

FOR IMMEDIATE RELEASE
October 25, 2011

CONTACT: Julia Lawless, Antonia Ferrier (Hatch)
(202) 224-4515
Jill Gerber (Grassley) (202) 224-6522

**HATCH, GRASSLEY CALL ON HHS TO EXERCISE AUTHORITY TO PREVENT WASTE,
FRAUD & ABUSE WITHIN MEDICARE**

In Letter to HHS Secretary Sebelius, Senators ask why CMS is not utilizing tools in new health law to safeguard program

WASHINGTON –In a letter today, the top Republicans on the Senate Finance and Judiciary Committees, U.S. Senators Orrin Hatch (R-Utah) and Chuck Grassley (R-Iowa), asked Health and Human Services Secretary Kathleen Sebelius why the Centers for Medicare and Medicaid Services (CMS) is not utilizing some of the tools provided within the Patient Protection and Affordable Care Act (PPACA) to safeguard the Medicare program from waste, fraud and abuse.

Under PPACA, CMS can impose a temporary enrollment moratorium on new Medicare providers and suppliers when the agency determines that there is a significant potential for waste, fraud, or abuse by the applicant type or geographic area. While the final rule for this regulation was published more than eight months ago, CMS has failed to impose a single temporary moratorium. Today, the Department of Justice (DOJ) and the HHS-OIG are operating strike force initiatives in seven States (California, Florida, Illinois, Louisiana, Michigan, New York, and Texas), including Miami, Florida. All of these areas, particularly Miami, have historically been vulnerable to Medicare fraud and are high risk areas for programmatic vulnerability. However, to date, CMS has failed to exercise its authority to protect against fraud. The National Health Care Anti-Fraud Association has estimated that as much as \$60 billion is lost to fraud, waste and abuse across the Federal health care programs.

“It is deeply disconcerting that CMS has failed to act in the best interest of the American taxpayers and Medicare beneficiaries and prevent fraud before it occurs by exercising its moratoria authority,” wrote the Senators. “It is not reasonable to suggest that CMS needs more time to study whether there is need to impose a temporary moratoria in certain geographical areas for certain provider and supplier types when ample evidence exists from the strike force activities to justify moratoria in these high fraud areas.”

The text of the letter to Secretary Sebelius is below and a signed copy can be found [HERE](http://finance.senate.gov/newsroom/ranking/release/?id=f4d925eb-a042-42bc-aff9-9d60b1157f8d):
(<http://finance.senate.gov/newsroom/ranking/release/?id=f4d925eb-a042-42bc-aff9-9d60b1157f8d>)

October 25, 2011
The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

As the Ranking Members of the Senate Finance and Judiciary Committees, we are writing to request that as Secretary of the Department of Health and Human Services (HHS), you exercise the discretionary authority granted to you through Section 6401(a)(6) of the Patient Protection and Affordable Care Act (PPACA) regarding the imposition of temporary moratorium on the enrollment of new providers and suppliers. Specifically, we urge you to determine why the Centers for Medicare & Medicaid Services (CMS) is failing to use this tool provided in PPACA to prevent waste, fraud and abuse.

On February 2, 2011, CMS published a final rule with comment entitled, "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" in the Federal Register. In part, this regulation allows 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.

Today, more than year after the publication of a proposed rule and more than 8 months after publishing the aforementioned final rule with comment, CMS has still not imposed a single temporary moratorium. In addition, despite a specific recommendation by the HHS Office of the Inspector General (HHS-OIG) to impose a temporary moratorium on independent diagnostic testing facilities in Los Angeles, California, CMS refused.

Additionally, the Department of Justice (DOJ) and the HHS-OIG are operating strike force initiatives in seven States (California, Florida, Illinois, Louisiana, Michigan, New York, and Texas), including Miami, Florida. All of these areas, particularly Miami, have historically been vulnerable to Medicare fraud and are high risk areas for programmatic vulnerability. Therefore, it is deeply disconcerting that CMS has failed to act in the best interest of the American taxpayers and Medicare beneficiaries and prevent fraud before it occurs by exercising its moratoria authority in some of these areas. It is not reasonable to suggest that CMS needs more time to study whether there is need to impose a temporary moratoria in certain geographical areas for certain provider and supplier types when ample evidence exists from the strike force activities to justify moratoria in these high fraud areas. To better understand CMS's failure to act, please:

1. Explain why CMS decided not to impose a temporary moratorium on independent diagnostic testing facilities (IDTFs) in Los Angeles, California despite the OIG recent recommendation and previous work by the OIG that indicated \$71.5 million in improper payments to IDTFs.
2. Explain what steps CMS is taking to address the concerns raised by the OIG with respect to IDTFs in Los Angeles, California. Please include a detailed timeline.
3. 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.
4. Explain why CMS decided not to impose a temporary moratorium 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.

5. Describe the program changes that CMS is considering to strengthen the provider enrollment process for “moderate” and “high” screening risk providers and suppliers, such as IDTFs, home health agencies, and suppliers of durable medical equipment, orthotics, prosthetics, and supplies.
6. Provide all materials used to develop and finalize the temporary moratorium provisions found in CMS-6028-P and CMS-6028-IFC.
7. Consistent with 42 CFR 424.570(a)(2)(i)(A), provide a list of providers and suppliers with a highly disproportionate number of providers and suppliers in a category relative to the number of beneficiaries for each State.
8. Consistent with 42 CFR 424.570(a)(2)(i)(B), provide a list of providers and suppliers and location (city and state) where a rapid increase in the number of enrollment applications has occurred within the past twelve months.
9. Consistent with 42 CFR 424.570(a)(2)(ii), provide a list of State Medicaid programs who have imposed a moratorium on a group of Medicaid providers or suppliers that are also eligible to enroll in Medicare.
10. Consistent with 42 CFR 424.570(a)(2)(iii), provide a list of State-imposed moratoria on enrollment in particular geographic areas or on a particular providers, supplier types, or both.

We understand that we are requesting a substantial amount of information, but appreciate your understanding Congress’ role in overseeing that taxpayer dollars are carefully spent. Thank you for your timely attention to this matter and we request a response by December 2, 2011.

Sincerely,
HATCH
GRASSLEY

cc: Administrator Donald Berwick, M.D., Centers for Medicare & Medicaid Services
Principal Deputy Administrator and Chief Operating Officer Marilyn Tavenner, Centers for Medicare & Medicaid Services

###