

A photograph of a cemetery in a foggy, overcast setting. In the foreground, a large, dark, rectangular tombstone stands prominently. In the background, several other tombstones are visible, some partially obscured by the fog. Tall trees with sparse, yellowing leaves are scattered throughout the scene, their forms softened by the mist. The overall atmosphere is somber and quiet.

*Federal Programs to Die For*  
*American Tax Dollars Sent Six Feet Under*

Senator Tom Coburn  
October 2010

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## Introduction

In the past decade, Washington sent over \$1 billion of your tax dollars to dead people. Washington paid for dead people's prescriptions and wheelchairs, subsidized their farms, helped pay their rent, and even chipped in for their heating and air conditioning bills.

In some cases, these payments quietly gather in a dormant bank account. In many others, however, they land in the pockets of still-living people, who are defrauding the system by collecting benefits meant for a now-deceased relative.

Since 2000, the known cost of these payments to over 250,000 deceased individuals has topped \$1 billion, according to a review of government audits and reports by the Government Accountability Office, inspectors general, and Congress itself. This is likely only a small picture of a much larger problem. Among the agencies making payments to the deceased:

- The Social Security Administration sent \$18 million in stimulus funds to 71,688 dead people and \$40.3 million in questionable benefit payments to 1,760 dead people.
- The Department of Health and Human Services sent 11,000 dead people \$3.9 million in assistance to pay heating and cooling costs.
- The Department of Agriculture sent \$1.1 billion in farming subsidies to deceased farmers.
- The Department of Housing and Urban Development overseeing local agencies knowingly distributed \$15.2 million in housing subsidies to 3,995 households with at least one deceased person.
- Medicaid paid over \$700,000 in claims for prescriptions for controlled substances written for over 1,800 deceased patients and prescriptions for controlled substances written by 1,200 deceased doctors.
- Medicare paid as much as \$92 million in claims for medical supplies prescribed by dead doctors and \$8.2 million for medical supplies prescribed for dead patients.
- Congress has established HIV/AIDS funding distribution based on historic numbers of deceased HIV/AIDS patients, while many individuals living with AIDS desperately wait for medical care.

In June, the administration announced new steps to stop itself from making these payments: agencies are now supposed to check their payees against the Social Security Administration's (SSA) Death Master File (DMF).<sup>1</sup> But SSA admits its

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<sup>1</sup>Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List," <http://www.whitehouse.gov/the-press-office/presidential-memorandum-enhancing-payment-accuracy-through-a-do-not-pay-list> (June 18, 2010).

records are fraught with errors. “[I]t is extremely expensive and may even be impossible to determine if a person is alive or dead particularly if the person died many years ago,” the Commissioner of SSA, Michael Astrue, explained in 2009.<sup>2</sup> So the administration’s new process cannot ensure the payments will end or improperly deny live, eligible Americans their benefits.

These erroneous payments are not the fault of the administration alone. Congress has repeatedly failed to give agencies the legislative tools they need to combat this waste, and we have fallen short of our solemn duty to oversee government operations. This report finds room for improvement across the government, but nowhere are the shortcomings more glaring than on Capitol Hill.

At a time when our country has incurred a \$1.3 trillion deficit and a \$13.6 trillion dollar debt,<sup>3</sup> these wasted funds would be better spent reducing the deficit or addressing real needs during this time of economic uncertainty.

At this point in our nation’s history, it is of the utmost importance that every tax dollar spent by the government be put to good use. This means spending within our means on the living, not outside our means on the dead.

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<sup>2</sup> August 14, 2009 Letter from Social Security Administration Commissioner Michael J. Astrue to Tom Coburn, [http://coburn.senate.gov/public/index.cfm/files/serve?File\\_id=7a29f89d-4833-4367-a1bb-ebb133b81ac1](http://coburn.senate.gov/public/index.cfm/files/serve?File_id=7a29f89d-4833-4367-a1bb-ebb133b81ac1).

<sup>3</sup> <http://www.usdebtclock.org>

## 1. Social Security Stimulus Money Sent to the Deceased

In 1996, James Hagner, of Baltimore, Maryland was surprised to open his mailbox and find a birthday card from the White House congratulating his mother on her one-hundredth birthday. The reason for his surprise? His mother, Rose, passed away in 1967.<sup>4</sup> Mr. Hagner was surprised again thirteen years later when he found another piece of mail from the government for his mother, this time from the Treasury Department. It was a \$250 stimulus check sent to Social Security beneficiaries.<sup>5</sup> Unfortunately, Mr. Hagner's situation was not unique, but only one example among tens of thousands in which stimulus checks were sent to the deceased.

When Congress passed the American Recovery and Reinvestment Act (ARRA), its purpose was to stimulate the economy and create jobs by spending money quickly.<sup>6</sup> One of the first programs to be implemented involved a one-time \$250 payment to individuals who were enrolled in Social Security and Supplemental

Security Income (SSI)<sup>7</sup> during the months of November 2008, December 2008, and January 2009. ARRA required SSA to identify and certify the (living) individuals in these programs that qualified for the payment. It was soon discovered that \$18 million in stimulus checks had been sent to 71,688 deceased individuals.<sup>8</sup>

Safeguards were built into the program to prevent this from happening, but ultimately proved ineffective. First, ARRA stipulated that only those who were on the agency's rolls during the specified three-month period were eligible for payments. Second, SSA's own internal policies stated that if a beneficiary dies before a check is issued, no payment will be issued. SSA certified the individuals that were eligible to receive the checks and provided that list to the Department of the Treasury to prepare and disburse the checks.

The SSA Office of the Inspector General (OIG) found, despite these policies, SSA certified and authorized payment of \$18 million in stimulus checks to 71,688 dead people. While the death of some of these individuals had not been reported to the SSA,

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<sup>4</sup> Stimulus Checks Rushed, Still Late, The Denver Post, May 13, 2009 [http://www.denverpost.com/politics/ci\\_12354992](http://www.denverpost.com/politics/ci_12354992).

<sup>5</sup> Dead Woman Gets Federal Stimulus Check, WBALTV, May 12, 2009, <http://www.wbalTV.com/money/19435100/detail.html>.

<sup>6</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 3(a)-(b), 123 Stat. 115 (2009).

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<sup>7</sup> Individuals enrolled in both Social Security and SSI were eligible for one stimulus check.

<sup>8</sup> Social Security Administration, Office of the Inspector General, Economic Benefit Payments for Social Security and Supplemental Security Income Beneficiaries, Report No. A-09-10-11017 (Sept. 24, 2010), <http://www.ssa.gov/oig/ADOBEPDF/A-09-10-11017.pdf>.

investigators found that many of the deaths were in fact noted in SSA internal files. Had these internal files been reviewed, many of these wrongful payments would likely have been avoided. By reviewing information it already had, SSA could have avoided most, if not all, of these payments to deceased individuals.

In one case, highlighted by the SSA OIG, a stimulus check was sent to an individual who died on June 21, 2005. SSA had received notice of the individual's death and posted the information in its database four days later on June 25, 2005. Almost four years later, however, SSA certified the individual was alive and issued the individual a \$250 check on April 27, 2009. The funds were electronically deposited into a joint banking account and had not been returned as of September 2010. The reason for this error is unclear.

For some of the misspent money the errors should have been more easily caught. 8,207 individuals who were sent checks were already too old to qualify for Social Security when the Social Security Act was passed. A law was later passed in 1966 to make these individuals retroactively eligible for Social Security. Almost 50 years later, many of these individuals remained on SSA's rolls. Investigators estimated these 8,207 individuals would be between the ages of 112 and 136 when they received their stimulus checks, making it highly unlikely these individuals were still alive. Indeed, SSA found only one of these individuals to be living. According to

the SSA OIG report, SSA issued checks to these individuals without any consideration of their age or that 30 years had passed since SSA last had contact with them.

Adding to the problem, ARRA did not provide authority for SSA or the Department of the Treasury to reclaim funds that were electronically transferred to the deceased by mistake. Therefore, electronically transferred funds were lost, unless returned voluntarily. Through a variety of means, however, Treasury was able to reclaim some of the funds, with the SSA OIG estimating that 52 percent of all checks and electronic funds sent to dead beneficiaries were returned.

Maintaining accurate death information for its beneficiaries has been a problem in the past for SSA. In 2008, SSA continued to pay more than 6,000 beneficiaries even after receiving reports they had died and their deaths were recorded in its files. But not all of these individuals had passed away. Based on its investigation, the SSA OIG estimated that only 1,760 of these beneficiaries were actually deceased. SSA paid these deceased beneficiaries \$40.3 million in benefits. Likewise, the presence of incorrect death information potentially denied payments to living beneficiaries.<sup>9</sup>

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<sup>9</sup> Social Security Administration, Office of the Inspector General, Payments to Individuals Whose Numident Record Contains a Death Entry, Report No. A-06-08-18095 (June 2009), <http://www.ssa.gov/oig/ADOBEPDF/A-06-08-18095.pdf>.

## 2. Heating and Air-Conditioning for the Deceased

Bookkeeping errors and data mix-ups recently led to more than 11,000 dead people receiving \$3.9 million in federal payments to help provide air-conditioning and heat for their homes. These payments were made through a congressionally established program called the Low Income Home Energy Assistance Program (LIHEAP). In 2009, LIHEAP distributed \$5 billion to 8.3 million homes.<sup>10</sup>

LIHEAP provides aid to low-income households through payments to household members, home energy companies, and landlords to subsidize heating and cooling costs. LIHEAP is managed by the Department of Health and Human Services (HHS) and is funded through grants given to the states. But while the program is administrated by the states, the federal government limits eligibility to those with specified low incomes based on poverty guidelines. States may also give priority to households with the highest energy costs, or a household's needs compared to the income available to that residence.

In 2009, the Government Accountability Office (GAO) investigated the disbursement of LIHEAP checks in seven states, and found that millions of dollars in

payments were going to deceased persons.<sup>11</sup> GAO compared the list of LIHEAP recipients to the SSA Death Master File. In just these seven states, GAO found the identities of 11,000 dead people were fraudulently used to apply for LIHEAP funds. Compounding the problem, the federal government provided no instructions to states to prevent this type of fraud.

Under current law, the federal government has drawn up regulations requiring states to properly distribute the LIHEAP funds, including those that prevent fraud and abuse in the program. The seven states reviewed by GAO, however, had not implemented effective measures to combat fraud, such as preventing the use of deceased individuals' identities and Social Security numbers. In total, the seven states sent deceased individuals \$3.9 million.

The failure to follow these regulations or implement meaningful fraud prevention mechanisms made using the identities of dead Americans to receive LIHEAP funding fairly easy. GAO identified one applicant in Illinois that simply included two additional Social Security Numbers for deceased individuals on her LIHEAP application. The applicant made it appear these deceased individuals were alive and lived in her

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<sup>10</sup> United States Government Accountability Office, Low-Income Home Energy Assistance Program: Greater Fraud Prevention Controls Are Needed, Report No. GAO-10-621, June 2010, <http://www.gao.gov/new.items/d10621.pdf>.

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<sup>11</sup> The seven states included: Illinois, Maryland, Michigan, New Jersey, New York, Ohio, and Virginia. GAO chose these states because together they disbursed one-third of LIHEAP funding and each state maintained centralized databases of program applicants and benefits.

home. Since the HHS poverty guidelines compare household income to the number of household members, the two additional people made it appear that more people depended on a single income. Without them, the applicant's income would have exceeded the specified maximum income threshold to qualify for LIHEAP funds. When interviewed by GAO, the applicant explained the state previously denied her LIHEAP application the past three years for not having enough household members in relation to her income. She realized she still had the Social Security cards for her dead mother and brother and simply added them to her application. Illinois sent the beneficiary \$540 based on these two individuals, who had each been dead for more than four years.

### **3. The Department of Agriculture Sends \$1.1 Billion to Dead Farmers**

In the course of seven years, the federal government paid out more than \$1 billion to nearly 173,000 dead farmers. While much of the blame for this can be found in poor financial management by the U.S. Department of Agriculture (USDA), more than one-third of the payments were made according to rules established by Congress.

All of the payments to dead farmers were provided through the Farm Services Agency (FSA) within the USDA. To encourage farming, Congress provides a number of

subsidies for those who pursue farming as a profession. The USDA, however, has failed to properly police its programs' rolls. Over the course of seven years (Fiscal Years 1999-2005), GAO found FSA paid 172,801 deceased individuals \$1.1 billion in farm program payments. While the program allows a farm to continue to receive payments for two years after a recipient's death in certain circumstances, investigators found that 40 percent of the \$1.1 billion in payments went to individuals that had died three or more years ago. Moreover, 19 percent was paid to individuals that passed away seven or more years ago.<sup>12</sup>

Under the Agricultural Reconciliation Act of 1987, farming subsidy payments are made to individuals that are "actively engaged in farming." Once a person dies, however, the farm is allowed to receive payments for two years, if the estate meets certain eligibility requirements by continuing the active engagement in farming. Congress also included policing mechanisms to maintain program integrity and required FSA to annually determine if an estate is still active.

Many farmers are increasingly using complex corporate arrangements to organize their farming businesses, and

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<sup>12</sup> United States Government Accountability Office, Federal Farm Programs: USDA Needs to Strengthen Management Controls to Prevent Improper Payments to Estates and Deceased Individuals, Report No. GAO-07-1137T, July 24, 2007, <http://www.gao.gov/new.items/d071137t.pdf>.



the government has been slow to adapt the payment of farming subsidies to account for these arrangements. The result is wrongful payments. The problem stems from the fact that farms can take the form of corporations or general partnerships, but also remain eligible to receive FSA payments. Program rules even allow some farmers to collect multiple payments: (1) for their status as an individual farmer; and (2) for their status as a member of a larger farming entity. GAO found that of the 172,801 deceased receiving payments, 5,081 received more than one payment because they were a member of more than one farming entity or they received a payment as an individual and also as part of an entity.

According to FSA, when farming operations are organized as complex entities, it is more difficult for FSA to prevent making payments to deceased individuals. Adding to the difficulties, each farm is responsible for self-reporting changes to FSA, which some avoid doing for fear of losing benefits. Further, FSA usually only maintains contact with one individual per farm who is assigned signature authority and communicates on behalf of that farming operation. Therefore, if a farming entity fails to report the death of a member without signature authority, because FSA rarely, if ever, has contact with that individual, the death may go unnoticed by FSA.

One example found payments going to a deceased farmer in Florida for a farm he co-owned in Illinois. GAO

investigators discovered a 1,900 acre farm in Illinois, which grew corn and soybeans, to have received \$400,000 in farm program payments from 1999 through 2005. The farm was set up as a corporation with four shareholders. The deceased shareholder with signature authority receiving the payments held a 40.3 percent interest in the farm. That individual died in 1995 and lived in Florida. While USDA regulations require program participants to certify any change in operations, payments to the deceased farmer went unnoticed by FSA until 2006 when the individual's children contacted a field office for signature authority.

As rules required, FSA should have reviewed the farmer's eligibility on an annual basis to determine if he was eligible for the program. FSA failed to comply with this requirement. GAO found that only 38 of 181 farming estates were evaluated for each year kept open beyond the post-mortem initial two years the regulations allow. In fact, the longer an estate was kept open, the less likely it was to be reviewed by FSA. GAO determined that from 1999 to 2005, FSA failed to properly conduct the required reviews for 40 percent of the farming estates. While the agency may have since improved, at the time FSA did not make an active attempt to police its own rolls by matching its list of program participants against the SSA DMF or any other outside source.

#### 4. Housing Subsidies for the Dead

The federal government – through the Department of Housing and Urban Development (HUD) – provides subsidies for individuals with low incomes through its Housing Voucher Choice Program. By failing to properly police its rolls, HUD inadvertently funded housing for thousands of deceased individuals.

In 2008, the HUD Office of Inspector General (OIG) found local public housing assistance agencies paid more than \$15.2 million for 3,995 voucher program households containing at least one deceased tenant.<sup>13</sup> While local public housing agencies distributed these funds, the HUD OIG placed primary blame for the problem on HUD for ignoring policies designed to prevent funds from going to deceased individuals. In one of the key findings, investigators discovered that HUD did not require local agencies to remove individuals from its rolls when they die. As a result, one agency did not learn of a tenant's death until it performed an inspection of the tenant's residence and found another family living in the unit.

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<sup>13</sup> Department of Housing and Urban Development, Office of the Inspector General, HUD Did Not Maintain Documentation to Determine if Public Housing Agencies Took Corrective Action on its January 7, 2008 Memorandum and Public Housing Agencies Paid an Estimated \$7 Million for Deceased Tenants, Audit Report No. 2010-FW-0001, November 10, 2009, <http://www.hud.gov/offices/oig/reports/files/ig1060001.pdf>.

Some of the blame, however, also rests with the local agencies charged with administering the vouchers. In an effort to monitor the Housing Choice Voucher Program, and prevent improper payments, HUD issued a memorandum in January 2008 (January Memorandum) notifying agencies of HUD's Enterprise Income Verification (EIV) system, which was designed to combat fraud by locating tenants that were under-reporting income. The January Memorandum expressly identified 12,667 households with one or more deceased tenants in either the public housing or voucher choice programs, including almost 49 percent of which were single-member households. HUD suggested public housing agencies use the information to update their files and correct household compositions listed in the January Memorandum.

The local public housing agencies failed to comply with HUD's suggestion and continued to send rent subsidy payments to tenants HUD told them were deceased. In total, the HUD OIG found agencies paid more than \$15.2 million for 3,995 voucher program households that contained at least one deceased tenant. This amount included \$7 million sent to single-member households comprised solely of a deceased individual and the remaining \$8.2 in payments for multiple-member households. The \$7 million in payments sent to single-member homes were identified as "clearly questionable," since it was unclear who was living in the house if the only household member had passed away. The remaining \$8.2

million sent to multiple-member households were also found to be improper, due to the fact that payments were made based on the inclusion of a deceased person. The questionable amount would vary by household depending on the number of deceased individuals listed as members.

Despite knowingly paying rental assistance to deceased individuals, local agencies still did not update records to correct the problem. The HUD OIG found local agencies only corrected death information for 288 of the 3,995 reported deceased during the audit period, leaving 3,707 deceased individuals on the rolls as of December 31, 2008. On average, agencies made 6.19 post-mortem payments for each of the deceased tenants.

To fix the problem going forward, the HUD OIG recommended HUD **require** agencies remove deceased individuals from the program, instead of just **suggesting** agencies remove these individuals as it did in its January Memorandum. Other suggestions included requiring the death of family members be promptly reported and the agency recover improper payments in a timely manner upon learning of the death of a program participant.

In total, the HUD OIG determined that if HUD stopped paying rent for deceased tenants, it could avoid paying \$14 million for all households listing a deceased member, including \$6.4 million in incorrect rental

payments for single-member deceased tenants.

## 5. Posthumous Prescriptions for Pain

Medicaid paid claims for prescriptions written for over 1,800 deceased individuals and prescriptions written by 1,200 doctors post-death, GAO investigators recently found.<sup>14</sup> Medicaid provides healthcare for individuals with low income and resources. The program is jointly funded by the federal government and the state; the state is responsible for administering the program and the federal government monitors the state programs through the Centers for Medicare and Medicaid Services (CMS) and sets eligibility requirements and standards.<sup>15</sup>

GAO obtained Medicaid prescription claims that were paid during fiscal years 2006 and 2007 from five states, which included California, Illinois, New York, North Carolina, and Texas. Then, to identify deceased prescribers and beneficiaries, GAO compared the prescriber and beneficiary information to the SSA DMF. The GAO study

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<sup>14</sup> United States Government Accountability Office, Medicaid: Fraud and Abuse Related to Controlled Substances Identified in Selected States, Report No. GAO-09-1004T, September 30, 2009, <http://www.gao.gov/new.items/d091004t.pdf>.

<sup>15</sup> U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services, [http://www.cms.gov/MedicaidGenInfo/01\\_Overview.asp#TopOfPage](http://www.cms.gov/MedicaidGenInfo/01_Overview.asp#TopOfPage).

focused on ten specific controlled substances.<sup>16</sup>

GAO discovered that in just the five selected states, Medicaid paid over \$200,000 in claims for prescriptions for controlled substances written for over 1,800 deceased individuals. GAO also found Medicaid paid approximately \$500,000 in claims for controlled substances that were posthumously written by 1,200 doctors.

In one instance, Medicaid paid claims for prescriptions of Vicodin and Lorazepam for several patients fraudulently written by a physician's assistant. The physician's assistant previously worked for a doctor that passed away, but the pharmacy never updated its records and continued to fill the prescriptions. In another instance, Medicaid paid over \$200,000 in medical services and \$2,870 in prescriptions for controlled substances for a beneficiary that died in 1980. Investigators could not locate the individual that used the identity of the deceased. GAO also cited a physician that continued prescribing Methadone, Klonopin, and Xanax for a beneficiary after her death in February 2006. The pharmacy filling the prescriptions finally informed the physician that his patient was dead when an acquaintance of the deceased patient saw her husband picking up

prescriptions for the deceased and informed the pharmacy of the death.

GAO found the five states failed to maintain proper fraud prevention controls. This included the fact that Medicaid offices failed to perform even the simple task of checking to see if beneficiaries or doctors were listed on any death records.

## **6. Dead Men Walking: Canes and Walkers for the Deceased**

Fraudsters walked off with tens of millions of dollars from Medicare in recent years after using the identities of dead doctors to charge the program for medical equipment no one was using. While the total extent of the problem was not determined, investigators from the U.S. Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs (PSI) estimated that losses to the taxpayer may have been as high as \$92 million.

Medicare is a federally funded health insurance program for the aged, disabled, and persons with end-stage renal disease.<sup>17</sup> The problem with faulty payments has centered on Medicare coverage for durable medical equipment (DME). DME refers to medical equipment and supplies used by a Medicare beneficiary in their home. This most commonly includes

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<sup>16</sup> These ten controlled substances included: Amphetamine derivatives; Benzodiazepine; Fentanyl; Hydrocodone; Hydromorphone; Methadone; Methylphenidate; Morphine; Non-Benzodiazepine sleep aids; and Oxycodone.

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<sup>17</sup> U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, <http://www.cms.gov/MedicareGenInfo/>.

wheelchairs, oxygen condensers, nebulizers, canes, hospital beds, prosthetics, and diabetic equipment. Clearly, for individuals that need this equipment, this is an important and necessary function of the Medicare program. For some, it became a target for defrauding the government.

PSI found that from 2000 to 2007, Medicare paid between \$60 million and \$92 million for hundreds of thousands of claims for medical equipment prescribed by deceased physicians.<sup>18</sup>

Typically, the process for a Medicare beneficiary to receive a DME requires a physician to prescribe the equipment. Through the Medicare program, a physician is assigned a Unique Physician Identification Number (UPIN). Then the beneficiary takes her prescription for a DME to a medical device supplier of her choosing and the supplier sells or rents the DME to the beneficiary. It then becomes the responsibility of the supplier to submit the claim for payment to an entity authorized by CMS for payment. The prescribing physician's UPIN must be included on the claim. Suppliers must be authorized by Medicare to submit claims for reimbursement.

PSI found that from 2000 to 2007, Medicare paid between \$60 million

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<sup>18</sup> Medicare Vulnerabilities: Payments for Claims Tied to Deceased Doctors: Hearing Before the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs United States Senate, 110th Congress (July 9, 2008).

and \$92 million for hundreds of thousands of DME claims procured through the use of deceased physician UPINs. In one example, Medicare paid over \$544,000 in DME claims from November 2005 to November 2006 written by a physician that died in 1999.

To perform its investigation, PSI obtained data on 33,000 deceased physicians from the American Medical Association and selected a statistically random sample of 1,500 deceased physicians. Next, PSI compared the UPINs for these 1,500 deceased doctors and obtained DME claims from Medicare for those 1,500 UPINs. PSI determined that 734 (or 43.9 percent) of the UPINs for deceased doctors were used to procure DME between January 1, 2000 and December 31, 2007. In fact, for these 734 UPINs, 21,458 claims totaling \$3.4 million were submitted to Medicare for payment. Moreover, 55 percent of the claims were dated at least five years after the physician had died. Based on this random sample, PSI estimated that, in total, Medicare paid between \$60 million and \$92 million for DME claims with deceased physician UPINs from 2000 to 2007.

The PSI findings were not news to Medicare. In 2001, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) published a report that found during 1999, Medicare paid \$32 million for medical equipment and supply claims containing invalid UPINs and an additional \$59 million for claims with

inactive UPINs.<sup>19</sup> Following this OIG report, Medicare stated that it planned to use a new claims process that would reject any claim using an invalid or inactive UPIN. But CMS decided against implementing changes to its automated claims processing system to block the payment of Medicare claims containing inactive or invalid UPINs. Instead, CMS chose to rely on provider education and two memoranda issued to stop service providers from submitting claims with inactive or invalid UPINs.<sup>20</sup> Clearly, these efforts failed.

Despite this evidence of a major problem, it remained unfixed for years to come. As of May 2008, PSI estimated that 2,000 to 2,900 UPINs for deceased physicians remained active, until it was replaced by the National Provider Identifier Number (NPI). However, unless CMS does a better job of maintaining NPIs, this new system will also be used to obtain payment for claims issued by deceased physicians.

Unfortunately, Medicare Part B has also paid claims for medical supplies prescribed for individuals after their death. In 2010, the HHS OIG office found that claims were being submitted and paid for DME for

deceased beneficiaries. In its own report, the HHS OIG found that CMS paid \$8.2 million in 2006-2007 in Medicare Part B claims that had dates of service after the beneficiary died.<sup>21</sup>

## **7. Federal Grants for Medical Care for Individuals with HIV/AIDS that Died Years Ago**

Federal funds set aside to fight HIV/AIDS have too often been directed to those who have died instead of those living and suffering from the illness. In 1990, Congress established certain federal programs to subsidize health care and housing for HIV/AIDS patients. However, these funds are allocated based on formulas that consider both individuals living with HIV and individuals that have died of AIDS. As a result, areas with historically higher populations of HIV/AIDS patients receive greater funding than those with the highest populations today. These formulas ignore the fact that other parts of the country may have the same number of actual, living cases of individuals with HIV/AIDS.

Congress passed the Ryan White Comprehensive AIDS Resource Emergency Act (RWCA or the CARE Act) to combat this disease using federal resources. The CARE Act is

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<sup>19</sup> Department of Health and Human Services, Office of Inspector General, Medical Equipment and Supply Claims with Invalid or Inactive Physician Numbers, November 2001, <http://oig.hhs.gov/oei/reports/oei-03-01-00110.pdf>.

<sup>20</sup> PSI Hearing citing HHS/OIG Semiannual Report to Congress, April 1, 2004-Sept. 30, 2004.

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<sup>21</sup> Department of Health and Human Services, Office of the Inspector General, Review of Medicare Parts A and B Services Billed with Dates of Service After Beneficiaries' Deaths, Report No. A-01-09-00519, September 2010, <http://oig.hhs.gov/oas/reports/region1/10900519.pdf>.

administered by HHS and provides funds to states and metropolitan areas to subsidize health care, medications, and support services to individuals and families affected by AIDS.<sup>22</sup> The Housing Opportunities for Persons with AIDS (HOPWA) program distributes federal funds for housing assistance to low-income individuals living with HIV/AIDS and their families. HOPWA was established by the National Affordable Housing Act of 1990 under the supervision of HUD.<sup>23</sup> Both programs are responsible for managing and distributing substantial sums of money. In Fiscal Year 2009, the CARE Act distributed over \$2.2 billion<sup>24</sup> and in Fiscal Year 2010, HOPWA distributed \$335 million.<sup>25</sup>

In 2004, GAO found, with regard to funding calculation, both the CARE Act and HOPWA use measurements of AIDS cases that do not accurately reflect the number of individuals living with HIV/AIDS and include the deceased.

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<sup>22</sup> U.S. Department of Health and Human Services, Health Resources and Services Administration, The HIV/AIDS Program, Legislation, <http://hab.hrsa.gov/law/leg.htm>.

<sup>23</sup> Libby Perl, Congressional Research Service, Housing for Persons Living with HIV/AIDS, April 27, 2010.

<sup>24</sup> U.S. Department of Health and Human Services, Health Resources and Services Administration, The HIV/AIDS Program, Funding, <http://hab.hrsa.gov/reports/funding.htm>

<sup>25</sup> U.S. Department of Housing and Urban Development, Housing Opportunities for Persons with AIDS Fact Sheet, <http://www.hudhre.info/documents/HOPWAFactSheet.pdf>.

**HOPWA.** Funding for the HOPWA program is designed to include individuals that have died from AIDS. The amount allocated to each area by HOPWA uses formulas that measure the number of cumulative AIDS cases for that area. GAO explained these cumulative numbers include AIDS cases reported to the Centers for Disease Control and Prevention (CDC) – living and dead – since the beginning of the AIDS epidemic in 1981. GAO makes clear that because the HOPWA funding formula includes the deceased, the distribution of funds is inaccurate and does not reflect the current allocation of individuals living with HIV/AIDS.<sup>26</sup>

As a result, GAO found 25 jurisdictions received an increase in funding during fiscal year 2004 based on cumulative case counts. The funding to these 25 areas was much higher than if HUD had used the current number of individuals living with HIV/AIDS. Further, 92 other jurisdictions were short-changed due to historically low numbers. Had the actual number of living patients with HIV/AIDS been used, these 92 jurisdictions would be entitled to an increase in funding. The areas that benefited most from the use of the formulas include jurisdictions in California, Michigan, New Jersey, and New York. Cited amounts of

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<sup>26</sup> United States Government Accountability Office, HIV/AIDS: Changes Needed to Improve the Distribution of Ryan White CARE Act and Housing Funds, Report No. GAO-06-332, February 2006, <http://www.gao.gov/new.items/d06332.pdf>.

additional funding ranged from \$2,000 to San Jose to over \$4 million to New York City.

In sum, GAO found that HOPWA's use of cumulative totals in funding distribution includes deceased individuals and misrepresents the number of individuals currently living in each jurisdiction with AIDS.

**The CARE Act.** The Care Act continues to pay for health care for deceased individuals as well. But the only jurisdiction that continues to receive funds based on the deceased is San Francisco, California. The CARE Act contains a provision – the “hold-harmless” provision – that protects a jurisdiction's funding levels, which guarantees a jurisdiction's base grant will be at least as large as a statutorily specified percentage of its previous year's funding. GAO found that for fiscal year 2004, San Francisco's CARE Act funding was determined by its fiscal year 1995 funding, which was based on both living and deceased AIDS cases. Since San Francisco also received hold-harmless funding in fiscal years 2005, 2006, and 2007, its CARE Act funding continues to be partially based on the number of deceased AIDS cases in San Francisco as of 1995.<sup>27</sup>

The implication of these funding decisions runs deep, discriminating against certain minorities and

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<sup>27</sup> United States Government Accountability Office, Ryan White Care Act: Impact of Legislative Proposal on Urban Areas, Report No. GAO-08-137R, October 5, 2007 <http://www.gao.gov/new.items/d08137r.pdf>.

individuals in desperate need of medical care. Using deceased AIDS cases to determine funding for federal HIV/AIDS programs results in less funding for minorities who are increasingly impacted by the disease. African-Americans and Hispanics account for a disproportionate share of new HIV/AIDS diagnoses.<sup>28</sup> African-Americans now represent a majority of new HIV/AIDS cases, with African-American women representing the fastest growing percentage of new HIV infections.<sup>29</sup> Survival after an AIDS diagnosis is also lower among African-Americans than other racial/ethnic groups.

These formulas also prevent needed medical care to the living. Currently, almost 4,000 people are on waiting lists to receive HIV/AIDS medications.<sup>30</sup> In May, a person in need of medication provided by the CARE Act's AIDS Drug Assistance Program (ADAP) in South Carolina died while on the waiting list.<sup>31</sup>

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<sup>28</sup> AIDS.gov, HIV/AIDS Basics, HIV 101, Statistics, <http://www.aids.gov/hiv-aids-basics/hiv-aids-101/overview/statistics/>.

<sup>29</sup> Darryl Fears, U.S. HIV Cases Soaring Among Black Women, The Washington Post, Feb. 7, 2005, <http://www.washingtonpost.com/wp-dyn/articles/A3318-2005Feb6.html>.

<sup>30</sup> National Alliance of States & Territories AIDS Directors, The ADAP Watch, ADAPs with Waiting Lists, October 22, 2010, [http://www.nastad.org/Docs/Public/InFocus/20101022\\_ADAP%20Watch%20update%20-%202010.22.10.pdf](http://www.nastad.org/Docs/Public/InFocus/20101022_ADAP%20Watch%20update%20-%202010.22.10.pdf).

<sup>31</sup> AIDS Healthcare Foundation, Obama AIDS Funding Fix “Too Little Too Late,” Says AHF, July 7, 2010, <http://www.aidshealth.org/news/press-releases/obama-aids-funding-fix-too.html>.



Patients on ADAP waiting lists have also died in West Virginia and Kentucky in recent years.<sup>32</sup> It is difficult, if not impossible, to justify distributing federal funds intended to support those living with HIV to areas based upon the number of people who died from the disease, some decades ago.

By using cumulative totals to determine HIV/AIDS funding, the American taxpayer is, once again, paying for a government program for the deceased. However, in this instance, it is robbing those living with HIV/AIDS of necessary and potentially life-saving benefits.

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<sup>32</sup> John Heys, Funding cuts hurt AIDS program, *The Charleston Gazette*, August 28, 2003; Eric Flack, Five People Died Waiting this Year, *Kentucky ADAP Crisis*, Wave3.com, Sept. 24, 2003, [http://www.actupny.org/reports/WV\\_ADAP\\_waitinglist\\_Deaths.html](http://www.actupny.org/reports/WV_ADAP_waitinglist_Deaths.html).

## Conclusion

The fault for these federal programs sending taxpayer funds to the deceased lies primarily with Congress. It is Congress that created and designed these federal programs, and it is Congress that must ensure its programs are properly serving the individuals they are designed to aid and are not subject to abuse, fraud, and waste. At minimum, Congress must take steps to remedy these known programs flaws.

**Accurate Collection of Death Information.** Congress must require SSA to make a more concerted effort to ensure its records are accurate. At minimum, SSA must take an active role in determining when its beneficiaries are deceased and not solely depend on family members and funeral homes to notify it of deaths as they currently do.<sup>33</sup> For example, SSA could actively pursue the life or death status of individuals whose age exceeds the average life expectancy age. If the White House is going to rely so heavily on the DMF, SSA must make sure its records are accurate. Once the DMF is accurate, other agencies and federal programs will be able to rely on the list to properly police their own rolls.

**Policing of Agency Program Rolls.** The federal agencies administering these programs also play an important role. As the various OIG investigations and reports make clear, agencies have been found lax in oversight of taxpayer dollars. These agencies must properly police their programs by ensuring that they are sending funds to qualifying individuals. For example, FSA must ensure that its rolls are accurate and it is not sending farming subsidies to deceased individuals. Further, these agencies must actively pursue the return of these funds and use all available punitive tools to prevent individuals that defraud the government from returning to the rolls. If individuals are going to receive government benefits, the government should require them to play by the rules.

**Heightened Monitoring of Physician Identification Numbers.** CMS and HHS must actively protect the Medicare and Medicaid programs from potential fraud. With the addition of the National Provider Identifier (NPI) system, CMS was given a fresh start to keep the provider rolls accurate and free of deceased physicians. NPI information must remain accurate to prevent further fraud on the Medicare and Medicaid programs.

**Proper Distribution of Federal Funds.** Congress must not allow HIV/AIDS program funding to be distributed based on historical headcounts, especially with so many individuals desperate for health care and housing. The formulas that are used to distribute funds for HOPWA and for San Francisco with regard to the

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<sup>33</sup> August 14, 2009 Letter from Social Security Administration Commissioner Michael J. Astrue to Tom Coburn, [http://coburn.senate.gov/public/index.cfm/files/serve?File\\_id=7a29f89d-4833-4367-a1bb-ebb133b81ac1](http://coburn.senate.gov/public/index.cfm/files/serve?File_id=7a29f89d-4833-4367-a1bb-ebb133b81ac1).

CARE Act should be updated to reflect distribution based on the estimated number of individuals currently living with HIV/AIDS in each jurisdiction. Any other distribution is unfair and prevents housing and healthcare to living individuals in need.

While these programs provide necessary and much needed help to certain Americans, responsibility to use these funds to help people must be balanced with controls for fraud, waste, and abuse. Any money wasted hurts program beneficiaries, as well as taxpayers.