

ONE HUNDRED THIRTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
Minority (202) 225-3641

September 5, 2013

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicaid and Medicare Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Tavenner:

Pursuant to Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce is continuing its examination of the Centers for Medicare & Medicaid Services' (CMS) efforts to reform the Medicare Secondary Payer (MSP) program.

The MSP program was put in place to protect Medicare funds by ensuring that CMS is reimbursed, pursuant to law, for claims that insurance companies or other entities are primarily responsible for covering. A June 22, 2011, hearing before the Subcommittee on Oversight and Investigations revealed that the MSP program was plagued by inefficiencies that led to costly delays for businesses, health plans and, ultimately, Medicare beneficiaries. To address some of these concerns, this Committee passed the Strengthening Medicare and Repaying Taxpayers Act (SMART Act) in September 2012, creating a process whereby parties to a settlement can secure a final conditional payment amount to be repaid to the Medicare Trust Fund within 95 days of such request. President Obama signed the SMART Act into law on January 10, 2013.

The SMART Act made certain changes to the way the MSP program is administered by CMS. For example, the SMART Act required that CMS establish certain threshold payment amounts below which claims were exempt and the agency would no longer expend resources pursuing, as the cost to the government in pursuing certain claims was actually greater than the value of the claim itself. Further, the SMART Act required that CMS eliminate the use of Medicare beneficiaries' full Social Security Numbers and Health Insurance Claims Numbers—commonly known as Medicare numbers—from the agency's MSP reporting requirements within 18 months of enactment. This change was made because Medicare beneficiaries were often hesitant to provide this sensitive personal information to adverse parties during settlement discussions, thereby preventing the timely resolution of claims and, ultimately, CMS reimbursement. Finally, to implement the law's requirements, the SMART Act required that CMS promulgate new rules within certain periods from the date of enactment.

While it is our understanding that CMS has made some progress in implementing the SMART Act and improvements to the MSP program, some challenges remain. In August 2011, CMS announced that it would only pursue those claims with a recovery value of \$300 or more in certain liability insurance cases. However, it is our understanding that CMS continues to pursue claims below the \$300 threshold. In addition, CMS has not promulgated certain regulations and rules required under the SMART Act by the deadlines specified in the law.

In order to better understand the status of the implementation of the SMART Act, we ask that CMS staff provide a briefing to Committee staff on the MSP program by no later than September 19, 2013. In addition, we ask that you provide written answers to the following questions:

1. Please describe the status of the rulemakings required by Sections 201 and 204 and, in particular, whether CMS intends to engage in formal notice and comment rulemakings for those sections. In addition, please explain why the agency did not meet the statutorily-required timeframes for these rulemakings, and why the agency chose not to engage in notice and comment rulemaking for implementation of Section 201.
2. Please describe CMS' current practices and procedures for determining which claims it pursues for recovery, and whether CMS continues to pursue claims with an expected recovery of \$300 or less.
3. Please describe the status of any analyses conducted by CMS relating to the SMART Act's requirement eliminating the use of Medicare beneficiaries' Social Security Numbers and Health Insurance Claims Numbers, including what alternative methods are being considered. In addition, please provide details and results of any tests or studies, including those conducted prior to enactment of the SMART Act, and an explanation of work conducted so far to address this issue.

We appreciate your prompt attention to this request. If you have any questions, please contact John Stone with the Committee staff at (202) 225-2927.

Sincerely,



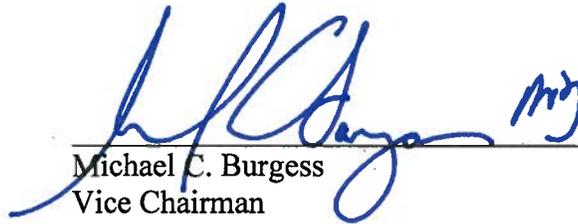
Tim Murphy  
Chairman  
Subcommittee on Oversight and Investigations



Joe Barton  
Chairman Emeritus



Marsha Blackburn  
Vice Chairman



Michael C. Burgess  
Vice Chairman  
Subcommittee on Oversight and Investigations

cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Diana DeGette, Ranking Member  
Subcommittee on Oversight and Investigations