

United States Senate

WASHINGTON, DC 20510

November 07, 2011

Mark Bertolini
CEO
Aetna, Inc.
152 Farmington Avenue
Hartford, CT 06156

Dear Mr. Bertolini:

As the Ranking Member of the Senate Judiciary Committee and Chairman of the Senate Finance Committee, we take seriously our responsibility to protect the interests of our nation's Medicare and Medicaid beneficiaries and the federal health care programs from waste, fraud, and abuse.

We are writing because of reports that Aetna and others may be engaged in a practice commonly referred to as "pull-through." "Pull-through" involves the alleged offering by a clinical laboratory testing company that contracts with Aetna for discounted or below cost pricing, in exchange for Aetna directing their in-network physicians to refer or arrange for the referral of other laboratory testing business, including testing for Medicare beneficiaries, to that clinical laboratory testing company. Congress passed the Federal Anti-Kickback law to protect patients and the Federal health care programs from potential influence of financial arrangements on health care decisions.

The Department of Health and Human Services Office of Inspector General has previously issued advisory opinions expressing concerns about the "pull-through" practice, noting that discount arrangements such as those at issue here are "particularly suspect."¹

In order to better understand this practice, please provide the following documents by December 1, 2011:

1. Copies of Aetna's lab services agreement with its five largest clinical laboratory testing providers, including all attachments and exhibits.

¹ OIG Advisory Opinions, available at <http://oig.hhs.gov/fraud/docs/advisoryopinions/2004/ao0416.pdf>, http://oig.hhs.gov/fraud/docs/advisoryopinions/1999/ao99_13.htm, and http://oig.hhs.gov/fraud/docs/advisoryopinions/1999/ao99_2.htm

2. Copies of all correspondence between Aetna and each of those five largest clinical laboratory testing providers relating to the negotiation of those contracts generally, and with respect to negotiation of the pricing arrangements for those contracts specifically.
3. All presentations to the Board of Directors regarding the contracts and correspondence described in request 2.
4. All presentations to the Board of Directors that refer to or describe "pull-through" practices.
5. All presentations at meetings with clinical laboratory testing providers, consultants or others that refer to or describe "pull-through" practices.
6. Correspondence with network and potential network physicians regarding bonuses and bonus arrangements as they relate to clinical labs.
7. Copies of all correspondence between Aetna and physicians relating to negotiation of contracts, and with respect to negotiation of any bonus or similar type arrangements specifically; copies of contracts with physicians.
8. Documents pertaining to network physician utilization of in and out-of-network laboratories.
9. Financial analysis or reports generated in connection with the five largest clinical laboratory testing provider accounts, including analyses used in connection with any bids submitted by those providers.
10. All documents you have previously submitted regarding "pull-through" practices in response to subpoenas or similar document requests received from the Attorney General of the State of California, to the extent not already provided in the requests above.

In cooperating with the Committees' review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committees.

We look forward to hearing from you by no later than December 1, 2011. All documents responsive to this request should be produced electronically, on a disc, in searchable PDF format. If you have questions regarding this request, please contact Erika Smith with the Judiciary Committee at (202) 224-5225 and Christopher Law with the Finance Committee at (202) 224-4515.

Sincerely,



Max Baucus
Chairman
Committee on Finance



Charles E. Grassley
Ranking Member
Committee on the Judiciary