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ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives
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July 18, 2014

Dr. Shantanu Agrawal
Deputy Administrator and Director
Center for Program Integrity
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Dr. Agrawal:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Wednesday, June 25, 2014, to testify at the hearing entitled "Medicare Program Integrity: Screening Out Errors, Fraud, and Abuse."

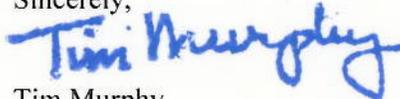
Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on Friday, August 1, 2014. Your responses should be mailed to Brittany Havens, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed in Word format to brittany.havens@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachments

Attachment 1—Additional Questions for the Record

The Honorable Tim Murphy

1. What percentage of Recovery Audit Contractors (RAC) appeal cases in FY 2013 were decided on the record?
2. Who are the top ten administrative law judges that are deciding RAC cases on the record?
3. What is being done to implement Office Inspector General (OIG) recommendations to improve the Administrative Law Judge (ALJ) process, including better training and clarification of Medicare policies, so ALJ RAC rulings are more in line with those made at the two earlier levels of appeal, the Medicare Administrative Contractors (MAC) and the Qualified Independent Contractors (QIC)?
4. What plans are in place to hire additional judges at the ALJ level to deal with the Office of Medicare Hearings and Appeals (OMHA) appeal backlog?
5. Dr. Agrawal said “We want to get the RACs up and running as quickly as possible.” What is delaying the award of new RAC contracts that are not under protest?
6. What is being done to monitor the quality of the Administrative Law Judges' decisions and ensure they consistently adhere to current Medicare policy?
7. What is being done to insure the RACs are notified of the ALJ hearings?
8. CMS is expanding the savings for the FPS to include savings associated with payment suspensions and savings associated with revocations. CMS' traditional Medicare Integrity Program (MIP) Return On Investment (ROI) does not include these types of savings. Why is CMS making a change with this methodology?
9. The Small Business Jobs Act of 2010 provided CMS with \$100 million to implement the Fraud Prevention System (FPS). If I recall correctly, the initial contract with option years was \$70 M. Based on the information in the first report and in this report, CMS has or is about to spend the initial \$100 million. What is the burn rate and the funding plan moving forward? Please provide a detailed chart with all costs (technology, manpower, legal, actual savings return based on enhanced edits, etc.).
10. The Small Business Jobs Act says that “the Secretary shall expand the use of predictive analytics technologies, beginning April 1, 2015, to apply to Medicaid and CHIP. To the extent the Secretary determines appropriate, such expansion may be made on a phased-in basis.” Will you commit to keep this Committee updated on what CMS is thinking as that date approaches?
11. CMS has said “the Fraud Prevention System now has the capability to stop payment of certain improper claims, without human intervention, by communicating a denial message to the claims

payment system.” This sounds promising. Has CMS actually used this capability yet? If so, how many claim denials has it resulted in?

12. CMS said it “has pilot projects underway evaluating the expansion of programs that provide waste, fraud and abuse leads to Medicare Administrative Contractors for early intervention.” Two questions on this:
 - a. Please explain the duration of the pilot, the evaluation process, and the timeframe in which this Committee can expect to know from you what actions you may take as a pilot.
 - b. How would this effort to work with MACs duplicate – or not duplicate – the work of the other program integrity contractors?
13. CMS said the FPS “resulted in CMS taking action against 938 providers and suppliers.” Can you give us a breakdown of the types of actions taken against different types of providers?
14. In tallying the adjusted (\$54 million) or unadjusted (\$210 million) Medicare dollars, how did CMS account for the role of its ZPICs, PSCs, or other program integrity contractors? Were the findings of the contractors counted toward the dollar amount identified? If so, how was the PSC’s normal work disaggregated from its work for the FPS?
15. Before the creation of the FPS that Congress mandated CMS adopt, CMS was reluctant to adopt more forward leaning, predictive tools. I am not asking you to agree with this characterization, but it was the perception of many in Congress that CMS did not think they needed the FPS, and resisted being told how to do this program. However, Congress mandated it, and here you are today explaining the achievements of FPS. Do you think the FPS has been a positive step for CMS and taxpayers? Mr. Chairman, I would note the role of former Florida Republican Senator George LeMieux, who, as author of the provision creating FPS, deserves credit for helping nudge CMS’s fraud-fighting efforts forward to adopt the FPS.
16. What number of full-time-equivalent (FTE) personnel are at CMS or its contractors, who are charged with identifying, reducing, or recovering improper payments attributable to fraud, waste, or abuse? Could you please provide the Committee with this number? Please include the personnel at Office of Financial Management who oversee the Recovery Audit Contractors, the contract staff of program integrity contractors, the FTE at the Center for Program Integrity, and any other relevant personnel.
17. Almost two years ago exactly, with a press release, HHS and DOJ announced a public private partnership to help prevent health care fraud. I think collaboration with industry and the private sector is the kind of initiative most members would support. However, it’s been two years, and what we have heard from many in the industry is that CMS has been moving, but moving slowly. Can you please outline for the Committee what the partnership has accomplished to date, and what are the metrics for success? Could you please provide the Committee—in as much detail as possible—with the following:
 - a. The number of cases shared between plans and CMS

- b. The number of trends shared between plans and CMS
 - c. What types of corrective actions CMS may have taken as a result of the partnership?
 - d. Has CMS identified any real or perceived legal barriers to plans and CMS sharing information?
 - e. In your view, are there any outstanding legal barriers to plans and CMS sharing needed information to prevent fraud, waste, or abuse?
18. What do you believe are the top five vulnerabilities with regard to the integrity of Medicaid payments?
19. Please provide the Committee with an update on the status of using RACs in Medicaid, as required by the ACA.

The Honorable Michael C. Burgess

- 1. CMS has not adopted all of the recommendations from HHS OIG to prevent and detect fraud. What recommendations have and have not been adopted? Why have these recommendations not been adopted? What is the timeline for implementing these provisions?
- 2. What databases is CMS currently using to screen provider or fund recipients or to detect other types of fraud in the system? What other databases could CMS be using?
- 3. Through the Sunshine Act, CMS is required to include “background information on industry-physician relationships.” While access to information about physician-industry relationships is important, the proper context is needed to understand these legitimate interactions between physicians and industry. Will CMS be putting out draft context proposals for public comment? If so, when? If not, why not?

The Honorable Renee Ellmers

- 1. Please describe in detail the proposals from CMS to reform MAC and RAC audits to ensure they are not unduly burdensome on medical equipment suppliers and providers.
- 2. I’ve heard from several Durable Medical Equipment, Prosthetics, Orthotics and Suppliers (DMEPOS) providers in my district about CMS changing the auditing rules and penalizing a company before they were aware of the change. Will CMS set a real guideline for a grace period for changes to the audit rules before auditors can penalize company?
- 3. What specific metrics does CMS use to target entities for audits? In particular, what metrics does CMS use to target DMEPOS companies for audits?

Attachment 2—Member Requests for the Record

During the hearing, Members asked you to provide additional information for the record, and you indicated that you would provide that information. For your convenience, descriptions of the requested information are provided below.

The Honorable Tim Murphy

1. Can someone with a foreign address be a Medicare provider?
2. With each recommendation made by the Government Accountability Office (GAO) and the HHS Office of the Inspector General (OIG) that has not been implemented, please explain the reason they have not been implemented.
3. What additional data would be valuable to help you prescreen for Medicare fraud?

The Honorable Michael C. Burgess

1. Please provide the Committee with a list of the recommendations made by GAO and the OIG that have not been implemented yet.

The Honorable Renee Ellmers

1. You suggested CMS is making changes in the next RAC audit time period so that providers who have a low denial rate are rewarded. What is the percentage of providers who are rewarded, if they have a low denial rate?

The Honorable Diana DeGette

1. How much will CMS spend this year on Medicare and Medicaid program integrity efforts?
2. Please explain your plans for the money if Congress appropriates the requested funding for your agency.