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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

April 4, 2013

Marilyn Tavenner
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

Dear Acting Administrator Tavenner:

On December 12, 2011, I wrote you to raise concerns regarding a dissemination of non-public information to hedge funds and political intelligence brokers.¹ You responded on January 11, 2012, saying in part “CMS does not have a system for tracking meetings for Agency staff.”² Further, you also said that all “Executive Branch employees are prohibited from knowingly making any unauthorized disclosure of nonpublic information,” and “no information is permitted to be provided to the public unless it is already publicly available such as through a public webpage, press release announcement, or another publication.”³

In your response you also provided a memorandum dated September 7, 2010, to all Centers for Medicare and Medicaid Services (CMS) employees which states,

The purpose of this memorandum and the accompanying document is to reinforce your awareness that as a CMS employee you frequently have access to nonpublic, confidential, privileged, or proprietary information, which may not be disclosed except as authorized by law...For example, an announced change in CMS payment or coverage policy may be market sensitive in that it could result in a stock or bond value increasing or decreasing as investors react to the announced information. Such information should never be released for public disclosure unless it is properly authorized for such release. Even when this information is properly released, given the potential effects on the markets, the information should be released in a careful way so as to minimize these effects, such as by releasing the information after the markets have closed at 4:00 p.m. Eastern Time

¹ December 12, 2011, letter to Marilyn Tavenner from Ranking Member Charles E. Grassley.

² January 11, 2012, letter to Ranking Member Charles E. Grassley from the Centers for Medicare and Medicaid Services.

³ *Id.*

to allow the investment community broad access to the information and time to fully analyze the announced change before reacting to it.⁴

According to the Wall Street Journal, at 3:42 p.m. Eastern Time, on Monday, April 1, 2013, Height Securities issued an advisory that “a deal has been hatched to protect Medicare Advantage rates from the -2.3% rate update issued in the advanced notice mid-February... We are supportive of MA related stocks (HUM, HNT [Humana, Health Net]) under these circumstances.”⁵ After Height Securities’ prediction was issued, volumes for affected companies jumped to a total of \$662.8 million in the final minutes of trading and stocks rose as much as six percent between 3:42 p.m. and when the markets closed.⁶ Humana and Health Net’s stock prices rose significantly.

This raises questions regarding political intelligence brokers’ ability to gather information from CMS in order to predict market moving events. To better understand how market moving information was successfully predicted by a political intelligence broker, please provide the following information:

1. When was the decision made at CMS on the final MA policy? Please provide a timeline of events on CMS’s decision.
2. Provide all communications, including emails, with respect to the rate announcement for MA and Part D programs within the last two weeks.
3. All names of CMS and non-CMS personnel (inclusive of Health and Human Services, Office of Management and Budget, and the White House) who received advanced notice of CMS’s April 1, 2013, MA decision prior to the public notification at approximately 4:30 p.m. Please provide the times at which these individuals were notified.

Thank you in advance for your cooperation and attention to this matter. When responding to this letter, please number your answers in accordance with my questions. I would appreciate a response by April 9, 2013. If you have any questions, please do not hesitate to contact Chris Lucas or Erika Smith for the Committee on the Judiciary at (202) 224-5225.

Sincerely,



Charles E. Grassley
Ranking Member
Committee on the Judiciary

⁴ *Id.*

⁵ April 1, 2013, Height Securities advisory.

⁶ Wall Street Journal, Tip on Policy Shift Jolted Health Shares, April 4, 2013.