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United States Senate

CHARLES E. GRASSLEY

WASHINGTON, DC 20510-1501

September 1, 2017

REPLY TO:

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VIA ELECTRONIC TRANSMISSION

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
200 Independence Ave, S.W.
Washington, D.C. 20201

Dear Administrator Verma:

On August 24, 2017, the Department of Health and Human Services Office of Inspector General (IG) issued an "Early Alert" (A-01-17-00504) to the Centers for Medicare and Medicaid Services (CMS) regarding its failure to report potential abuse or neglect at Skilled Nursing Facilities (SNFs).^[1] Specifically, the IG noted that it identified 134 Medicare beneficiaries "whose injuries may have been the result of potential abuse or neglect" that occurred between January 1, 2015, and December 31, 2016.^[2] The IG also noted that it found that "a significant percentage of these incidents may not have been reported to law enforcement" in accordance with section 1150B of the Social Security Act.^[3] The IG concluded that CMS does not have adequate procedures to ensure that incidents of potential abuse or neglect of Medicare beneficiaries are identified and reported.^[4]

The IG also found that CMS, beginning with the Obama Administration, has failed to use the tools at its disposal to enforce the requirement that SNFs report abuse to law enforcement. In investigating these failures, the IG preliminarily found the following:

- CMS has not taken any enforcement actions using section 1150B of the Social Security Act or used the penalties it contains to ensure facilities report incidents of potential abuse or neglect.^[5]
- CMS did not include regulations for section 1150B into the State Operations Manual until March 8, 2017.^[6]
- CMS neglected to add section 1150B to the Conditions of Participation (CoPs) until November 2016.^[7]
- CMS has failed to match Medicare claims for reimbursement of emergency room services with claims for reimbursement to skilled nursing facilities to identify potential instances of abuse or neglect.^[8]

Committee Assignments:

CHAIRMAN,
JUDICIARY

AGRICULTURE
BUDGET
FINANCE

CO-CHAIRMAN,
INTERNATIONAL NARCOTICS
CONTROL CAUCUS

These early findings are extremely troubling and call into question why, for so many years, CMS has failed to take proper steps to ensure that SNFs followed the law and protected patients. Our nation's most vulnerable people must be protected, not ignored. Accordingly, please answer the following:

1. CMS officials assert that it has not taken 1150B enforcement actions because the Secretary of Health and Human Services has not delegated responsibility to enforce that law to CMS. In light of that lack of delegation, what enforcement actions has HHS made regarding 1150B?
2. When will delegation of that responsibility occur? Why did the Obama Administration not work to make that delegation happen before CMS initiated the delegation in June 2017?
3. Why did CMS take six years to update the State Operations Manual to include 1150B regulations?
4. Why has CMS failed to match Medicare claims for reimbursement of emergency room services with claims for reimbursement to skilled nursing facilities in order to identify potential instances of abuse or neglect? When will CMS begin to do so?
5. CMS recently declared that it will take action on the IG's recommendations when the IG finalizes its review.^[9] In light of the potential for substantial harm in delaying implementation of the IG's recommendations, why wait?

Thank you in advance for your cooperation with this request. Please number your answers according to their corresponding questions and respond no later than September 15, 2017. If you have questions, contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
U.S. Senator

cc:

The Honorable Tom Price, M.D.
Secretary
Department of Health and Human Services

^[1] DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL, A-01-17-00504, EARLY ALERT TO SEEMA VERMA, CMS ADMINISTRATOR (2017).

^[2] *Id.* at 2, 5.

^[3] *Id.* at 5.

^[4] *Id.*

^[5] *Id.* at 7.

^[6] *Id.*

^[7] *Id.*

^[8] *Id.*

^[9] Ricardo Alonso-Zaldivar, *Gov't probe: Abuse in nursing homes unreported despite law*, Associated Press (Aug. 28, 2017). The IG made the following recommendations in the Early Alert: implement procedures to compare Medicare claims for emergency room treatment with claims for SNF services to identify incidents of potential abuse or neglect of Medicare beneficiaries residing in SNFs and periodically provide the details of this analysis to the Survey Agencies for further review and continue to work with the HHS Office of the Secretary to receive the delegation of authority to impose the civil monetary penalties and exclusion provisions of section 1150B. After receiving the delegation of authority, CMS should: promulgate appropriate regulations, if CMS determines it is necessary, to impose penalties under section 1150B; enforce section 1150B, including imposing penalties for violations; ensure that the SOM is updated as planned with an effective date of November 28, 2017, to include references to section 1150B, including its penalty provisions; and notify Survey Agencies when the SOM is updated to include references to section 1150B and direct them to refer suspected violations of section 1150B to CMS for appropriate action. *Id.* at 7-8.