

United States Senate Committee on Finance

For Immediate Release

Thursday, March 30, 2006

Grassley, Baucus Continue to Question CMS on Specialty Hospitals

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, are asking Department of Health and Human Services (HHS) Secretary Michael Leavitt for documents and raising further questions about the Centers for Medicare and Medicaid Services (CMS) and the enforcement of the moratorium on physician-owned specialty hospitals. The senators said that officials from CMS recently confirmed that an Oregon hospital that had a policy to call 911 in case of a patient emergency in lieu of an on-call physician was in fact a specialty hospital and should not have been treating Medicare patients as it opened during the congressionally mandated moratorium on physician-owned specialty hospitals. This facility was highlighted by Grassley and Baucus in a February 14, 2006, letter to Leavitt questioning CMS' enforcement of the moratorium and led to CMS' current investigation of the Oregon facility.

“The confirmation from CMS that this facility was in fact a specialty hospital raises more questions than it answers,” Grassley said. “Congress passed an 18-month moratorium on specialty hospitals, the president signed it into law, but now it's clear that the law wasn't enforced in one case. I intend to find out whether it wasn't enforced in other cases, and make sure that there aren't more facilities out there that violated the moratorium.”

Baucus said, “It appears that this facility was a hospital in name only, and that contributed to this patient's death. I want assurances that CMS is on the job across the country, making certain that Medicare patients aren't being endangered by 'hospitals' that aren't really hospitals. Medicare dollars need to be spent wisely at legitimate facilities where patients can receive proper care.”

The text of the latest Grassley-Baucus letter follows.

March 29, 2006

Via Electronic Transmission

The Honorable Michael O. Leavitt
Secretary
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Leavitt:

The United States Senate Committee on Finance (Committee) has exclusive jurisdiction over, among

other things, the Medicare and Medicaid programs. As Chairman and Ranking Member of the Committee, we have a responsibility to protect these programs along with the more than 80 million Americans who receive healthcare from them.

On February 14, 2006, we wrote to you outlining concerns we had upon learning the tragic details surrounding the death of a patient who had back surgery at Physicians' Hospital (Physicians') in Portland, Oregon. We were concerned by many details of this story, including that the hospital did not have a physician physically present, the hospital staff were unable to reach the on-call physicians, the hospital apparently did not have any arrangement with a local community hospital for emergencies, and the staff ultimately needed to call 911 for emergency help to resuscitate a patient who had undergone surgery a few hours prior, and that Medicare was paying the bill for this level of care.

It was very disheartening to learn that the patient in this case ultimately passed away at another hospital. The events surrounding this death highlighted not only the serious deficiencies in the treatment of patients and quality of care at Physicians', but also brought to light a serious problem with the administration of the 18-month moratorium on physician-owned specialty hospitals Congress passed as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

Tasked with the goal of implementing certain portions of the MMA, the Centers for Medicare and Medicaid Services (CMS) had the responsibility of implementing the 18-month moratorium on physician-owned specialty hospitals. The law specifically imposed a moratorium during which physician-investors in new specialty hospitals may not refer Medicare or Medicaid patients to these hospitals unless they were under development prior to the start of the moratorium. The authority to enforce this provision was given to CMS to ensure that the growth of these facilities was contained until congressional studies could be conducted.

As outlined in our previous letter, information provided to the Committee shows what appears to be a physician-owned specialty hospital that opened during the moratorium (Physicians'). Through recent discussions between our staff and CMS, as well as a review of CMS's correspondence with Physicians', it is now clear that CMS has determined that Physicians' is in fact a specialty hospital and that it opened in violation of the 18-month moratorium. This finding is unsettling as it only continues to raise more questions about CMS's enforcement of the 18-month moratorium and whether CMS continued to provide Medicare payments to other physician-owned specialty hospitals in violation of the moratorium.

Accordingly, as Chairman and Ranking Member of the Committee, we request that you provide the following documents, as well as written responses to the following:

- (1) A copy of the March 2, 2006, letter sent to Physicians', alerting the hospital of CMS's intention to terminate its provider agreement with the Medicare program and notifying how Physicians' could avoid the termination.
- (2) A copy of the results of the CMS survey conducted at Physicians' on February 24, 2006, referred to as the "CMS Statement of Deficiencies/Plan of Correction," also known as, "CMS 2567".
- (3) A copy of the March 10, 2006, letter that was sent by CMS to Physicians', which accompanied "CMS Statement of Deficiencies/Plan of Correction".

(4) A copy of the "Plans of Corrections" submitted to CMS by Physicians' in response to CMS's finding of immediate jeopardy related to Medicare's Condition of Participation requirement for medical staff.

(5) A list of all hospitals that qualify as a "specialty hospital" under Section 507 of the MMA (codified at 42 U.S.C. 1395nn(h)). In complying with this request please provide the name of the facility, the Medicare provider number of the facility, the geographic location of the facility, and the date that the Medicare provider number was granted to the facility.

(6) A list of all new Medicare provider numbers issued since November 18, 2003. In complying with this request please include the name of the facility, the geographic location of the facility, and the date that the Medicare provider number was granted to the facility.

(7) A detailed response outlining how many specialty hospitals CMS is currently investigating as potentially violating the moratorium. In complying with this response, please state the name of the facility, why CMS is examining a certain facility, and the current status of any investigation.

(8) Please describe what procedures CMS has implemented to determine whether a hospital is a physician-owned specialty hospital as defined in the MMA. Please include what actions you have taken to ensure that existing specialty hospitals adhered to the moratorium in terms of not expanding their number of physician investors or scope of services, and limiting expansion of their number of beds.

(9) In its mandated report to Congress on Specialty Hospitals, CMS stated the following:

"To address these concerns, we plan to revisit the procedures by which applicant hospitals are examined to insure compliance with relevant standards. We will instruct our agents to refrain from processing further participation applications from specialty hospitals until this review is completed and any indicated revisions are implemented. During this six-month review period, we expect to conduct a comprehensive review of our procedures... We expect to complete revisions to procedures by January 2006."

Then, on January 3, 2006, CMS issued a fact sheet that stated, "Last summer, CMS temporarily suspended enrollment of new specialty hospitals while the agency reviewed its procedures for enrollment. At present, CMS plans to continue the suspension until February 15, 2006, after this review is completed."

- a. Please identify how many hospitals you have placed on hold during the suspension on enrollment.
- b. Please provide an update on your review of CMS procedures for enrollment.

We remain very concerned that CMS's enforcement of the 18-month moratorium was insufficient and question how many new physician-owned specialty hospitals may have received Medicare funding in violation of the moratorium. CMS has both a duty and responsibility to beneficiaries and taxpayers to ensure that every dollar the Medicare program spends is distributed according to the letter of the law. At the least, the 18-month moratorium appears to have been violated in this one specific case. Working together, we need to determine whether any additional facilities violated the moratorium.

We thank you in advance for your cooperation and request that your staff provide a point of contact

for this matter no later than April 5, 2006. Additionally, we request that CMS provide the requested documents and written responses no later than April 14, 2006, and ask that this information be pooled together with our previous request of February 14, 2006, which remains outstanding. In complying with this request, please respond to each enumerated question by repeating the question, followed by CMS's response. Should any of the requested documents be available prior to completion of written responses, please provide the available documents on a rolling basis.

Sincerely,

Charles E. Grassley
Chairman

Max Baucus
Ranking Member

Cc: The Honorable Mark McClellan, M.D., Ph.D.