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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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July 6, 2017

VIA ELECTRONIC TRANSMISSION

Mr. Tom Miller
Attorney General of Iowa
Hoover State Office Building
1305 E. Walnut Street
Des Moines, Iowa 50319

Dear Attorney General Miller,

On September 6, 2016, I wrote to you expressing my concerns that Mylan's apparent misclassification of its EpiPen may have cost the State of Iowa several million dollars and that if that were the case, the State and people ought to be made whole. On February 2, 2017, you had a conference call with my staff to discuss the potential cost to Iowa and what steps your office was taking to hold Mylan accountable. In a follow up email to that call, my staff asked how your office would know whether Iowa was made whole. In response, your office said,

If your question seeks the value that would make Iowa Medicaid whole in a settlement, that number is also unknown. To our knowledge, no "reasonable" value has been established for the pharmaceutical from which one could compare the post-rebate value paid against to determine the actual injury to the Medicaid program. Even if a reasonable value has been established, assessment of the injury to Iowa Medicaid would require access to the post-rebate value paid, which this office does not have access to because of the federal confidentiality law.

Your office further notes that the Medicaid Fraud Control Units (MFCU) have obtained the rebate information from Mylan and are actively negotiating with Mylan to resolve the dispute. However, significant concerns remain that Iowa may not receive proper reimbursements.

As you are aware, the Inspector General for Health and Human Services estimated that the EpiPen's misclassification could have cost \$1.27 billion. A portion of that involves rebates that would have been paid to the respective states, including Iowa. Accordingly, it must be assumed that some harm has been inflicted on Iowa and your office has a responsibility to ensure the state and its people receive the correct rebates.

Please confirm whether it is accurate that your office is unable to determine the value of reimbursement necessary to make Iowa whole from EpiPen's misclassification. If that is not the case, please explain what steps you are taking to make Iowa whole. If that is the case, please explain what steps you are taking to interface with the MFCU's to ensure that a proper and adequate reimbursement value is reached. And finally, assuming the Justice Department eventually settles with Mylan, please describe the process by which Iowa will receive its share of the settlement.

Thank you in advance for your cooperation with this request. Please respond no later than July 20, 2017. If you have questions, contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Senate Committee on the Judiciary