

United States Senate

WASHINGTON, DC 20510

July 12, 2017

VIA ELECTRONIC TRANSMISSION

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

Dear Ms. Verma:

Congress established the Medicare EHR Incentive Program to improve health care quality, safety, and efficiency through the adoption of electronic health record (EHR) technology. To receive an incentive payment, eligible professionals (EPs) are required to self-attest that they meet program requirements by entering data into the National Level Repository. EPs who qualify for the incentive program and demonstrate “meaningful use” can begin receiving incentive payments from both Medicare and Medicaid, but cannot receive payments from both programs in the same year.

In June 2017, the U.S. Department of Health and Human Services, Office of Inspector General (OIG) issued its report, titled *Medicare Paid Hundreds of Millions in Electronic Health Record Incentive Payments That Did Not Comply with Federal Requirements*. The objectives of the OIG’s report was to determine whether CMS’ oversight of the Medicare EHR Incentive Program was sufficient and whether CMS made Medicare EHR incentive payments in accordance with Federal requirements.

The OIG found the following:

- Out of the 100 EPs sampled for this report, the OIG identified 14 EPs with payments totaling \$291,222 who had not demonstrated meaningful use through sufficient attestation support, appropriate reported meaningful use periods, or sufficient use of certified EHR technology.
- On the basis of the OIG’s sample results, they calculated that from May 2011 through June 2014 CMS paid over \$729,424,395 in inappropriate EHR incentive payments.
- The OIG also reported that CMS made inappropriate EHR incentive payments to EPs who switched between the Medicare and Medicaid programs. As a result, the OIG calculated that CMS paid over \$2,344,680 to 471 EPs for the wrong payment year.

The OIG provided six recommendations to which CMS concurred with four. Most notably, CMS did not commit to recover the estimated \$729,424,395 in inappropriate payments. CMS alleges that it has implemented targeted risk-based audits to strengthen program integrity and will continue to do so in 2017. However, the OIG stated that the targeted risk-based audits are not capturing errors identified in the report.

If CMS is capable of recovering taxpayer money that should not have been spent, the agency should take all reasonable steps to do so. If it is incapable of fully recovering the money, Congress should know about those limitations. We are writing today to learn more about the actions CMS has taken to address the issues identified by the OIG in this report. Specifically, we are requesting a response to the following questions:

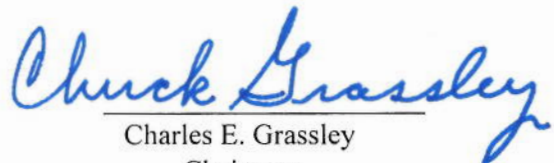
1. Please provide an update on how much of the \$291,222 made to the 14 EPs sampled for the OIG's report have been recovered.
2. Given the estimated \$729,424,395 in inappropriate incentive payments, why has CMS not made greater attempts to recover these funds?
3. Has CMS attempted to review a random sample of EPs' self-attestation documentation to identify inappropriate payments that may have been made after the audit period?
4. Provide an update on how much of the \$2,344,680 in overpayments made to EPs who switched between Medicare and Medicaid have been recovered.
5. Describe how targeted-risk audits will work to recover inappropriate payments already made and prevent inappropriate payments made in the future, including in the context of the Medicare Merit-based Incentive Payment System that pertains to EPs beginning in 2017.

We recognize that the earlier agency comments to the Inspector General were written by officials from the last Administration, and look forward to working more closely with you in prioritizing the protection of taxpayer dollars. Please provide answers according to their corresponding questions no later than July 31, 2017. If you have questions, please contact Chris Armstrong or Caitlin Soto of Senator Hatch's Finance Committee staff at (202) 224-4515 or Josh Flynn-Brown of Senator Grassley's Judiciary Committee staff at (202) 224-5225. Thank you for your cooperation.

Sincerely,



Orrin G. Hatch
Chairman
Committee on Finance



Charles E. Grassley
Chairman
Committee on the Judiciary