

United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510-6200

August 25, 2008

Via Electronic Transmission

Kerry Weems
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

The Honorable Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, S.W.
Washington, DC 20201

Dear Acting Administrator Weems and Inspector General Levinson:

I am in receipt of the final report prepared by the Office of the Inspector General (OIG) of the Department of Health and Human Resources (HHS) entitled: "Medical Review of Claims for Fiscal Year 2006 Comprehensive Error Rate Testing Program" (Report). That Report was conducted to:

- 1) Determine the adequacy of the Comprehensive Error Rate Testing Program (CERT) contractor's 2006 medical review of Durable Medical Equipment (DME) claims; and
- 2) Assess the impact of reviewing additional medical records on the 2006 DME error rate.

To begin, I am deeply disturbed by the findings of the OIG Report and by the failures of the Centers for Medicare and Medicaid Services (CMS) and its contractor, AdvanceMed. Although you were not the Administrator of CMS at the time that the original 2006 error rate was reported to me, Mr. Weems, I look to your leadership to address the serious concerns arising out of the OIG Report.

In its Report the OIG determined that the 2006 DME error rate is not 7.5% as originally reported to Congress, but instead is closer to 30%--more than four times as high as CMS reported to Congress. What is even more alarming is that it appears that CMS may have deliberately instructed the contractor to take the unusual step of undertaking a limited review of the available data so as to make the error rate calculation far smaller than it was in reality. According to the OIG Report, CMS orally instructed the CERT contractor to "deviate from written policies by making determinations based primarily on the limited medical records available from suppliers..., not the full medical records available from physicians and by applying clinical inference when reviewing supplier medical records to reasonably infer that the DME provided was medically necessary." See page 2 of Report.

This is unconscionable and an affront to every American taxpayer who is footing the bill, especially because we are not talking about millions of dollars. Instead, we are talking billions of dollars lost to fraud, waste and/or abuse in 2006.

Equally important is whether or not the 2007 DME error rate reported to Congress is as inaccurate as the 2006 DME error rate reported to Congress. Accordingly, I am requesting through this letter that the HHS OIG:

- 1) Examine the methodology being used to determine the CMS 2007 DME error rate; and
- 2) Investigate who at CMS directed AdvanceMed to deviate from established policies and use clinical inference.

Additionally, I am interested in learning more about the CERT contractor, AdvanceMed. In particular Mr. Weems, I would appreciate receiving a copy of the contract(s) executed between CMS/HHS and AdvanceMed for the past five years. In addition, I would appreciate receiving any and all reviews, assessments, evaluations or the like conducted of AdvanceMed and its contract performance. Next, I would like to know to what extent AdvanceMed was merely following the contract with CMS or, if not, what action CMS will take with regard to AdvanceMed for its inadequate review of available documentation leading to an inaccurate DME error rate being reported to Congress.

Thank you in advance for your attention to this important matter and I look forward to receiving your responses and the material I requested as soon as possible.

Sincerely,



Charles E. Grassley
Ranking Member