities. One successful program to achieve this is the Money Follows the Person program, which I have led with Senator Portman. This program allows older adults and people with disabilities to leave institutional care settings to live in their community, yet has not received permanent funding.

In Washington, the Money Follows the Person program has been incredibly successful, helping more than 8,000 individuals transition from long-term care facilities back into their own homes since 2008. It was also able to save the state Medicaid program millions of dollars. We must support efforts to have sustained funding for this program so that states can effectively use these funds to expand the program.

***The COVID-19 pandemic has made it dangerous for immunocompromised people and seniors to live in crowded facilities. Home and Community Based care became one of the solutions to solve this issue. If confirmed, would you work with me to secure funding for programs like Money Follows the Person?***

***Answer:*** Thank you for your leadership on this important issue. The Money Follows the Person (MFP) demonstration gives Medicaid beneficiaries more options for their care and allows them to choose to receive care in the community, rather than institutions. This demonstration has shown promising results, including improving participant quality of life and lowering the cost of care. It is my understanding that the Administration supports a permanent extension of MFP. If confirmed, I look forward to working with you on extending this program.

***Home and Community Based Services cannot exist without a robust caregiving workforce. Home care workers are often low-income, racial minorities, underpaid, and overworked. If confirmed, would you pledge to support programs that bolster the caregiving workforce in a fair and equitable manner?***

***Answer:*** Our caregiving workforce is critical to ensuring access to home- and community-based services – and we know the needs will only grow as our population continues to age. If confirmed, I look forward to working with you to ensure this workforce has the support it needs to serve older adults and people with disabilities.

## Questions for the Record

“Hearing to Consider the Nomination of Robert Michael Gordon, of the District of Columbia, to be an Assistant Secretary of Health and Human Services and Rebecca Jones Gaston, of Oregon, to be Commissioner on Children, Youth, and Families, Department of Health and Human Services, and January Contreras, of Arizona, to be Assistant Secretary for Family Support, Department of Health and Human Services”

Witnesses: Robert Michael Gordon, January Contreras, and Rebecca E. Jones Gaston  
Finance Committee Hearing Date: February 9, 2022 at 10am  
Questions Submitted: February 11, 2022

**From: Senator Brown & Senator Lankford**

### Question for Robert Michael Gordon

Every day, our offices receive calls from constituents who can't afford their prescription drugs. High out-of-pocket costs at the pharmacy counter are especially difficult for older Americans, who are often on fixed incomes and sometimes have to make the impossible decision between paying for groceries or their prescription medicines because they can't afford both. Policymakers - both Congress and the Administration - can and must do more to address system challenges that inadvertently drive out-of-pocket costs up for seniors, including direct and indirect remuneration (DIR) fees which often lead to increased costs for seniors at the pharmacy counter and threaten the viability of pharmacies across the nation.

CMS recently proposed a regulation that would address pharmacy DIR. If finalized, CMS' Part D Rule for CY 2023 would reduce out-of-pocket costs for beneficiaries by \$21.3 billion over 10 years. While CMS has yet to take action in this space, we also look forward to working with you, HHS, and CMS to implement standardized pharmacy quality measures that help to provide more certainty to community pharmacies and the Medicare beneficiaries they serve.

**Will you commit to working with our offices and the Senate Finance Committee to ensure this rule is finalized, and that the reforms applied to all Medicare beneficiaries?**

**Answer:** Small and rural pharmacies are critical to our nation's health care system and have been especially important during the pandemic. We must do all we can to ensure that Americans can access important health care services, including from local pharmacies in their communities. If confirmed, I look forward to working with Congress to ensure that community pharmacists have predictability and to lower drug prices for patients and families.

**Ranking Member Mike Crapo**  
**Questions for the Record**  
**February 11, 2022**

**Robert Gordon**

As I understand it, you left your position with the Michigan Department of Health and Human Services due to policy disagreements with Governor Gretchen Whitmer. Without opining on the specifics of that disagreement, I respect your willingness to resign a position if you disagree with a policy and believe that you cannot implement it in good faith. I also believe that Congress has an important role to play in conducting oversight and ensuring government accountability.

- **Will you commit to respond to all the members of this Committee, fulsomely and in good faith, during your nomination process, the term in which you would act as Assistant Secretary, and afterward regarding questions on your tenure?**

*Answer:* I deeply respect the oversight function of Congress. If confirmed, I am committed to being responsive to requests from all members of this Committee and providing Congress with the information that it needs consistent with appropriate law and regulation, during my tenure and subsequently.

**Senator Chuck Grassley's (IA) Questions for-the-Record**

Department of Health & Human Services (HHS)

Assistant Secretary for Financial Resources

Nominee – Mr. Robert Gordon

Submitted February 11, 2022

1. Since the COVID pandemic began, I have engaged in oversight on two fronts: (1) the origins of the virus; (2) the connection between the Department of Health and Human Services (HHS) and the National Institutes of Health (NIH) with the Wuhan lab and coronavirus research. In my July 27, 2021, Senate floor remarks, I challenged the federal government's failure to oversee grants sent by NIH to EcoHealth which then sub-awarded the money to the Wuhan lab. If you are confirmed as Assistant Secretary for Financial Resources, you will oversee the HHS Office of Finance and Office of Grants. During the past three years, I've conducted oversight on what steps the HHS has taken to detect and deter foreign threats to taxpayer-funded research. This work includes determining whether or not the NIH complied with all federal regulations in funding activity at the Wuhan Lab. **If confirmed, will you ensure the HHS is fully transparent and compliant in all Office of Inspector General audits and Congressional inquiries?**

*Answer:* I deeply respect the oversight function of Congress and the HHS Office of Inspector General (OIG). If confirmed, I am committed to being responsive to inquiries from Congress and OIG consistent with appropriate law and regulation.

2. **If confirmed, will you commit to conducting, supporting, and responding to any investigation into taxpayer money involving in China-related research?**

*Answer:* The President, Secretary Becerra, and the National Institutes of Health (NIH) all support the need to identify the origins of the COVID-19 virus, including by cooperating with the Intelligence Community's recent investigation. If confirmed, I would be happy to work to ensure the Department is responsive to information requests from Congress.

3. **In confirmed, will you commit to determining with certainty that HHS money wasn't misused by the Chinese government and related entities, including gain-of-function research?**

*Answer* I deeply respect the oversight function of Congress and the laws that govern foreign-sponsored research. If confirmed, I am committed to being responsive to inquiries from Congress and ensuring that grant dollars are used for their intended purpose.

4. I am concerned about an action recently made by the Biden Administration is a Notice of Funding Opportunity for Harm Reduction Program Grants by the Department of Health and Human Services (HHS). This \$30 million grant program, which will begin in May, would provide funds to nonprofits and local governments to make drug use safer for those with a

substance use disorder. Specifically, grant funds must be used to support certain harm reduction activities, including purchasing equipment like FDA-approved overdose reversal medication, syringes, but also safe smoking kits/supplies. In my review, this is the first time a grant solicitation has included anything about safe smoking kits/supplies. Without any explanation or context, the Administration seemingly endorsed the dispersal of drug paraphernalia by the federal government. If you are confirmed as Assistant Secretary for Financial Resources, you will oversee HHS grant compliance to federal law. **Do you support the use of “safe smoking kits/supplies” for the purpose of harm reduction policy to responds to the drug overdose crisis? Can you explain how the dispersal of these kits and supplies would not violate 21 U.S.C. 863, which makes it unlawful to transport drug paraphernalia?**

*Answer:* I support evidence-based practical strategies that prevent deadly overdoses, reduce the spread of disease associated with drug use, and engage individuals that use drugs in treatment productively. If confirmed, I will work with the appropriate subject-matter experts on this issue and follow the law.

**5. Has HHS noticed funding or provided grant funding for “safe smoking kits/supplies” prior to FY2022? If so, please provide the specific grant number or Notice of Funding Opportunity.**

*Answer:* As a private citizen, I am not aware of all previous HHS grant opportunities.

**6. It has been reported that the Department of Justice (DOJ) is considering supporting the use of safe injection sites. Safe injection sites are public facilities for drug users to consume illicit drugs like fentanyl, methamphetamine, or heroin, under the supervision of medical staff. This position by the Justice Department could violate federal law. 21 U.S.C. 856 prohibits any person from knowingly or intentionally maintaining a place for the purpose of illegal drug use. The Trump Administration DOJ opposed safe injection sites for this reason, and the Third Circuit agreed with this position finding that it is a federal crime to open and operate a safe injection site for illegal drug use. **Is the funding of “safe injection” for the purpose of harm reduction policy compliant with federal law? Please cite the specific federal statute if you believe it is compliant.****

*Answer:* I am not aware of Department of Justice’s position or actions on this issue. However, the opioid overdose crisis plaguing our nation requires a forceful response that is rooted in evidence about what works to save lives, reduce the spread of disease, and engage individuals in treatment productively. If confirmed, I will follow the law and commit to working with my federal, state, tribal, local, and territorial public health leaders to address this deadly epidemic.

**7. Should federal dollars fund “safe injection” sites?**

*Answer:* If confirmed, I will work together with the appropriate subject-matter experts and follow the law.

8. It has been reported that the Department of Justice (DOJ) is considering supporting the use of safe injection sites. Safe injection sites are public facilities for drug users to consume illicit drugs like fentanyl, methamphetamine, or heroin, under the supervision of medical staff. This position is concerning for a number of reasons. First, reports show that safe injection sites do not reduce overall overdose deaths or opioid-related emergency calls. Safe injection sites have led to an increase in crime, discarded needles, and social disorder in the surrounding neighborhoods. Advocates in favor of safe injection sites assert that they provide connections for those with substance use disorders to find housing and treatment options. Additionally, “safe injection” sites have a poor record of moving drug users into treatment and recovery, with some referral rates as low as 1%. **What outcome evidence is there, including treatment and recovery referral rates, for “safe injection” sites?**

*Answer:* If confirmed, I will work across the Department to ground the Department’s programs in evidence.



## UNITED STATES SENATE COMMITTEE ON FINANCE

**Hearing to Consider the Nominations of Robert Michael Gordon, of the District of Columbia, to be an Assistant Secretary of Health and Human Services, January Contreras, of Arizona, to be Assistant Secretary for Family Support, Department of Health and Human Services, and Rebecca E. Jones Gaston, of Oregon, to be Commissioner on Children, Youth, and Families, Department of Health and Human Services**

**Senator Richard Burr, Questions for the Record**

**Question for Robert Gordon to be Assistant Secretary for Financial Resources, Department of Health and Human Services**

1. Mr. Gordon, as the Ranking Member of the Senate Committee on Health, Education, Labor and Pensions, I take my oversight responsibilities very seriously, particularly as Congress provided billions of dollars in funding for the response to COVID-19 over the last two years.

While you are currently before the Senate Committee on Finance, if you are confirmed you will oversee financial resources for a wide range of agencies, programs, and initiatives under the HELP Committee's jurisdiction.

As I have told Secretary Becerra, congressional oversight is not an option. There has to be accountability for the historic levels of funding that have gone out the door for this response. Until we get a full picture of how the funds provided by Congress so far have been spent, it is difficult to justify any potential requests for additional funds.

**Mr. Gordon, do you commit to providing me regular reports in a timely manner that detail each account that the administration is using for spending on COVID-19 response, how much money is in each account, how much has been obligated, how much has been spent, and what specific activities those funds have been spent on?**

*Answer:* I deeply respect the oversight function of Congress, including the responsibility for oversight of financial expenditures. Currently, the Department complies with federal law requiring regular reports for spending on COVID-19 activities. These reports are delivered to the Appropriations Committee on a monthly basis, as required by law. If confirmed, I commit to thoughtfully reviewing and responding to your request, and will provide the Committee with information to support its oversight functions.

**Robert Michael Gordon**

During his confirmation hearing last February, the Department of Health and Human Services (HHS) Secretary Xavier Becerra stated the following: "I believe deeply in religious freedom, and I will make sure that as Secretary of HHS that you will know that I will not only respect the law when it comes to these issues of religious freedom, but I will enforce them as Secretary of HHS within my department."

- 1. Mr. Gordon – If confirmed, will you commit to supporting robust funding for the Office for Civil Rights' Conscience and Religious Freedom Division to assist the Secretary in this regard?**

*Answer:* I support ensuring all HHS offices have sufficient resources to fulfill their mission in an efficient and effective manner. If confirmed, I will work with others across the Department to protect the civil rights of all people who participate in HHS programs.

- 2. Mr. Gordon – If confirmed, will you commit to ensuring the fair and equal access and treatment of faith-based organizations with regard to Agency grant opportunities without them having to compromise their religious missions?**

*Answer:* Faith-based providers are critical to the child welfare system. In my current role, I work closely with the faith community and understand how essential they are to our safety net. If confirmed, I look forward to listening to and working closely with faith-based providers.

*Senator James Lankford*  
*Questions for the Record*  
*HHS Nominations Hearing; Robert Gordon, January Contreras, and Rebecca Jones Gaston*  
*February 5, 2022*

**For Robert Gordon:**

*DIR: (Joint with Senator Brown)*

1. Every day, our offices receive calls from constituents who can't afford their prescription drugs. High out-of-pocket costs at the pharmacy counter are especially difficult for older Americans, who are often on fixed incomes and sometimes have to make the impossible decision between paying for groceries or their prescription medicines because they can't afford both. Policymakers - both Congress and the Administration - can and must do more to address system challenges that inadvertently drive out-of-pocket costs up for seniors, including direct and indirect remuneration (DIR) fees which often lead to increased costs for seniors at the pharmacy counter and threaten the viability of pharmacies across the nation.

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**Will you commit to working with our offices and the Senate Finance Committee to ensure this rule is finalized, and that the reforms are applied to all Medicare beneficiaries?**

*Answer:* Small and rural pharmacies are critical to our nation's health care system and have been especially important during the pandemic. We must do all we can to ensure that Americans can access important health care services, including from local pharmacies in their communities. If confirmed, I look forward to working with Congress to ensure that community pharmacists have predictability and to lower drug prices for patients and families.

*Hyde:*

1. If confirmed, you will be responsible for the financial resources and budget at HHS. As you know, Congress has continued to maintain the Hyde Amendment on a bipartisan basis each year in annual funding bills since 1976. **If confirmed, will you continue to uphold and enforce the restrictions of the Hyde amendment – that no federal funding can pay for abortions except in the case of rape, incest or to protect the life of the mother – as enacted by Congress, as well as other prolife protections currently in federal law?**

*Answer:* If confirmed as Assistant Secretary for Financial Resources, I will follow the law.

2. **Will you commit to not attempting to weaken the Hyde amendment and similar prolife policies or strip them from future budgets or appropriations bills?**

*Answer:* If confirmed, I will follow the law.

3. Congress has also continued to include conscience protections for individuals who have a religious or moral objection to participating in an abortion. Specifically, the Weldon amendment, which has been included in funding bills since 2004, restricts federal funding from going to agencies or programs that discriminate against health care providers that do not provide, pay for, provide coverage of or refer for abortions. Unfortunately, this administration has walked back enforcement of the Weldon amendment, including rescinding enforcement action on California for violating Weldon. **If confirmed, will you continue to uphold and enforce the Weldon amendment and other conscience protections enacted by Congress to ensure that no health care providers are discriminated against with federal dollars?**

*Answer:* If confirmed, I will follow the law.

4. A report from the Obama administration in 2010 reinforced the importance of faith-based partnerships. Among the recommendations put forward in the report was to draw more on the local expertise and relationships of faith-based organizations as a way of filling gaps in the provision of essential services. Faith-based organizations are excellent, effective, and efficient at meeting the needs of our most at-risk populations. The report also highlighted the need to ease overly-burdensome reporting and regulation requirements placed on social service agencies. **Do you agree that it is important to continue pursuing ways to engage and expand faith-based partnerships as a way of effectively addressing some of the most critical social service needs in our country?**

*Answer:* Faith-based providers are critical to the child welfare system. In past roles, I have worked closely with the faith community and understand how essential they are to our safety net. If confirmed, I look forward to listening to and working closely with faith-based providers.

5. The Supreme Court has, in multiple decisions, reiterated that religious organizations cannot be discriminated against in the distribution of a public benefit for which they otherwise qualify because of their religious beliefs or identity. **Will you commit to ensuring that no policy in HHS will disqualify a religious organization from receiving aid or participating in grant programs simply because of the organization's religious beliefs or because the organization receives statutory protections for religious freedom like those in Title VII and Title IX?**

*Answer:* If confirmed, I will follow the law.

*Budget/Grants:*

6. The office of ASFR oversees arguably some of the most important offices at HHS, particularly those overseeing the agency's budget. Something that I think every person on this Committee can agree on is that HHS's budget could use some additional transparency, especially after the several billions thrown its way over the course of the pandemic. I authored the *Taxpayers Right to Know Act* which was enacted in 2020, and OMB is in the early phases of discussing implementation. This provision will create a searchable list of every program in the federal government, how many employees are dedicated to that task, how much we spend on the program, and how it is evaluated, or if it is evaluated at all.

**Are you aware of these new requirements, and what you can do to help facilitate the implementation of Taxpayer's Right to Know Act within the thousands of multi-layered programs at HHS should you be confirmed? What value do you see in having HHS's spending inventoried for all to see?**

*Answer:* I am aware of these requirements. As a senior official at the U.S. Office of Management and Budget, including as Acting Deputy Director, I worked to advance transparency in Congressional budget justifications and supported the ongoing work of federal agencies to track and report performance and financial data through implementation of the Government Performance and Results Modernization Act and the Digital Accountability and Transparency Act. I have also strongly supported increased evaluation of program effectiveness, using a broad range of tools. I value the importance of improving transparency in government programs so taxpayers have access to information to understand how federal funds are expended. If confirmed, I will work to advance transparency and evaluation so taxpayer dollars are spent effectively and taxpayers have access to information about how public funds are expended.

7. The need to fully understand how grant dollars are used has been something I have highlighted for years. In Oklahoma, we have several state of the art facilities that often are the recipients of research grants through one of the many HHS sub-agencies. **Though you have yet to be installed in office, through your background in several administrations and other large public agencies, I am hoping you can provide some insight into how HHS makes decisions on who gets grants, who makes these decisions, how often or if the decision-making panel changes, and how or if HHS works with the applicants who are not awarded the grant they applied for to see there are another other funding sources available to them?**

*Answer:* From my time at OMB my understanding is HHS, like all federal agencies, must design and execute a merit review process for applications for competitive grants or cooperative agreements. That review process must be guided by the program objectives and review criteria in the Notice of Funding Opportunity. An agency must first select objective reviewers who are

knowledgeable in the field of endeavor. HHS has department-wide policies that agencies are required to implement to avoid conflict of interest. Program leadership makes recommendations for funding to the grants official and must include a statement explaining why unfunded applications were not selected. The grants office conducts a risk assessment as required by regulation on each recommended application and, in consultation with the program office, makes the final decision to fund an application. With respect to applicants not receiving an award, my understanding is agencies must notify unsuccessful applicants in writing within a month of the decision. Agencies may after the announcement work with those applicants on other funding sources in a fair and equitable manner that does not give an unfair advantage to any potential applicant of another grant. In addition, I understand all competitive HHS funding opportunities are posted to Grants.gov as much in advance of the application closing date as possible. If confirmed, I would welcome the opportunity to work with you and others on ideas consistent with the law for improving this process.

Senator Barrasso Questions for the Record  
Robert Gordon  
Nomination Hearing  
Wednesday, February 9, 2022  
10:00 a.m

Question 1: Lower population states at times feel the participation requirements in certain programs at the Department of Health and Human Services require too much administrative burden compared to the level of federal support. In other words, the state is forced to devote large sums of staff time and expense to receive relatively small amounts of federal financial help.

- **Do you believe there are ways the department could streamline or reduce the administrative burden placed on states, especially those with smaller populations to participate in HHS programs?**
- **If so, can you identify policies you believe Congress could examine to achieve this goal.**

*Answer:* From my time in state government, I am personally aware of the burdens which federal requirements can place on states, and I can appreciate that smaller states may face particular challenges. If confirmed, I look forward to working within the Department and with Congress and states to find ways to reduce administrative burden while preserving or even strengthening the effectiveness and transparency of public spending.

Question 2: You have previously stated the importance of reducing waste, fraud and abuse in federal programs. This is something we all support.

- **Can you discuss an experience in your career where you reduced wasteful spending in a government program?**

*Answer:* When I arrived at the Michigan Department of Health and Human Services, the Department's technology budget--which funded systems that delivered Medicaid payments to hospitals, tracked children in foster care, and enrolled individuals in SNAP and Medicaid --faced a \$45 million structural deficit. To address that imbalance without sacrificing vital services, with colleagues I eliminated scores of government positions in technology middle management. I stopped spending on a failed new approach to managing public assistance caseloads. I undertook a benchmarking exercise to identify excesses of costs over value, and then personally engaged vendor executives to renegotiate contracts. I also improved controls in the agency's approval processes. These steps and others greatly improved the Department's financial position.

- **Can you also discuss ways HHS can better collaborate with state governments to achieve this shared goal, especially regarding HHS programs that are jointly funded by states and the federal government.**

***Answer:*** It is critical that HHS works together with states to protect the integrity of Medicaid and other programs funded by the federal government and states. Reducing waste, fraud, and abuse has been a priority for me as a senior official at OMB and as the director of the Michigan Department of Health and Human Services. HHS has a critical opportunity and responsibility to collaborate with state governments to ensure we are protecting taxpayer dollars, improving the efficiency of our programs, and reaching the intended populations. If I am confirmed, I would continue this focus and partner with Congress and states to ensure strong oversight of federal and state supported programs like Medicaid to reduce waste, fraud, and abuse.