

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

October 20, 2010

Via Electronic Transmission

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Sebelius:

As the senior Senator from Iowa and Ranking Member of the Senate Committee on Finance (Committee), it is my duty to conduct oversight of the Department of Health and Human Services (HHS or Department) and federal healthcare programs. In this effort, I have written to you several times concerning the role of overutilization in the rising cost of our health care system. After discovering the example of a Florida provider who wrote 96,685 prescriptions for mental health drugs in a 21-month period, I wrote to state Medicaid agencies requesting data for several mental health medications, as well as other drugs. Specifically, I asked for information concerning the top ten prescribers for these drugs during both 2008 and 2009, including the number of prescriptions written per year by each provider. I write today concerning not only the responses I received following this inquiry, but information provided by the Department regarding my earlier letters.

March 15, 2010 HHS Letter Regarding Overutilization

The Department's March 15, 2010 letter on overutilization stated that HHS routinely "works through Medicare claims processing contractors, program integrity contractors... and state Medicaid agencies to monitor payments and utilization for individual providers" to "identify anomalies and take appropriate action to... support claims, educate providers, suspend payments or make referrals to law enforcement." The same letter also stated that CMS does "not federally maintain a list of allegations or investigations of Medicare or Medicaid providers focused on overutilization." The Department admitted that the cases it does track "do not include instances in which providers are not suspected of fraud, but are identified as possible overutilizers..." Providers identified as "possible overutilizers" are "put on focused medical review and educated on proper billing or referral."

For Medicaid, you wrote that states "are required to monitor utilization rates," through Surveillance and Utilization Review units (SURs). In the Florida case mentioned above, you stated that the Florida SURs unit "reported similar findings to the data included" in my prior inquiry and the amounts Medicaid paid for the provider's

prescriptions had fallen “from \$12.2M in 2004 to \$5.6M in 2008, which is likely attributable to increased surveillance and interventions....” The Department admits that it has “significant work to do to improve the timeliness, detail and comprehensiveness of Medicaid” data, and has begun “a ground up reassessment of how” it collects and uses Medicaid data.

State Medicaid Data Regarding Overutilization

The prescriber information provided by states revealed a wide range of utilization across the country. However, several trends appeared to span across states and raise questions as to how the Department continues to monitor utilization rates for mental health and other drugs. I want to be clear that none of the information provided suggests any illegal or wrongful behavior. It merely demonstrates that across pharmaceutical brands and categories, as well as across states, there are very often providers that prescribe certain drugs at significantly higher rates than their peers. This may be because a particular physician has a specific expertise or patient population, but it might also suggest overutilization or even health care fraud. The only way to determine veracity is through appropriate oversight by the Department and continued monitoring by the Congress and this Committee.

One utilization characteristic spanned the country and occurred in states both large and small. In many states the top prescriber for a particular drug appears to write several times more prescriptions than the tenth highest provider. Here are several examples:

- In Oklahoma, the top prescriber of Abilify wrote 1,606 prescriptions in 2008, compared to the tenth highest prescriber that year at 569, and again in 2009 the same prescriber wrote 2,093 prescriptions compared to the tenth highest at 570.
- In Florida, the top Zyprexa provider wrote 1,356 total prescriptions for 309 individuals in 2008 and 1,238 for 236 in 2009, compared to the tenth highest each year who wrote 256 for 55 and 192 for 30, respectively.
- For Risperdal prescriptions in South Dakota, the top prescriber wrote 846 and 898 prescriptions in 2008 and 2009, compared to the other 9 top prescribers who were all in the range of 133-441 prescriptions.
- In Connecticut, one provider consistently ranked as the top prescription writer across the full range of pharmaceuticals, totaling 5,945 prescriptions in 2008 and 7,459 in 2009 for seven medications. This compares to the lowest provider of the top ten in these categories, who wrote 1,755 prescriptions in 2008 and 1,394 in 2009.

This trend is found again and again across the states, suggesting that top prescribers stand out not only against other providers in their state, but against the very *top* prescribers in those states.

I was also concerned by what appear to be extreme outliers based upon the information that we received directly from the states. In Ohio for instance, a single provider stood out in nearly every drug category. This included 13,461 Abilify prescriptions in 2008 and 13,825 in 2009; 4,958 Geodon prescriptions in 2008 and 4,426 in 2009; 20,433 Seroquel prescriptions in 2008 and 18,890 in 2009; and 21,182 Risperdal prescriptions in 2008 and 5,134 in 2009.

I also asked states for information about the anxiety drug alprazolam, a drug commonly sold under the trade name Xanax. Like many drugs alprazolam is commonly abused and can lead to overdoses and death. This drug was prescribed at outlier levels in many states, including these examples:

- In Texas one outlier provider authorized 13,596 filled prescriptions for Xanax in 2008, and increased that to 14,170 filled in 2009. This compared to the lowest of the top ten, who prescribed 1,444 and 1,696, respectively.
- Concerning the Florida physician who previously wrote 96,685 prescriptions for mental health drugs in a 21-month period, information provided by Florida indicates the individual is also an extreme outlier for the generic form of Xanax. The provider wrote 6,726 prescriptions for the drug in 2008, and 7,509 more in 2009.

I reiterate that high rates of utilization are not necessarily indicative of wrongful behavior or health care fraud. But there can be no doubt that they merit scrutiny by your Department. I send this information today and reiterate with urgency the need for your Department to step up efforts to monitor providers that are outliers. This is necessary not only to determine the veracity of Medicare and Medicaid claims, but to protect these programs from fraud, waste, and abuse, and help ensure their solvency.

In light of this information and the continued concerns detailed in past letters, I am requesting additional information from the Department. Please restate the question and follow with the responsive information and documentation.

- 1) You state that the Department relies heavily upon contractors to identify outliers and other indications of fraud, waste, and abuse. Please detail what guidelines the Department gives these contractors and by what activities it ensures that they are conducting complete analyses of Medicare and Medicaid data.
- 2) Your March 15, 2010 letter suggests that the Department and states treat allegations of fraud wholly different and apart from information suggesting overutilization. Indeed, it appears that the accepted response to indicated overutilization is “medical review and education” on proper billing. Please state the reasons that the Department treats this information as unrelated and describe the degree to which overutilization information is used to determine credibility of allegations of fraud.

- 3) For the state Medicaid information described above, please detail whether this is similar to Medicare information the Department and its contractors review. At what point might such information trigger additional scrutiny, even if only for the purposes of “medical review and education?”

Thank you for your attention to this important matter. I request that you provide a response by no later than December 3, 2010. Should you have any questions regarding this letter, please contact Christopher Armstrong at (202) 224-4515. All formal correspondence should be sent electronically in PDF format to Brian_Downey@finance-rep.senate.gov or via facsimile to (202) 228-2131.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Daniel R. Levinson
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Office of Inspector General
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