

United States Senate

WASHINGTON, DC 20510

September 26, 2011

Via Electronic Transmission

Donald Berwick, M.D., M.P.P.
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Administrator Berwick:

On June 8, 2011, the Centers for Medicare and Medicaid Services (CMS) published its proposed rule regarding the release and use of Medicare claims data to measure provider and supplier performance pursuant to a new requirement under Section 10332 of the Patient Protection and Affordable Care Act. Specifically, the proposed rule would make claims data from Medicare parts A, B, and D available to a “qualified entity” for a fee to combine claims data from other sources in order to evaluate the performance of health care providers and suppliers.

CMS explains in its proposal the purpose of providing access to this data to specific entities. The proposal states, “since Medicare serves an older population with declining health, using claims data from Medicare would provide more opportunities to assess care provided to the chronically ill and other resource-intensive populations than is found in other claims data.”

CMS also states, “We believe the sharing of Medicare data with qualified entities through this program and the resulting reports produced by qualified entities would be an important driver of improving quality and reducing costs in Medicare, as well as for the healthcare system in general. Additionally, we believe this program would increase the transparency of provider and supplier performance, while ensuring beneficiary privacy.”

We recognize that in issuing this proposed rule, the Agency is exercising its responsibility to implement statutory requirements. However, we believe efforts to promote transparency in Medicare payments and provider performance should not end with this rule.

As you are aware, on April 7, we introduced S. 756, *The Medicare Data Access for Transparency and Accountability Act*. This bill would expand access to database of claims that health care providers submit to Medicare for payment beyond the qualified entities defined in the proposed rule. The data would be available to the public through a searchable database without compromising the privacy of Medicare beneficiaries. This data is useful not only for comparing and understanding the cost and utilization of health care services and assisting in business decision-making, but also for identifying and exposing potential misuse or waste of valuable Medicare dollars.

Open access to the database has been very limited. In 1977, the Department of Health, Education, and Welfare was in the process of making billing data for Medicare providers available upon request. However, since a 1979 court decision, the Secretary has been prohibited from releasing physicians' billing information to the public.

Billions of tax dollars are wasted every year due to fraud, and law enforcement is waging an uphill battle trying to stop the trend. Allowing the public to see for the first time what individual physicians submit and receive from Medicare, by accessing the Database, would shine necessary light on the \$500 billion program.

The *Wall Street Journal* showed how effective public disclosure can be in identifying suspicious billing patterns indicating misuse of taxpayer Medicare funds. Using a limited amount of Medicare billing data, the newspaper and the nonprofit Center for Public Integrity exposed several medical practitioners who were attempting to game the system.

We acknowledge that the instances discovered by *The Wall Street Journal* are not indicative of the medical profession as a whole. Quite the contrary, America's quality physicians and practitioners deserve recognition for the services they provide. Public disclosure of claims data is not meant to cause them undue hardship, but rather advance transparency and accountability within the system.

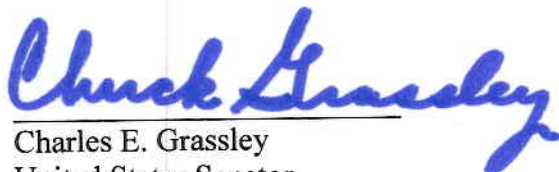
Scores of federal contracts recently became public through a new website, USAspending.gov. Created by legislation sponsored by then-Senator Obama and Senator Coburn, the idea behind it is familiar: with transparency comes accountability.

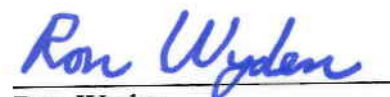
That same concept makes sense for Medicare claims and payments. A taxpayer dollar spent on Medicare isn't any different than a taxpayer dollar spent on defense programs when it comes to the public's right to know. Given the nation's current balance sheet, taxpayers ought to know where their hard-earned dollars are being spent.

We look forward to working with CMS to advance the goal of real transparency and accountability in government and request the opportunity to engage in thoughtful dialogue on how to best move this initiative forward.

If you have any questions regarding this letter, please contact Kevin Courtois of Senator Grassley's office at (202) 224-5225, or Elizabeth Jurinka of Senator Wyden's office at (202) 224-5244.

Sincerely,


Charles E. Grassley
United States Senator


Ron Wyden
United States Senator