

ONE HUNDRED FIFTEENTH 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

February 21, 2018

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Azar:

As you begin your new role as Secretary of U.S. Department of Health and Human Services, we wanted to bring to your earliest attention our concerns regarding the findings from Ernst & Young's audit of the Department of Health and Human Services (HHS) Fiscal Year (FY) 2017 financial statement and to request information on the remediation of violations of federal statute identified in the report.

While we applaud the Department's significant progress on remediating the issues identified by auditors in the past, we are disappointed that HHS remains in violation of several federal statutes and has not put forth a timeline for remediation. According to the audit report, at the time of publishing its FY 2017 financial statement, HHS was not in compliance with the Improper Payments Information Act of 2002, the Federal Financial Management Improvement Act of 1996, and the Social Security Act.

Federal Financial Management Improvement Act of 1996

The auditors reported deficiencies in financial reporting systems, including the use of antiquated financial recording processes, delays in reconciling financial information from states, and lack of oversight over financial IT systems which represent a violation of the Federal Financial Management Improvement Act of 1996.

To receive federal grant money under the Medicaid program, CMS requires states to submit quarterly expenditure report certifications. In FY 2017, as in the past, CMS experienced significant delays in receiving these certifications from states, leading to delays in finalizing grant amounts and backlogs of uncertified claims. At NIH, the auditor noted the agency made

over 11,000 manual journal entries—entries of transactions the automated system is not configured to handle, or corrections of information entered through the automated system—which introduce a higher level of human error and inefficiency into the reporting process.

The auditors also identified several deficiencies in the financial IT systems at HHS that, in aggregate, damage the integrity of the financial report to the extent that it may be significantly inaccurate enough to affect decision-making.¹ This is known as a material weakness.² The deficiencies represent a lack of oversight over financial IT systems and are as follows:

- deficiencies in access controls, such as not monitoring unauthorized changes to user access, inconsistent monitoring of the removal of terminated users, and inconsistent monitoring of user activity for high-level accounts;
- deficiencies in configuration management such as not adequately monitoring changes to the system configuration to ensure they were authorized; and
- deficiencies in segregation of duties such as allowing administrators to modify grants to avoid required approvals and users set to be deleted maintaining system access.³

The auditors determined that these deficiencies represent non-compliance with the Federal Financial Management Improvement Act of 1996 (P.L. No. 74-271), which set forth uniform accounting standards across all Federal agencies. The Act was written to increase credibility and trust in the Federal government and to reduce waste and inefficiency, and noncompliance by HHS is highly concerning to us.

Improper Payments Information Act of 2002

Several federal laws place requirements on HHS with respect to improper payments. These laws require each Federal agency to identify programs at risk for significant improper payments, and to publish an annual report estimating the amount of improper payments in each identified program.⁴ Furthermore, the Acts require agencies to publish a plan on how to reduce their improper payment rates and set target error rates, to meet goals set in previous years, and prohibit recording an error rate over the maximum threshold of 10 percent for any one program.

The audit found that three of HHS' programs were not in compliance with the respective governing federal statutes.⁵ In the Medicaid program, HHS posted a gross improper payment rate of over 10 percent, representing over \$35 billion in overpayments.⁶ Of these improper payments,

¹ Department of Health and Human Services Agency Financial Report FY 2017, at 55-56 (Nov. 14, 2017).

² *Id.* at 54-55.

³ *Id.* at 56-57.

⁴ Improper Payments Information Act of 2002 (P.L. 107-300) as amended by the Improper Payments Elimination and Recovery Act of 2010 (P.L. 111-204) and the Improper Payments Elimination and Recovery Improvement Act of 2012 (P.L. 112-248).

⁵ Department of Health and Human Services Agency Financial Report FY 2017, at 66 (Nov. 14, 2017).

⁶ *Id.* at 201.

the known monetary loss was \$3.8 billion and \$21.5 billion was of unknown status.⁷ Primary drivers behind these improper payments include state non-compliance with provider screening and National Provider Identifier requirements, lack of or insufficient medical documentation, and payments to providers not enrolled in the Medicaid program.⁸

Social Security Act

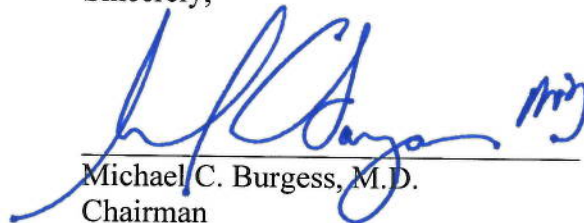
Beneficiaries utilize the Medicare appeals process if their request for a treatment or drug is denied. Because the treatments requested may be lifesaving or life extending, it is critical that appeals are processed within a reasonable timeframe. However, HHS reports being unable to meet the 90-day timeframe for appeal adjudication required by the Social Security Act of 1935 (P.L. No. 72-271), as amended.⁹ Even more troubling, HHS reported that, at the end of Fiscal Year 2017, there was a backlog of over 532,000 appeals waiting to be reviewed by the HHS Office of Medicare Hearings and Appeals and over 29,000 appeals waiting to be reviewed by the HHS Departmental Appeals Board.¹⁰

We request that HHS provide the Committee with plan detailing concrete steps the Department will take to remedy the deficiencies identified by the audit and enter into compliance with statute. For each planned action or goal, include a timeline for completion. Please submit the plan no later than 30 days from the receipt of this letter. We appreciate your assistance with this request. If you have any questions, please contact Paul Edattel or Jen Barblan of the Majority Committee staff at (202) 225-2927.

Sincerely,



Greg Walden
Chairman



Michael C. Burgess, M.D.
Chairman
Subcommittee on Health



Gregg Harper
Chairman
Subcommittee on Oversight
and Investigations

⁷ *Id.* at 203.

⁸ *Id.* at 202 & 203.

⁹ *Id.* at 31 & 48.

¹⁰ *Id.* at 31.