

Congress of the United States
Washington, DC 20510

April 2, 2012

Marilyn Tavenner, Acting Administrator
Center for Medicare & Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Acting Administrator Tavenner:

As members of both House and Senate Committees overseeing the Medicare program, we have a responsibility to conduct oversight and ensure that the Centers for Medicare & Medicaid Services (CMS) is utilizing all possible resources and authorities to protect the Medicare program from fraud, waste, and abuse. It is in this role that we are writing to request additional information regarding CMS's efforts to identify "nominee owners" and the type of fraud perpetrated by individuals and organizations establishing false storefronts and "shell companies" – paper-only firms with no real operations.

On March 7, 2012, the Department of Justice (DOJ) indicted¹ an individual for allegedly swindling \$20 million from the Medicare program over a five-year period by establishing two home health agencies using a nominee owner. This indictment, along with the other examples cited in this letter, demonstrate that CMS's provider screening efforts are still not effectively safeguarding the Medicare program from individuals intent on committing fraud within the Medicare program and that CMS should revise its screening efforts to address nominee owners.

As you know, a nominee owner does not identify himself as an owner, but in fact exercises ownership and control of an entity. Thus, the true owner of the entity gives someone else limited authority to act on behalf of an entity, usually for a limited period of time, and usually during the initial formation of the entity. In fact, the Internal Revenue Service² (IRS) does not authorize the use of nominees to obtain an employer identification number (EIN), and the DOJ recently convicted³ several individuals after they installed nominee Presidents to hide their control of five durable medical equipment companies that submitted fraudulent claims to Medicare. The Department of Health and Human Services' Office of Inspector General (HHS-OIG) has

¹ See Department of Justice (DOJ) web site at http://www.justice.gov/usao/iln/pr/chicago/2012/pr0307_01.pdf

² See Internal Revenue Service web sites: <http://www.irs.gov/businesses/small/article/0,,id=228578,00.html> and <http://www.irs.gov/businesses/small/article/0,,id=214471,00.html>

³ See DOJ press release dated March 9, 2011 for the Southern District of Mississippi: <http://www.justice.gov/usao/mss/press/MARCH2011/Miranda,%20Miguel%20Sentencing%20Press%20Release.pdf>

expressed concerns regarding the use of nominee owners and recommended that CMS take aggressive action to identify them.⁴ Thus far, it does not appear that CMS has addressed the concept of nominee owners, false storefronts, and shell companies in any of its enrollment regulations⁵ or its Provider Screening statement of work.⁶

Accordingly, to address our concerns about the ongoing Medicare and Medicaid fraud, we request that CMS:

1. Describe CMS's efforts to identify and detect nominee owners in the Medicare and Medicaid programs since publication of the Medicare, Medicaid, and CHIP screening rule on February 2, 2011.
2. Explain whether or not CMS (directly or through the Medicare enrollment contractors) collaborates with the IRS, HHS-OIG, the Social Security Administration, the Department of Homeland Security and/or the DOJ to verify information regarding individuals listed as a prospective owner of a provider or supplier in the Medicare, Medicaid and CHIP programs.
3. Explain whether or not CMS has implemented payment caps to protect the Medicare program from "bust-out" schemes such as those described in the Reuters article cited below.⁷
4. Provide a list of the safeguards (i.e., use of smart card technology, authentic token, or multi-factor verification technology) currently utilized by the Medicare enrollment contractors to verify the identity of an individual practitioner, owner, or authorized/delegated official during the initial enrollment process, change of information, or enrollment revalidation submission.
5. Describe the process used by CMS to determine which categories of providers and suppliers are deemed "high risk" and explain why non-physician owned clinics are currently viewed as "low risk" by CMS.

⁴Testimony of Omar Perez, Assistant Special Agent in Charge, Office of Inspector General, U.S. Department of Health and Human Services, before the United State House of Representatives, Committee on Energy Commerce, Subcommittee on Oversight & Investigations on March 2, 2011; Testimony of Gerald T. Roy, Deputy Inspector General for Investigations, Office of Inspector General, U.S. Department of Health and Human Services, before the U.S. House of Representatives, Committee on Oversight & Government Reform, Subcommittee on Health Care, District of Columbia, Census and National Archives on April 5, 2011; and Testimony of Daniel R. Levinson, Inspector General, U.S. Department of Health and Human Services before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Health on September 22, 2010.

⁵ Federal regulation titled, "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" published on February 2, 2011.

⁶ See the July 20, 2011 Statement of Work associated with Contract Award Number HHSM-500-2011-00089C.

⁷ See December 21, 2011, Reuters News Special Report: Phantom Firms Bleed Millions From Medicare at <http://www.reuters.com/article/2011/12/21/us-shellcompanies-medicare-idUSTRE7BK0PY20111221>.

In closing, we share your goal of ensuring that the Medicare, Medicaid, and CHIP programs have appropriate procedures in place to confirm the ownership interest of participating providers and suppliers. As such, we would like to better understand the steps CMS is taking to identify nominee owners and false storefronts prior to those individuals/entities ever gaining entry into the Medicare, Medicaid or CHIP programs. We appreciate your efforts in responding to this request and ask that you respond by April 20, 2012. Should you have any questions, please do not hesitate to contact Kim Brandt with the Senate Finance Committee at (202) 224-5367 or Chris Armstrong with the House Ways and Means Committee at (202) 225-5522.

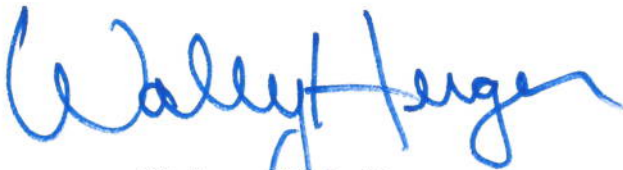
Sincerely,

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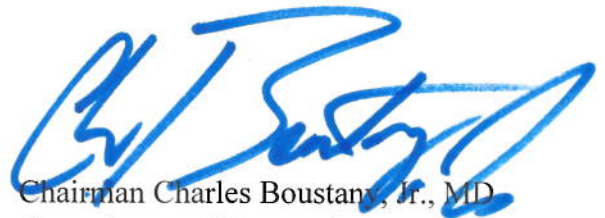
Senator Orrin G. Hatch
Ranking Member
Senate Finance Committee

A handwritten signature in blue ink, reading "Tom Coburn".

Senator Tom Coburn, MD
Member
Senate Finance Committee

A handwritten signature in blue ink, reading "Wally Herger".

Chairman Wally Herger
Committee on Ways and Means
Subcommittee on Health

A handwritten signature in blue ink, reading "Charles Boustany, Jr.".

Chairman Charles Boustany, Jr., MD
Committee on Ways and Means
Subcommittee on Oversight