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United States Senate
COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

June 1, 2016

VIA ELECTRONIC TRANSMISSION

The Honorable Sylvia Mathews Burwell
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Burwell:

This past April, the Office of Inspector General (OIG) at the Department of Health and Human Services (HHS) compiled an annual compendium of its top 25 unimplemented recommendations. This report found that HHS has failed to implement several recommendations over the last 15 years that would have saved billions of dollars and positively impacted HHS programs “in terms of cost savings and/or quality improvements.”¹ HHS’s failure to implement these recommendations has caused – and continues to cause – billions of dollars in waste, fraud, and abuse within Medicare and Medicaid programs.

On May 13, 2015, I wrote to you regarding several unimplemented recommendations that caused concern. First, I wrote to you about OIG’s review of 23 Head Start grantees that did not fully comply with federal or state requirements to protect children from unsafe materials and equipment.² Further, 21 out of 24 grantees did not fully comply with federal or state requirements to conduct criminal record checks. In response on August 3, 2015, HHS noted that the Office of Head Start had revised its monitoring system such that every facility of each grantee “receives a monitoring visit and is reviewed against an Environmental Health & Safety (EnvHS) protocol.”³ Further, HHS stated that this monitoring would be used to assess grantee compliance with respect to the following:

¹ *Compendium of Unimplemented Recommendations*, U.S. Dep’t of Health and Human Services, Office of Inspector General (April 2016), hereinafter *Compendium 2016*. Available at: <http://oig.hhs.gov/reports-and-publications/compendium/files/compendium2016.pdf>.

² *Compendium of Unimplemented Recommendations*, U.S. Dep’t of Health & Human Services, Office of the Inspector General (March 2015), hereinafter *Compendium 2015*. Available at: <https://oig.hhs.gov/reports-and-publications/compendium/>.

³ Letter from Health and Human Services to Charles E. Grassley (August 8, 2015).

1. federal, state and local criminal background check requirements for all staff;
2. Health and safety requirements;
3. Meeting life safety codes; and
4. To determine if any violations related to child maltreatment have occurred in any of the grantees sites.⁴

The Administration for Children and Families has also determined that it could address Federal health and safety requirements better. As such, a notice of proposed rulemaking was released on June 19, 2015 designed to strengthen health and safety requirements, to include background checks for staff.⁵ Importantly, the rule would require Head Start programs to follow state licensing disqualification factors in making employment decisions.⁶ This is a positive step forward. I appreciate HHS' implementation of the OIG's recommendations to deal with the shortcomings I raised last year. Effective oversight of Head Start grantees is necessary to ensure that tax money is spent as intended to provide a safe environment for children. In order to acquire a more complete picture as to the effect of these changes, please provide a list of all Head Start grantees that did not fully comply with federal and state requirements to protect children from unsafe material and equipment and conduct proper criminal records checks as described in the OIG's 2015 Compendium.

In addition, in my May 13 letter to HHS, I asked what steps it is taking to ensure that incarcerated individuals did not improperly receive Medicare payments. In response, HHS noted that the claims processing system was not able to notify contractors of the need for retroactive adjustments when new incarceration data impacted previously paid claims.⁷ Further, it noted that after its retroactive adjustment process was employed, it resulted in almost 1 million improper denials. HHS stated in its August 3 response that CMS is working with the Social Security Administration to ensure a proper retroactive adjustment process. Although it appears HHS and CMS are taking steps forward to solve this issue, the OIG's recommendation on this topic is yet to be closed.

And finally, with respect to my May 2015 letter to HHS, I specifically noted that CMS's Audit Tracking and Reporting System (ATARS) may not have been adequately collecting overpayments and audit disallowance determinations. In response, HHS noted that CMS "established a workgroup and held several discussion with OIG on ways to ensure that the information related to the actual claims is provided to CMS in a timely manner."⁸ Further, HHS stated that "[t]his would allow contractors to begin collecting these amounts as soon as possible."⁹ However, HHS did not provide any detail as to how a workgroup would allow contractors to begin collecting overpayment amounts. It would be helpful if HHS provided a more detailed explanation. Further, HHS stated, "CMS has also begun efforts to improve the overall tracking and reporting process of these overpayments."¹⁰ Again, HHS failed to describe those efforts in full.

⁴ Letter from Health and Human Services to Charles Grassley (August 3, 2015).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 10-11.

⁹ *Id.* at 11.

¹⁰ *Id.*

In this year's Compendium of Unimplemented Recommendations, twenty of the recommendations are directed at the Centers for Medicare and Medicaid Services (CMS) which accounts for over 80 percent of HHS's budget.¹¹ Again, one unimplemented recommendation involved preventing Medicare payments to incarcerated persons.¹² This has been an issue since January of 2013, when OIG issued a report urging CMS to implement policies and procedures that would detect and recoup improper Medicare payments made to incarcerated persons. It would be helpful if CMS could provide an update with respect to the most recent progress, if any, of implementing a fix.

Further, the OIG also found that 22 percent of Medicare beneficiaries in skilled nursing facilities experience "clearly or likely preventable" adverse events. Such preventable harm, and its ensuing hospital visits, led to an additional Medicare expense of over \$200 million in August 2011. According to OIG, "this equates to \$2.8 billion spent on hospital treatment for harm caused in SNFs in FY 2011."¹³ Please provide an update with regarding the progress, if any, CMS has made in fixing this problem.

In addition, the OIG noted that states have inconsistent mechanisms for determining their Medicaid upper payment limits (UPL) "which establish aggregate caps on payments to different classes of facilities."¹⁴ This inconsistency has allowed states to artificially increase the federal share of Medicaid cost, and fail to commit the required matching funds, without adequate Congressional oversight. The OIG urged CMS to establish uniform guidance for calculating states' UPL. Such clarification could save up to \$3.87 billion over five years, according to the OIG.¹⁵

And finally, OIG found that CMS made \$26 million in improper payments to Medicare Advantage organizations from Calendar Year 2010 through 2012 for illegal aliens.¹⁶ CMS also "accepted prescription drug event records totaling almost \$29 million in unallowable drug costs" for illegal aliens during [Calendar Year] 2010 and 2011."¹⁷ According to OIG, CMS is developing and implementing policies that would address the enrollment of illegal aliens. It would be beneficial for CMS to explain what it is doing to ensure that public benefits are properly used only for persons legally in the country.

In light of the findings contained within the OIG's compendium, please detail the steps HHS plans to take, or has taken, in order to improve the implementation of the aforementioned recommendations and a projected timeline for implementation. If HHS does not plan on implementing the recommendations, please explain why that decision was made. In addition, please provide more detail regarding the ATARS fixes that CMS mentioned in its August 3 letter to me.

¹¹ *Compendium 2016* at 1.

¹² *Id.* at 5.

¹³ *Id.* at 6.

¹⁴ *Id.* at 27.

¹⁵ *Id.* at 63.

¹⁶ *Id.* at 13.

¹⁷ *Id.*

Thank you for your cooperation and attention in this matter. Please respond no later than June 15, 2016. If you have any questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Chairman
Committee on the Judiciary