

Congress of the United States

Washington, D.C. 20515

October 2, 2014

The Honorable Marilyn Tavenner
Administrator
Centers for Medicare & Medicaid Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Administrator Tavenner:

We share the Administration's stated commitment to curb waste, fraud, and abuse in Medicare. Therefore, it was with great interest that we read the June 2014 Report to Congress, *Fraud Prevention System – Second Implementation Year* from the Centers for Medicare & Medicaid Services (CMS), as mandated by Section 4241(e) of the Small Business Jobs Act of 2010. The Administration's implementation of this program is especially important since the Government Accountability Office (GAO) has found Medicare to be at "high risk" due to its size, complexity, budgetary commitment, and susceptibility to waste, fraud, and abuse.¹

In the recent report, CMS announced that its Fraud Prevention System (FPS) has saved the agency over \$210 million in fiscal 2013 by blocking improper Medicare reimbursements. While that seems like a large amount of money, in FY2014, Medicare costs will total about \$603 billion dollars, or roughly \$2.3 billion each business day. Therefore, the \$210 million represents only a very small portion of what Medicare spends in one day, and only a tiny fraction of the estimated \$50 billion in improper payments made by CMS each year.² Moreover, the savings from every dollar spent, or purported return-on-investment (ROI), of 1.34 to 1 is far below other ROIs of 5 to 1 or 7 to 1 which HHS often cites in traditional anti-fraud work.

Given the administration's repeated statements that FPS is the key to transitioning from the traditional claims-processing culture of "pay and chase" to a claims-processing approach that is more forward-leaning, we write to you today to request additional information regarding the FPS. We believe this information is critically important to helping inform Congress regarding the degree to which CMS may be achieving its goals.

¹ http://www.gao.gov/highrisk/medicare_program/why_did_study

² Source for CMS spend: <http://www.crs.gov/pages/Reports.aspx?PRODCODE=R40425&Source=search> Calculations is as follows: \$603 billion / 260 business days = \$2.3192 B per day.

Please provide our offices with answers to the following questions:

1. The Small Business Jobs Act of 2010 provided CMS with \$100 million to implement the FPS. The initial contract with option years was reportedly for \$70 million. Based on the information in the first FPS report and in this report, CMS has spent, 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.).
2. The Small Business Jobs Act says, “[T]he 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.” What outreach has CMS made to states to discuss this requirement? Please describe any challenges CMS may face in implementing this policy. Will you commit to updating us on these developments as April 1, 2015 approaches?
3. CMS said it has “pilot projects underway evaluating the expansion of programs that provide waste, fraud and abuse leads to Medicare Administrative Contractors (MACs) for early intervention.” Please describe and explain:
 - a. The duration of any ongoing or completed pilots, the overall evaluation process, and the timeframe in which this Committee can expect to know what actions you may take as a result of the pilots.
 - b. All other pilot projects that will be initiated in the next 12 months, including the stated purpose, goals, and duration of each.
 - c. How does this effort with MACs duplicate and/or compliment the work of the other program integrity contractors?
 - d. How does this effort fit with CMS’ response to the recent GAO report that CMS could increase its oversight and guidance to improve the effectiveness of post-payment claims reviews?³
4. During the second implementation year, “The FPS had 74 models running simultaneously to monitor fraud, waste, and abuse,” including 39 models new to the second year and refinements to 17 models from the first year. Please describe CMS’ efforts to evaluate the efficacy of each of the models, and CMS’ projections and goals on how many model’s plans to have running each year over the next five years.

³ <http://www.gao.gov/products/GAO-14-474>

5. Of the 938 providers and suppliers that CMS took administrative action against, 48 were barred from future participation in Medicare programs. Please detail the considerations that made fraud, waste, and abuse by those 48 more severe than the other 890, and thus led to their revocation from participation in Medicare.
6. While revoking the billing privileges of 938 providers is a positive step, there are over 1.5 million Medicare providers.⁴ Will statutory changes be needed to improve the ability of FPS (and other program integrity efforts) to prevent fraudulent or abusive providers from keeping and/or receiving Medicare billing privileges?
7. CMS 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.” We are pleased to learn CMS ran a pilot with MAC to test this capability. What amount of the total adjusted savings was realized from the pilot project? Please provide a timeline for instituting this capability nationwide.
8. Please describe CMS’ work plan over the next two years, outlining specific goals, deliverables, timeframes, and metrics for evaluation. Please include a description of how CMS’ program integrity efforts, both within and outside FPS, will evolve given the development of clear ROI metrics (“adjustment factors”) for each type of administrative action.
9. Has CMS developed a multi-year strategic plan to guide the development, evolution, and future procurement of FPS? If not, will CMS commit to developing such a plan within the next 12 months?
10. How many full-time-equivalent (FTE) personnel at CMS or its contractors are charged with identifying, reducing, or recovering improper payments attributable to fraud, waste, or abuse? Please include the personnel in the Office of Financial Management who oversee the Recovery Audit Contractors, the contract staff of all program integrity contractors, the FTE at the Center for Program Integrity, and any other relevant personnel including budget or contracts support.
11. In addition to the FPS, CMS has more than a dozen separate programs or initiatives in place to combat fraud.⁵ Do these programs overlap in their scope and purpose? Are these efforts coordinated or inter-related, if at all? Please briefly describe the goal of each

⁴ <http://www.gao.gov/assets/650/649537.pdf>

⁵ Only a few include: the MEDICS, the ZPICs, the RACs the Fraud Investigation Database, PEPPER (Program for Evaluating Payment Patterns Electronic Report), FATHOM (First-look Analysis Tool for Hospital Outpatient Monitoring), CBRs (Comparative Billing Reports), the Medical Review Specialty Study, the Command Center, the Fraud and Abuse Customer Service Initiative, CERT, and One PI.

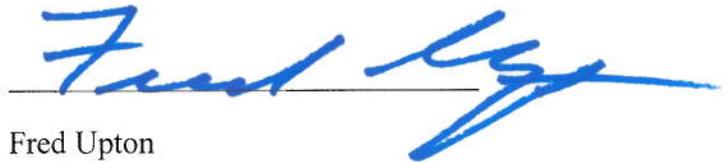
of these efforts, and identify the amount of funding spent for each in the most recent Fiscal Year.

Thank you for your prompt attention to this important matter. I would appreciate your response by no later than October 31, 2014. Should you have any questions regarding this letter, please contact Kimberly Brandt of the Senate Finance Committee at (202) 224-4515, Josh Trent of the House Energy and Commerce Committee (202) 225-5754, Tegan Millspaw of the Senate Judiciary Committee at (202) 224-4751, or Gabe Sudduth of the Senate Homeland Security and Government Affairs Committee at (202) 224-5225.

Sincerely,



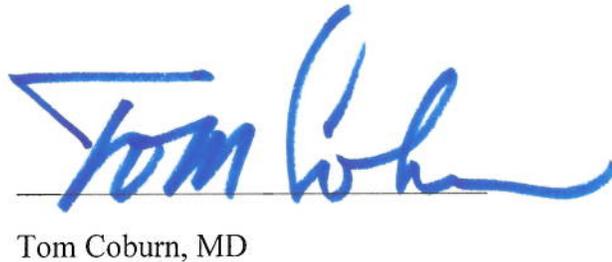
Orrin Hatch
Ranking Member
Senate Finance Committee



Fred Upton
Chairman
House Energy and Commerce Committee



Charles Grassley
Ranking Member
Senate Judiciary Committee



Tom Coburn, MD
Ranking Member
Homeland Security and
Government Affairs Committee

CC: Shantanu Agrawal, Director, Center for Program Integrity, CMS