United States Senate

WASHINGTON, DC 20510

April 15, 2010

The Honorable Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
Room 5541
Cohen Building
330 Independence Avenue, S.W.
Washington, DC 20201

Dear Inspector General Levinson:

We appreciate your crucial role in combating waste, fraud, and abuse in the U.S. Department of Health and Human Services. Today, on "Tax Day" in America, we write to express our serious concern about the potential abuse of taxpayer dollars under the new health reform law, The Patient Protection and Affordable Care Act (P.L. 111-148), which was amended by The Health Care and Education Reconciliation Act of 2010 (P.L. 111-152). Since the new health reform law will spend $2.6 trillion more taxpayer dollars over just a 10-year period, we trust you have already given serious consideration to preventing the loss of those taxpayer dollars to waste, fraud, and abuse.

We are gravely concerned that the loss and abuse of taxpayer dollars due to waste and fraud could increase under the new health law. We believe this concern is well placed, as our largest federal health care programs, Medicare and Medicaid, are already rife with waste, fraud, and abuse.

Just earlier this week, *The Miami Herald* reported the story of Ihosvany Marquez. Marquez recently plead guilty "to federal health care fraud charges alleging he made $55 million in false Medicare claims between 2005 and 2007." [1] He spent "his Medicare millions on a fleet of luxury cars, authorities say, including a Lamborghini…." This is unacceptable, but it is not highly unusual. The Medicare program alone loses about $60 billion annually to wasted and fraudulent payments according to many estimates. [2,3] More broadly, the Government Accountability Office previously reported that the program makes about $17 billion in improper payments each year alone.[4] Harvard University's Malcolm Sparrow testified to Congress that official estimates are "lacking in rigor," are "comfortingly low and quite misleading," even excluding many kinds of fraud and abuse. Sparrow thinks that as much as 20 percent of the federal health care budget is consumed by fraud, which would be about $90 billion a year for Medicare alone.

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[1] April 12, 2010, *The Miami Herald,* http://www.miamiherald.com/2010/04/12/1575258/miami-dade-clinic-operator-to.html
[2] Johnson, Carrie, "Medical Fraud a Growing Problem," *The Washington Post,* June 13, 2008, http://www.washingtonpost.com/wp-dyn/content/article/2008/06/12/AR2008061203915.html.
[3] In FY2009, Medicare is expected to cover an estimated 46 million beneficiaries at a total cost of $486 billion, according to the Congressional Research Service.
[4] http://article.nationalreview.com/?q=YTIyMTUxM2FkOTA4YmVkYzdlZGE3ODhkMzBiZDRkNDQ=
Sparrow. "Fraud in the U.S. Health Care System: Exposing the Vulnerabilities of Automated Payment Systems." *Social Research* 75.4 (Winter 2008)

Medicaid also suffers from rampant fraud. As your office revealed last year, in an analysis of the only source of nationwide Medicaid claims and beneficiary eligibility information – the Medicaid Statistical Information System (MSIS), the federal government does not have "timely, accurate, or comprehensive information for fraud, waste, and abuse detection" in the Medicaid program. [5] In fact, your office's report found that the data in the MSIS system was on average about a year-and-a-half old when it was used, but even then "MSIS did not capture many of the data elements that can assist in fraud, waste, and abuse detection."

Absent comprehensive estimates, Medicaid's improper payment rate is the most objective measure of taxpayer dollars lost to fraud. In response to a letter from Senator Cornyn, Secretary Sebelius released state-specific Medicaid improper payment rates, and the results were unacceptable. The national average improper payment rate ranges between 8.7% and 10.5%, but many states have much higher improper payment rates. In Washington, D.C. for example, nearly one out of five Medicaid dollars is improperly spent. Taxpayers are losing tens of billions of dollars to fraud and abuse under Medicaid.

The new federal health reform law dramatically expands Medicaid, significantly changes Medicare, creates substantial new mandates and regulations, and will send hundreds of billions of dollars to insurance companies. We are concerned that this dramatic expansion of government spending will create significant vulnerabilities to waste, fraud, and abuse. Furthermore, we are concerned that the fraud and waste provisions in the new law fail to address these vulnerabilities. In fact, the independent nonpartisan Congressional Budget Office estimated that over the next decade under the new law, only $6.7 billion dollars will be saved from fraud in Medicaid and Medicare.[6] We are very concerned that, under the new reform law, taxpayers and patients will continue to lose out to criminals who commit fraud.

While we opposed the new law when it was considered in the Senate, we believe we have a duty as public servants to do all we can to protect Americans' tax dollars. Program dollars should pay providers for caring for patients, not line the pockets of criminals who commit fraud. Waste, fraud, and abuse not only threaten the financial viability of programs, they erode the public trust. No group of stakeholders in America would be expected to tolerate high rates of waste, fraud, and abuse in any private company, and we should not expect American taxpayers to tolerate rampant waste, fraud, and abuse in publicly-funded health care programs. Therefore, we respectfully submit the following questions for your review and response.

1. We note that, in testimony before the Senate Finance Committee in April of last year, your office said that "curbing fraud, waste, and abuse must be an essential component of any health care reform strategy." Your office said "for the U.S. health care system…to remain solvent for future generations, we must pursue an effective strategy to combat fraud, waste, and abuse." Your office identified five principles as core policy recommendations. In your estimation, does the new health reform law fully and effectively implement all the strategies and recommendations your office identified for eliminating fraud, waste, and abuse in our health care system?

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[5] August 6, 2009, Memorandum Report: "MSIS Data Usefulness for Detecting Fraud, Waste, and Abuse," OEI-04-07-00240," http://oig.hhs.gov/oei/reports/oei-04-07-00240.pdf

[6] http://www.cbo.gov/ftpdocs/113xx/doc11379/Manager'sAmendmenttoReconciliationProposal.pdf, and

2. In your professional estimation, do the provisions in the health reform law that are designed to combat waste, fraud, and abuse represent a fundamental change in the "pay and chase" culture in Medicare? Do the law's anti-fraud provisions largely represent a continuation of the current post-incident, enforcement-driven culture in Medicare and Medicaid?
3. What fraud or exploitation vulnerabilities do you see in the new state Exchanges and subsidy arrangements for waste, fraud, and abuse? Since the subsidies will flow from the federal government and the states will run the Exchanges, do you see any potential coordination issues that could make the new mechanisms vulnerable to fraud or abuse?
4. The new health reform law expanded the Medicaid program to all individuals making up to 133 percent of the federal poverty level. Do you believe that the new law contains sufficient reforms to prevent the fraud, waste, and abuse in the current Medicaid program? Are there any reforms to address the high improper payment rates in the program?
5. What prudent steps could federal offices and agencies take to share Medicare and Medicaid data in an effort to reduce waste, fraud, and abuse?
6. What further particular recommendations or strategies for combating waste, fraud, and abuse in public health care programs do you think that Congress should review and consider?

We appreciate your honorable service to the public through your efforts to protect taxpayer dollars by combating waste, fraud, and abuse in public health care programs. Thank you for your careful and timely review of our request and look forward to your response.

Sincerely,

Tom Coburn, M.D.
U.S. Senator

George LeMieux
U.S. Senator

John Thune
U.S. Senator

John Cornyn
U.S. Senator

John McCain
U.S. Senator