

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

July 29, 2010

Via Electronic Transmission

Dr. Donald Berwick
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue
Washington, DC 20201

Dear Dr. Berwick:

I am writing to follow up on a request for information that you previously agreed to provide in connection with your nomination to serve as the Administrator of the Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services (HHS/Department). The Committee on Finance (Committee) has sole jurisdiction in the United States Senate over federal health programs including Medicare, Medicaid and the Children's Health Insurance Program. Since your nomination is subject to Senate confirmation pursuant to Article II, Section 2, Clause 2 of the Constitution, your nomination was referred to this Committee.

Ever since the President first nominated you on April 19, 2010, your nomination was undergoing the Committee's usual and routine bipartisan nomination investigation and review process. That process had in fact proceeded to the point where I had asked for a hearing for the week of June 21, 2010, and, to my knowledge, no member of the Committee objected to the hearing. Unfortunately, while the Committee was weighing when to have a hearing, the President circumvented the nomination process on July 7, 2010, by using his authority to recess appoint you to the position. The President has since resubmitted your nomination to the Senate. Consistent with the limits of the President's recess appointment authority under the Constitution, your term as CMS Administrator will expire at the end of 2011 absent action by the Senate to confirm your nomination.

As you are aware, many of my colleagues and I are very concerned that your recess appointment has circumvented the open public review of your nomination. The need to consider your nomination in a transparent and deliberative manner is all the more important because the recently enacted health care reform legislation makes CMS responsible for numerous and significant changes to federal health programs, including over half a trillion dollars in Medicare payment cuts and the largest Medicaid coverage expansion since the program's creation. Furthermore, your recess appointment combined with the Administration's apparent opposition to allowing you to appear before a Committee nomination hearing has almost certainly imposed an injustice on you by denying you a forum to present your qualifications and answer legitimate questions raised about your nomination. As a result, an unfortunate shadow has been cast over your suitability, legitimacy, and authority to serve as Administrator during a critical time for CMS and for the nation as a whole.

One of the many significant issues related to your nomination that remains unresolved is the potential for conflicts arising from donors to the Institute for Healthcare Improvement (IHI), the organization you founded and led as Chief Executive Officer. The public has the right to know whether the numerous and significant policy decisions that you make are vulnerable to these potential conflicts of financial interest.

On June 4, 2010, my staff requested that you provide IHI's last three Forms 990, including Schedules B which include the requested information on donors to IHI. As you will recall, we discussed this when we met in my office on June 16, 2010, and you assured me you would comply with this request. Indeed, you even agreed to have my staff meet with the Chief Financial Officer for IHI to ensure that the financial information provided was accurate and complete. In addition, an Administration official confirmed by email on June 24, 2010, that he was working to provide the Committee this information. However, this information has not yet been provided despite assurances from both you and the Administration.

Please be assured that my request for this information remains despite your recess appointment. The requested information goes to the heart of the issue of whether you are able to execute your significant responsibilities as CMS Administrator in a fair and impartial manner. In fact, my request for this information becomes even more important as it appears that you will not have a forum to address this issue in the immediate future despite the repeated urgings by Republicans on the Committee for a hearing on your nomination.

For these reasons, I renew my request that you provide IHI's last three Forms 990, including Schedules B. In addition, given that you are currently serving as CMS Administrator due to the recess appointment, please indicate whether the Department has reviewed your conflicts of interest, if any, as is required, and indicate whether any waiver of any conflict has been issued to you by the Secretary or any other Administration official. If so, please provide a copy of any such waiver to the Committee.

Additionally, as part of the nomination process, you wrote a letter dated April 16, 2010, to the Designated Agency Ethics Official at HHS outlining steps that you would take to avoid actual or apparent conflicts of interest should you be confirmed by the Senate. Though you were not confirmed by the Senate, please indicate whether you have taken all of the actions outlined in this ethics agreement subsequent to your recess appointment and indicate any other actions taken, if any. In addition, please indicate whether IHI continues to provide benefits to you and your family including health care coverage as indicated in IHI's audited financial statement. And, if so, please indicate whether continued receipt of benefits from IHI and the funding sources for IHI were taken into consideration in either the ethics review by the Office of Government Ethics or by the Department.

Given the importance of this inquiry and the fact that you are already serving as Administrator, it is imperative that this information be provided, and accordingly, I request that you provide the requested information by Friday, August 13, 2010. Should you have any questions regarding this letter, please contact Nick Wyatt of my staff at (202) 224-4515. Thank you for your attention to this important matter.

Sincerely,


Charles E. Grassley
Ranking Member