

United States Senate
WASHINGTON, DC 20510

December 18, 2024

VIA ELECTRONIC TRANSMISSION

The Honorable Chiquita Brooks-LaSure
Administrator
Centers for Medicare and Medicaid Services

Dear Administrator Brooks-LaSure:

On November 15, 2024, the Center for Medicare and Medicaid Services (CMS) released its Fiscal Year (FY) 2024 Improper Payments Fact Sheet.¹ The findings listed in the CMS fact sheet raise serious concerns as to how CMS stewards the taxpayer dollars it oversees. This fact sheet shows that improper payments were made in Medicare Fee-For-Service (FFS), Medicare Part C, Medicare Part D, Medicaid, the Children's Health Insurance Program (CHIP), and the Advance Payments of the Premium Tax Credit (APTC) for the Federally-facilitated Exchange (FFE) programs. Specifically, the FY2024 improper payment rates for each program were:

- Medicare FFS estimated improper payment rate was 7.66% or \$31.70 billion
- Medicare Part C estimated improper payment rate was 5.61% or \$19.07 billion
- Medicare Part D estimated improper payment rate was 3.70% or \$3.58 billion
- Medicaid improper payment rate was 5.09% or \$31.10 billion
- CHIP improper payment rate was 6.11% or \$1.07 billion
- APTC program improper payment was 1.01% or \$562.93 million.²

The data shows that Medicare improper payments, regardless of the Medicare program, increased from \$51.2 billion in FY2023 to \$54.4 billion in FY2024.³ In total, between all the programs listed in the CMS fact sheet, improper payments made by the agency totaled nearly \$87.09 billion.⁴ This letter is not the first time concerns have been raised about CMS and its history of improper payments, resulting in fraud, waste, and abuse of taxpayer dollars.⁵

¹ Ctrs. for Medicare & Medicaid Servs., *Fiscal Year 2024 Improper Payments Fact Sheet*, CMS (Nov. 15, 2024), <https://www.cms.gov/newsroom/fact-sheets/fiscal-year-2024-improper-payments-fact-sheet>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ Sen. Charles E. Grassley, Press Release, *Grassley, Toomey Slam 27 Years of Improper Medicaid Payments* (Mar. 8, 2019), [https://www.grassley.senate.gov/news/releases/grassley-toomey-slam-27-years-improper-medicaid-payments#:~:text=WASHINGTON%20%E2%80%93%20Senate%20Finance%20Committee%20Chairman%20Chuck%20Grassley,of%20which%20have%20been%20improper%20in%20recent%20years;see%20also%20Sen.%20James%20Lankford,Press%20Release,%20Lankford,%20Colleagues%20Demand%20Information%20on%20Safeguards%20for%20Preventing%20Medicaid%20Fraud,%20Improper%20Payments%20\(Apr.%2014,%202022\),https://www.lankford.senate.gov/news/press-releases/lankford-colleagues-demand-information-on-safeguards-for-preventing-medicaid-fraud-improper-payments/;see%20also,%20GAO,%20Medicare%20and%20Medicaid:%20Additional%20Actions%20Needed%20to%20Enhance%20Program%20Integrity%20and%20Save%20Billions%20\(Apr.%2016,%202024\),GAO-24-107487,https://www.gao.gov/products/gao-24-107487](https://www.grassley.senate.gov/news/releases/grassley-toomey-slam-27-years-improper-medicaid-payments#:~:text=WASHINGTON%20%E2%80%93%20Senate%20Finance%20Committee%20Chairman%20Chuck%20Grassley,of%20which%20have%20been%20improper%20in%20recent%20years;see%20also%20Sen.%20James%20Lankford,Press%20Release,%20Lankford,%20Colleagues%20Demand%20Information%20on%20Safeguards%20for%20Preventing%20Medicaid%20Fraud,%20Improper%20Payments%20(Apr.%2014,%202022),https://www.lankford.senate.gov/news/press-releases/lankford-colleagues-demand-information-on-safeguards-for-preventing-medicaid-fraud-improper-payments/;see%20also,%20GAO,%20Medicare%20and%20Medicaid:%20Additional%20Actions%20Needed%20to%20Enhance%20Program%20Integrity%20and%20Save%20Billions%20(Apr.%2016,%202024),GAO-24-107487,https://www.gao.gov/products/gao-24-107487); see also Sen. James Lankford, Press Release, *Lankford, Colleagues Demand Information on Safeguards for Preventing Medicaid Fraud, Improper Payments* (Apr. 14, 2022), <https://www.lankford.senate.gov/news/press-releases/lankford-colleagues-demand-information-on-safeguards-for-preventing-medicaid-fraud-improper-payments/>; see also, GAO, *Medicare and Medicaid: Additional Actions Needed to Enhance Program Integrity and Save Billions* (Apr. 16, 2024), GAO-24-107487, <https://www.gao.gov/products/gao-24-107487>. (“The Department of Health and Human

Additionally, with this staggering amount of funding wasted on improper payments, we have concerns with how CMS is planning to recover these improper payments. Section 1903(u) of the Social Security Act requires, except in certain limited cases, that the federal government recoup Medicaid eligibility-related improper payments in excess of three percent made by states.⁶ Further, the law requires the government “not to make payment to a state with respect to the portion of its erroneous payments that exceed a 3 percent error rate,” but CMS determined more than twenty years ago to focus “on prospective improvements in eligibility determinations rather than disallowances.” There have been no efforts made to recoup payments since 1992.⁷ Unfortunately, despite CMS wasting billions of taxpayer dollars on improper payments, the agency has broadened their practice of not recouping taxpayer dollars. Specifically, on January 30, 2023, CMS finalized a rule “limit[ing] dollar recoveries for audits dating back a decade or more.”⁸ This is concerning given that, in 2013 alone, CMS made \$49.891 billion in improper payments for Medicare FFS, Part C, and Part D.⁹

To improve public confidence in such a large commitment of taxpayer dollars, it is essential to ensure this money is spent as Congress intended—namely, to provide specified health and long-term care services for low-income Americans, with a historical focus on the aged, disabled, children, and families. Accordingly, please provide answers to the following questions by January 1, 2025:

1. Provide a list of companies CMS has used to conduct Medicare Advantage audits. Include copies of the audits and contracts. Provide all records.¹⁰
2. Provide copies of all audits related to the Medicare Advantage program since 2013. Provide all records.
3. Which State agencies has CMS worked with in its efforts to reduce improper payments? Provide all communications between CMS and each state’s Medicaid Fraud Control Unit.
4. CMS claims the majority of improper payments are due to a lack of documentation. This accounts for roughly 60-80% of improper payments for Medicaid, CHIP, and Medicare fee-for-service.¹¹ What are the underlying causes and practices, outside of a lack of documentation, that contribute to improper payments in the programs CMS oversees? Provide all records.

Services (HHS) estimated a combined total of over \$100 billion in improper payments in the Medicare and Medicaid programs in fiscal year 2023. This represents 43 percent of the government-wide total of estimated improper payments that agencies reported for that year.”)

⁶ Federal Register, *Changes to the Medicaid Eligibility Quality Control and Payment Error Rate Measurement Programs in Response to the Affordable Care Act*, Vol. 82, No. 127 at 31160, <https://www.govinfo.gov/content/pkg/FR-2017-07-05/pdf/2017-13710.pdf>.

⁷ *Id.*

⁸ Fred Schulte, *KFF Health News Sues To Force Disclosure of Medicare Advantage Audit Records*, KFF HEALTH NEWS (Nov. 12, 2024), <https://kffhealthnews.org/news/article/lawsuit-hhs-disclosure-medicare-advantage-audit-records-inspector-general/>.

⁹ United States Dept. of the Treasury, *Annual Improper Payments Data Sets*, 2015 Data Set, <https://www.paymentaccuracy.gov/payment-accuracy-the-numbers/>.

¹⁰ “Records” include any written, recorded, or graphic material of any kind, including letters, memoranda, reports, notes, electronic data (emails, email attachments, and any other electronically created or stored information), calendar entries, inter-office communications, meeting minutes, phone/voice mail or recordings/records of verbal communications, and drafts (whether they resulted in final documents).

¹¹ Ctrs. for Medicare & Medicaid Servs., *Fiscal Year 2024 Financial Report*, CMS (Nov. 2024), <https://www.cms.gov/files/document/cms-financial-report-fiscal-year-2024.pdf>. (The improper payment estimate for Medicare Part D due to missing or insufficient documentation is 72.99%. The improper payment estimate for Medicare FFS due to missing or insufficient documentation is 68%. The improper payment estimate for Medicare Part C due to missing or insufficient documentation is 5.69%. The improper payment estimate for Medicaid due to

5. What corrective actions has CMS taken to address the causes and practices contributing to improper payments? Provide all records.
6. What steps has CMS taken to strengthen their whistleblower policies and encourage whistleblowers to come forward to report improper payments and fraud, waste, or abuse of taxpayer dollars?
7. How much does it cost CMS to recoup improper payments? Provide all records.

Thank you for your prompt review and responses. If you have any questions, please contact Tucker Akin of Senator Grassley's Committee staff at (202) 224-0642 or Cambridge Neal of Senator Lankford's staff at (202) 224-5754.

Sincerely,



Charles E. Grassley
Ranking Member
Senate Committee on the Budget



James Lankford
United States Senator