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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

RICHARD J. KESSLER, STAFF DIRECTOR
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November 4, 2013

The Honorable Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator Tavenner:

We are writing to express our concerns that the Centers for Medicare & Medicaid Services (CMS) has not taken sufficient steps to screen Medicare providers who pose a risk to beneficiaries and taxpayers.

The Social Security Act requires CMS to exclude individuals from participation in any federal health care program, including removal from the list of authorized Medicare providers, if they have been convicted of Medicare-related crimes, patient neglect or abuse, or felonies related to health care fraud or controlled substances.¹ Yet, disturbingly, it appears that at least some individuals convicted of such offenses may continue to remain on the list of eligible providers.

We know that you share with us a strong commitment to reduce waste and fraud in the Medicare system. CMS has taken strides to improve its screening of its list of providers, including physicians, authorized to charge Medicare for health care services. However, some recent analysis performed by our offices raises serious questions as to whether current provider screening is adequate. We are concerned, moreover, that the examples identified by our analysis may be illustrative of a larger problem.

Specifically, we were able to readily identify at least 16 physicians who are enrolled in the Medicare program, and who have been convicted of a crime that requires CMS to exclude the individual from participation in Medicare or any other federal health care program (see Attachment). These examples were not the result of a complete analysis of every provider, but do represent cases easily identified using open sources.

To enable Congress to better understand CMS's current efforts to take action against providers who are convicted of crimes that are supposed to result in mandatory exclusion from Medicare, please provide our offices with the following answers and information:

- 1) Describe the criteria, process, and timeframes for disenrolling such providers (i.e., who is disenrolled from the program, who is not, and why)?
- 2) Has CMS established interagency agreements with other federal and state agencies to ensure that it receives felony conviction information in a timely manner?

¹Social Security Act, Sec. 1128(a) (42 U.S.C. §1320a-7(a)).

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- 3) How does CMS use data captured by the Federation of State Medical Board, which aggregates enforcement actions against providers that lead to the loss of a medical licence, in order to proactively flag potentially problematic providers?
- 4) For each of the providers listed in the Attachment, please indicate:
 - a. Whether the provider is currently on the list of authorized Medicare providers;
 - b. If the provider is not currently on the list of authorized Medicare providers, when the individual was removed from the list; and
 - c. If the provider is currently on the list of authorized Medicare providers, why that individual has not been removed from the list.
- 5) Federal regulations require that physicians and non-physician practitioners report any adverse legal action, such as a felony conviction, to CMS within 30 days of the reportable event.² If a provider fails to report such adverse action, CMS is required to collect overpayments back to the date of the reportable adverse action.³ For each of the providers listed in the Attachment, please indicate:
 - a. Whether the provider complied with the reporting requirement for adverse actions;
 - b. Whether the provider billed the Medicare program for services furnished to beneficiaries after the date of their conviction or guilty plea, and whether CMS collected any overpayments back to the date of such event; and
 - c. Whether the provider ordered or certified services for Medicare beneficiaries after the date of their conviction or guilty plea.

In addition to the mandatory exclusions discussed above, the Social Security Act gives CMS the option to exclude individuals for a number of other offenses, including misdemeanors relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the provision of health care services or a government funded program, as well as individuals whose state medical licenses have been revoked or suspended.⁴ Under federal regulations, CMS may also revoke a provider's billing privileges if it determines that a felony offense is detrimental to the best interests of the Medicare program and its beneficiaries.⁵ Please explain the criteria and process that CMS uses to determine whether to exclude a provider who commits an offense that would allow for such a "permissive exclusion."

We look forward to hearing from your office on this matter. We kindly request a reply by December 15th, 2013.

With best personal regards we are,

Sincerely yours,



Thomas R. Carper
Chairman



Tom A. Coburn, M.D.
Ranking Member

²42 C.F.R. § 424.516.

³42 C.F.R. § 424.565.

⁴Social Security Act, Sec. 1128(b) (42 U.S.C. 1320a-7(b))

⁵42 C.F.R. § 424.535.