

# United States Senate

WASHINGTON, DC 20510

March 28, 2013

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

Dear Secretary Sebelius:

For the past two years, we have written to you requesting information about the discretionary authority granted to you as Secretary of the Department of Health and Human Services (HHS) through Section 6401(a)(6) of the Patient Protection and Affordable Care Act (PPACA) regarding the imposition of a temporary moratorium on the enrollment of new providers and suppliers. The answers that we received from both you and Acting Administrator Tavenner have not provided us with satisfactory answers about when the Centers for Medicare & Medicaid Services (CMS) might begin using this authority. *CMS has yet to utilize this tool provided in PPACA to prevent waste, fraud and abuse.*

It has now been three years since PPACA was enacted and over two years since CMS published a final rule that allowed CMS to impose a temporary enrollment moratorium on new Medicare providers and suppliers when CMS determines that there is a significant potential for fraud, waste, or abuse with respect to a particular provider or supplier type, geographic area or both.<sup>1</sup> To date, not a single action has been taken by CMS using this authority.

Over the past two years, the number of providers and suppliers providing high vulnerability to fraud services like home health and durable medical equipment has risen dramatically in some of the areas of the country where healthcare fraud is the most rampant. For example, at last count there were over 681 Medicare enrolled home health agencies in Miami-Dade County in Florida, widely considered the epicenter of health care fraud in this country, while there were about half that number as recently as three years ago.

A report from the Government Accountability Office (GAO) issued in September 2012<sup>2</sup> identified several types of suppliers and providers who were the most egregious perpetrators of health care fraud, which tracks closely to the list of high profile health care fraud cases contained in the 2012 Health Care Fraud and Abuse Control Fund (HCFAC) Report.<sup>3</sup> Therefore, it is

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<sup>1</sup> "Medicare, Medicaid, and Children's Health Insurance Programs (CHIP); Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers," Federal Register 76:22 (February 2, 2011) p. 5862-5971.

<sup>2</sup> <http://www.gao.gov/assets/650/647849.pdf>

<sup>3</sup> <https://oig.hhs.gov/publications/docs/hcfac/hcfacreport2012.pdf>

difficult to understand why CMS continues to refuse to take action against enrolling these high vulnerability providers and suppliers.

It is not reasonable to suggest that CMS needs more time to study whether there is a need to impose a temporary moratorium in certain geographical areas for certain provider and supplier types when ample evidence exists to justify moratoria in these high fraud areas. To better understand CMS's failure to act, please:

1. Explain why CMS has not imposed a temporary moratorium of "high" or "moderate" categorical risk providers/suppliers in HHS-OIG strike force cities or other high-risk areas.
2. Specifically, explain why CMS has not imposed a temporary moratorium in the following areas:
  - a. for durable medical equipment suppliers in south Florida when Daniel R. Levinson, the Inspector General for HHS-OIG, stated in his March 9, 2011 Congressional Testimony that there is "rampant fraud" among durable medical equipment suppliers in south Florida,<sup>4</sup>
  - b. for home health agencies in Miami-Dade County, Florida, when the number of home health agencies there has increased significantly over the past three years and when the Department of Justice has acknowledged publicly that home health fraud is a high risk to the Medicare program in Florida,<sup>5</sup>
  - c. for home health agencies and emergency transport services in Harris County, TX, since the District Attorney and others have repeatedly raised concerns about the proliferation of these providers to CMS,<sup>6</sup> and
  - d. for physical therapy providers in Brooklyn, NY, since there have been widely documented and pervasive health care fraud issues identified with that provider type in the past two years.<sup>7</sup>
3. Describe the steps CMS is taking to control Medicare fraud in these high fraud areas absent imposing a moratorium and provide statistics or other metrics documenting how those efforts have been successful over the past two years.
4. Provide enrollment statistics for all current strike force locations showing the number of durable medical equipment, home health, physical therapy, community mental health center, ambulance provider and independent diagnostic testing facilities for 2010, 2011, 2012 and 2013. Please also provide the number of pending applications currently awaiting action by CMS contractors for each of the provider/supplier types listed above.

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<sup>4</sup> [https://oig.hhs.gov/testimony/docs/2011/levinson\\_testimony\\_03092011.pdf](https://oig.hhs.gov/testimony/docs/2011/levinson_testimony_03092011.pdf)

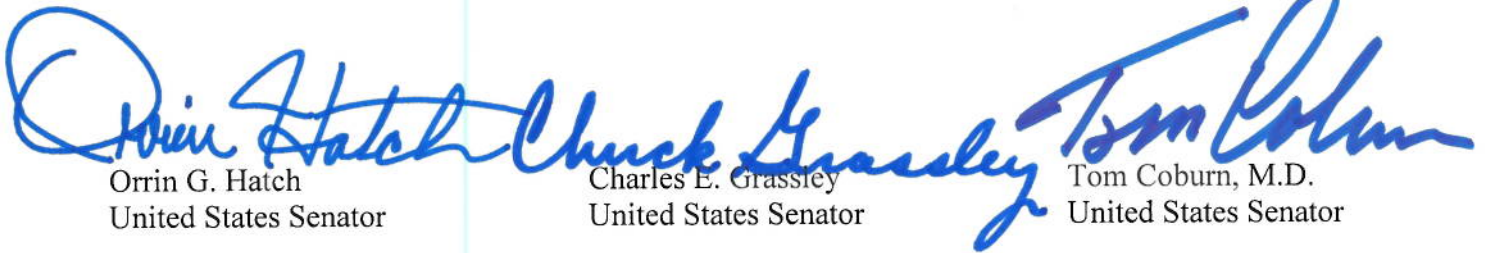
<sup>5</sup> <http://homehealthcarenews.com/2012/05/miamis-real-vice-medicare-fraud-to-the-tune-of-137-million/>

<sup>6</sup> Langford, T (December 3, 2011). Home health care firms breaking rules, raking in Medicare dollars. Houston Chronicle; and Langford, T (October 17, 2011). DA says Medicare ignores evidence of EMS transport fraud. Houston Chronicle.

<sup>7</sup> <http://www.nbcnewyork.com/news/local/Medicare-Fraud-Brooklyn-Arrest-FBI-Task-Force-Medicaid-Brooklyn-172634561.html>

HHS and CMS have a duty to ensure that taxpayer dollars are being carefully stewarded and that all available tools are being utilized to combat health care fraud nationwide. Therefore, we appreciate your assistance in helping us better understand what HHS and CMS are doing to address these issues. Thank you for your timely attention to this request and we look forward to receiving your response by April 19, 2013.

Sincerely,



Orrin G. Hatch  
United States Senator

Charles E. Grassley  
United States Senator

Tom Coburn, M.D.  
United States Senator

cc: Acting Administrator Marilyn Tavenner, Centers for Medicare & Medicaid Services