

March 1, 2011

MEMORANDUM

To: Members, Subcommittee on Oversight and Investigations
From: Subcommittee on Oversight and Investigations Staff
Subject: March 2 Hearing on “Waste, Fraud, and Abuse: A Continuing Threat to Medicare and Medicaid”

On Wednesday, March 2, 2011 at 10:00 a.m., in Room 2322 Rayburn House Office Building, the Subcommittee on Oversight and Investigations will hold an oversight hearing entitled “Waste, Fraud, and Abuse: A Continuing Threat to Medicare and Medicaid.” The hearing will examine reports that waste, fraud, and abuse cost taxpayers \$60 billion a year and will analyze what measures can be taken to combat this problem.

I. Witnesses

The hearing will have seven witnesses:

- John Spiegel, Director of Medicare Program Integrity, Centers for Medicare and Medicaid Services (CMS).
- Kathleen King, Director of the Health Care Division, Government Accountability Office (GAO).
- Gerald Roy, Deputy Inspector General for Investigations, Department of Health and Human Services (HHS).
- Omar Perez, Assistant Special Agent in Charge, HHS Office of the Inspector General, Miami Regional Office.
- The Hon. R. Alex Acosta, former U.S. Attorney for the Southern District of Florida and current Dean of the Florida International University College of Law.
- Craig H. Smith, former General Counsel of Florida’s Agency for Health Care Administration.
- Sara Rosenbaum, Professor, GW School of Public Health and Health Services.

II. Discussion

In 2011, mandatory federal spending on Medicare and Medicaid will be more than [\\$650 billion](#). GAO recently found that Medicare had estimated federal outlays in 2010 of \$509

billion, and that the size and complexity of the program made it inherently susceptible to improper payments and serious management challenges. As much as [\\$60 billion is stolen](#) through Medicare scams every year, meaning more than 10% of the program's cost is lost to fraud. The GAO has produced hundreds of reports over the last thirty years outlining waste, fraud and abuse in Medicare and Medicaid. GAO first designated Medicare as a "high-risk" program in 1990 and Medicaid as a "high-risk" program in 2003. Yet these programs continue to be riddled with fraud today: indeed, a 2011 report from GAO once again designated Medicare and Medicaid as high-risk programs. The most common types of Medicare fraud are:

- Billing for services that were not performed or billing for a higher level of service than was provided.
- Billing for equipment that is not delivered.
- The use of another individual's Medicare card to obtain care, supplies, or equipment.
- Billing for home medical equipment after it has been returned.

Medicare fraud is bankrupting states and the federal government alike. In South Florida, for instance, Medicare fraud has become one of the state's most pervasive crimes. In one repeated scam, criminals establish sham durable medical equipment (DME) storefronts. These sham entities submit false billings to Medicare and then close up shop, move to a new location and simply repeat the crime. Last year the Inspector General of HHS [warned](#) that violent criminals with sophisticated criminal drug networks have increasingly turned to defrauding the Medicare program, finding it safer and more profitable to steal from Medicare than to traffic in illegal drugs. Just a few weeks ago a nationwide effort by law enforcement [resulted in charges against 111 defendants](#) in nine cities for their alleged participation in Medicare fraud schemes involving more than \$225 million. Fraud is also being perpetrated by corporations, hospitals, and nursing facilities. This can include complex billing fraud, accounting schemes, illegal marketing, and physician self-referral agreements. These schemes result in burdensome regulations and reduced fees for the vast majority of Medicare providers, who are honest, and provide legitimate services.

The GAO designated Medicaid as a high-risk program due to the inadequacy of its fiscal oversight. Indeed, an April 2009 [GAO report](#) estimated the improper payment rate in Medicaid at 10.5 percent. The program currently accounts for more than 20 percent of states' expenditures, and the cost of the expansion ordered by the Patient Protection and Affordable Care Act (PPACA) is estimated to exceed \$430 billion over the next 10 years. The federal government will be responsible for paying over 90 percent of those increased costs. The GAO recently found that CMS has failed to ensure that states develop adequate processes to address improper Medicaid payments.

Law enforcement plays a critical role in combating Medicare and Medicaid fraud, but catching criminals after they commit a crime is time-consuming and costly. A significant amount of time and money goes into investigating and prosecuting Medicare and Medicaid fraud. HHS recently announced [new rules](#) that focus on preventing health care fraud before it occurs, rather than trying to catch the perpetrators after the fact. As part of its strategic efforts to combat fraud, CMS merged its separate Medicare and Medicaid integrity offices in 2010 into the combined Center for Program Integrity. HHS also plans to introduce new predictive analytics technology to assist with its prevention efforts. The hearing will provide the Subcommittee an opportunity to question HHS about the potential effectiveness of these new measures.

III. **Issues**

The following issues will be examined at the hearing:

- How much is lost to waste, fraud, and abuse in the Medicare and Medicaid systems each year?
- What percentage of the providers or suppliers within the Medicare or Medicaid system are engaged in fraudulent practices, and how can they be weeded out?
- Why has fraud become so rampant within the Medicare and Medicaid systems?
- What additional tools, resources, rules, or regulations would be helpful to those fighting to prevent fraud?
- Why do HHS and CMS believe that the new rules will deter or prevent the rampant fraud that has continued unabated over the last 20 years?

IV. **Staff Contacts**

If you have any questions regarding this hearing, please contact Sean Hayes or Stacy Cline, Counsels for the Subcommittee on Oversight and Investigations, at (202) 225-2927.