

December 3, 2010

Donald Berwick, M.D.
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Administrator Berwick:

I write in strong support of the proposed rule to combat waste, fraud, and abuse in the Medicare, Medicaid and CHIP programs that was published in the Federal Register on September 23, 2010. Specifically, I would like to encourage aggressive use of the authority granted to you by Congress under the Affordable Care Act to issue a temporary moratorium on enrollment of new durable medical equipment (DME) suppliers in the Medicare program while ensuring beneficiary access is not compromised. Limiting the enrollment of new DME suppliers will go a long way in assisting CMS' fraud and abuse prevention activities. This will assist CMS in ensuring that suppliers billing Medicare are compliant with the standards and criteria required to obtain and retain their billing privileges. CMS can continue to clamp down on the ability of fly-by-night operations to fraudulently bill Medicare during a temporary national moratorium, with any exceptions necessary to ensure beneficiary access to needed equipment and supplies. I encourage you to aggressively employ the new Affordable Care Act authorities that will help prevent fraud, waste and abuse from occurring instead of chasing the dollars after the fact. You and I have agreed on many occasions that in health care, prevention is best.

It is well-documented that the durable medical equipment industry contains many fraudulent actors that increase costs to the American taxpayer. According to the Centers for Medicare & Medicaid Services, there are nearly 100,000 durable medical equipment suppliers participating in Medicare in the United States. Daniel R. Levinson, Inspector General of the U.S. Department of Health & Human Services, testified before the House Committee on Energy and Commerce, Subcommittee on Health on September 15, 2010 that "an OIG claims analysis revealed that in 2007, Medicare allowed more than \$6 million for DME claims with invalid referring physician identifiers and \$28 million for claims with inactive physician identifiers. Based on this analysis, we recommended that CMS update its claims-processing system to ensure that referring physician identifiers are valid and active. Had this capability been in place in 2007, Medicare could have avoided \$34 million in improper payments." It is clear that the DME program has been highly susceptible to fraud in the past.

I therefore urge that under the new authority given to the Secretary under the Affordable Care Act, you consider a temporary moratorium on issuing new supplier numbers specifically as it relates to DME suppliers. While the competitive bidding program which is soon to be operational in 9 areas across the country seeks to provide immediate savings to beneficiaries and taxpayers and should help ensure that only legitimate providers are serving Medicare beneficiaries, further restricting the proliferation of fly by night operations – such as through a national moratorium on new entrants into Medicare – will go towards strengthening program integrity. I request that CMS redouble its efforts to enforce the 30 standards that exist for current suppliers during a moratorium on the enrollment of new suppliers for a program that has been for so long the target of fraud. I urge CMS to use all the authorities at its disposal, including the new authorities under the Affordable Care Act, to address waste, fraud, and abuse in this area and I encourage the Agency to consider all options, including a national moratorium, to prevent fraudsters from simply relocating across the country to avoid detection. In addition, I am enthusiastic about the Agency's efforts to develop a national database of compromised provider and beneficiary numbers, which will also help prevent bad actors from defrauding the Medicare program.

In addition to actively pursuing a moratorium on new provider numbers, I also urge CMS to use its existing authority to deactivate provider numbers that are no longer in use. It is my understanding that on April 21, 2006, CMS published a final rule in the Federal Register titled, "Medicare Program; Requirements for Providers and Suppliers To Establish and Maintain Medicare Enrollment." This rule permits CMS to deactivate provider and supplier billing privileges when no claims are submitted within 12 consecutive months. I support and urge the deactivation of provider numbers that have been dormant, as it has come to my attention that these numbers can be transferred and used to perpetuate fraudulent actions.

Thank you for your consideration and for your efforts to proactively prevent fraud in federal programs that Americans so deeply rely on.

Sincerely,



Senator Ron Wyden