

# United States Senate

WASHINGTON, DC 20510

March 1, 2011

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, D.C. 20201

Dear Inspector General Levinson:

As Chairs of the United States Senate Committee on Finance, and the Committee on Homeland Security and Governmental Affairs Subcommittees on Federal Financial Management and Contracting Oversight, we are committed to reducing fraud, waste and abuse within federal government programs. In an effort to fulfill this commitment, we are writing today to express our concern with potential conflicts of interest among the private-sector contractors that perform most of the payment, administration and oversight functions of Medicare.

As you know, last year the federal government spent over \$500 billion to provide health coverage to 47 million Americans through Medicare. However, an estimated \$47.9 billion, approximately 10% program-wide, was made in improper payments in 2010.<sup>1</sup> In addition, the Government Accountability Office (GAO), which is responsible for evaluating the performance of the federal government and its programs, has had the Medicare program on its list of programs at high risk for waste and fraud since 1990.<sup>2</sup>

A recent survey of contractors conducted by our staffs to examine problems within the Medicare program found several examples of potential conflicts that raise concerns over the integrity of the Medicare program. The survey identified several relationships between key Medicare contractors that raise questions about possible conflicts of interest, or at the very least, might present the appearance of a conflict of interest, between the companies responsible for approving and processing reimbursement claims, and those hired by the federal government to ensure claims are paid correctly. In some instances, an oversight contractor is a subsidiary of a company with a Medicare claims processing contract. In other instances, the claims contractor is a subsidiary of a parent company that also has a subsidiary with an oversight contract.

Since 1999, the Centers for Medicare & Medicaid Services has had to follow the guidelines under the Federal Acquisition Rules (or "FAR").<sup>3</sup> The FAR requires contractors to be disqualified

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<sup>1</sup> Annual U.S. federal government Improper Payment figures for fiscal year 2010. Figures include improper payments for Medicare Parts A,B&C, but do not include Medicare Part D prescription drug program which have not yet been estimated. see: <http://www.paymentaccuracy.gov/high-priority-programs>

<sup>2</sup> Government Accountability Office, High Risks and Challenges, Medicare Program. see: [http://www.gao.gov/highrisk/risks/insurance/medicare\\_program.php](http://www.gao.gov/highrisk/risks/insurance/medicare_program.php)

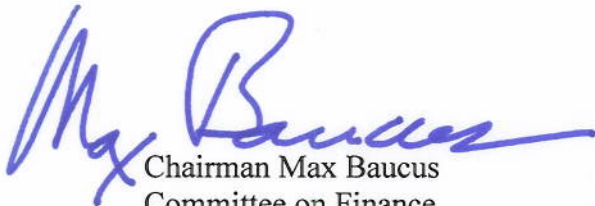
<sup>3</sup> See the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191), section 202(a).

when they have an avoidable or unmitigated organizational conflict of interest (OCI).<sup>4</sup> In defining an OCI, the GAO and federal case law have recognized three types of conflicts of interest: impaired objectivity, unfair access to non-public information, and biased ground rules.<sup>5</sup> There would clearly be questions of impaired objectivity, or the appearance of impaired objectivity, when related companies are charged with both the administration of Medicare-related programs and oversight of that administration.


In light of the potential conflicts described in the staff memo, we urge you to conduct a review of the contractors and their subsidiary relationships to identify possible conflicts of interest. We recognize that a conflict of interest does not necessarily mean fraudulent or improper activity is occurring. However, this survey by our respective committee staffs strongly underscores the need for a more extensive review of relevant contracts to ensure compliance with federal regulations, and to promote a more efficient and transparent federal government.

Thank you for your attention to this important matter. Please send all correspondence to Peter Tyler of Chairman Carper's staff at [peter\\_tyler@hsgac.senate.gov](mailto:peter_tyler@hsgac.senate.gov) or contact him at 202-224-7155, Christopher Law of Chairman Baucus's staff at [christopher\\_law@finance-dem.senate.gov](mailto:christopher_law@finance-dem.senate.gov) or 202-224-4515, and Nichole Distefano of Chair McCaskill's staff at [nichole\\_distefano@McCaskill.senate.gov](mailto:nichole_distefano@McCaskill.senate.gov) or 202-224-6154.


Sincerely,



Chairman Max Baucus  
Committee on Finance



Chairman Thomas R. Carper  
Subcommittee on Federal Financial Management,  
Government Information, Federal Services, and  
International Security



Chair Claire McCaskill  
Subcommittee on Contracting Oversight

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<sup>4</sup> OCI's may arise when "... factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required." 48 C.F.R § 9.502 (c) [https://www.acquisition.gov/far/html/Subpart%209\\_5.html](https://www.acquisition.gov/far/html/Subpart%209_5.html)

<sup>5</sup> Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress. January 2007, page 24. [https://www.acquisition.gov/comp/aap/24102\\_GSA.pdf](https://www.acquisition.gov/comp/aap/24102_GSA.pdf)