

# United States Senate

WASHINGTON, DC 20510

May 04, 2015

## VIA ELECTRONIC TRANSMISSION

The Honorable Andrew M. Slavitt  
Acting Administrator  
Centers for Medicare & Medicaid Services  
200 Independence Ave, S.W.  
Washington, D.C. 20201

Dear Mr. Slavitt,

We noted with interest the Early Alert (alert) issued to the Centers for Medicare & Medicaid Services (CMS) on April 29 by the Health and Human Services Office of Inspector General (OIG) titled, “Without Clearer Guidance, Marketplaces Might Use Federal Funding Assistance for Operational Costs When Prohibited by Law.” In the alert, OIG notes that without clearer guidance from CMS as to what actions fall within prohibited uses, taxpayer monies could be – and may have already been – used for improper operational costs within State based marketplaces (SBMs). The concerns raised by OIG are very similar to ones we raised to your predecessor regarding CMS’ oversight of the state-based exchanges and how CMS is ensuring taxpayer dollars are appropriately used and expended.

To help implement the ACA, CMS provided guidance clarifying that federal funds may not be used to cover maintenance and operating costs, which include rent, software maintenance, telecommunications, utilities, and base operational personnel and contractors. However, OIG notes that the guidance should be more specific regarding other key prohibitions, such as call centers and in-person assisters. OIG stated, “Without specific guidance that clearly defines the difference between a design, development, and implementation expense (potentially allowable) and an operating expense (statutorily prohibited), there is a risk that SBMs might inappropriately use establishment grant funds for operational costs.”

These concerns are not hypothetical. For example, OIG cites Washington State’s budget documents which allude to the use of \$10 million in establishment grant funds to support operating expenses. Further, OIG notes that SBMs face uncertain operating revenues in 2015 and beyond. The lack of revenues is quite disconcerting in light of the fact billions of dollars of taxpayer money have already been spent to undergird SBMs. In December 2014 alone, \$420 million was awarded to SBMs. This extra funding was extended via No Cost Extensions (NCE) and OIG notes that CMS should issue specific guidance to make clear that the ACA restrictions within section 1311 also apply to funds made available through NCEs.

SBMs cannot be allowed to use hard-earned taxpayer dollars for expenses that are statutorily prohibited. Moreover, given the operational challenges of SBMs nationwide, the use

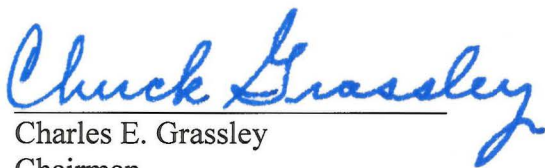
of grant funds to support operations is not only a prohibited use of such funds but a short term fix that delays the time before structural defects have to be addressed.

Accordingly, we request the following:

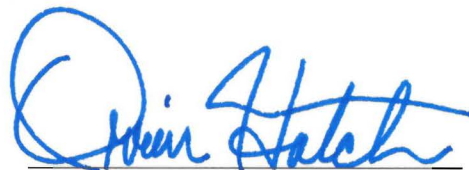
1. To minimize the improper use of establishment grant funding for operations costs, will you develop and publish clearer guidance on what constitutes operational costs? If so, how will you ensure the new guidance prevents improper use of grant funds? If not, why not?
2. To minimize the improper use of establishment grant funding for operations costs, will you develop and publish clearer guidance on what constitutes design, development, and implementation costs? If so, how will you ensure the new guidance prevents improper use of grant funds? If not, why not?
3. Will you monitor SBMs use or potential use of establishment grant funds for operations costs? If so, what action will you take if prohibited use is found? If you will not monitor, why not?
4. Have you already engaged in monitoring improper use of establishment grant funds? If so, please list the SBMs involved and the amount of money misused. In addition, please list the steps made to remedy the misuse.
5. Please provide your timeline to address each of the issues raised above.

Please number your responses according to their corresponding questions. Please respond no later than May 18, 2015. If you have any questions, please contact Josh Flynn-Brown of Chairman Grassley's Judiciary Committee staff at (202) 224-5225 and Kim Brandt of Chairman Hatch's Finance Committee staff at (202) 224-4515. Thank you for your cooperation in this important matter.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary



Orrin G. Hatch  
Chairman  
Committee on Finance