

# United States Senate

WASHINGTON, DC 20510

February 9, 2016

## 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 wrote to you in June 2015 regarding the inaccuracy of advance premium tax credit (APTC) payments made to health plan issuers.<sup>1</sup> In December 2015, the Department of Health and Human Services (HHS) Office of Inspector General (OIG) issued a report outlining more costly issues with the Affordable Care Act (ACA).<sup>2</sup> Specifically, HHS OIG found that “CMS could not ensure that APTC payments made to QHP [Qualified Health Plans] were only for enrollees who had paid their premiums.”<sup>3</sup> In other words, HHS OIG found that CMS was making payments on behalf of people who may not have qualified to receive them.

Payments to issuers are predicated upon the proper collection and interpretation of data about the enrollees. However, it appears that CMS is not obtaining payment data on an enrollee-by-enrollee basis from issuers when making APTC payments. In addition, CMS is not providing APTC payment data to the IRS during the course of the year. The lack of controls in place at CMS and the lack of communication with the IRS to track payments made to individuals is concerning because billions of taxpayer dollars are at stake.

Under the current system, enrollees may be eligible for assistance paying their premiums through the APTC program. The marketplaces determine if an enrollee is eligible, and for those deemed eligible, the applicable marketplace determines the APTC amounts “on the basis of the premium associated with the second-lowest-priced silver plan available in the area in which the enrollee resides” and on the basis of the enrollees’ income and family size.<sup>4</sup> CMS then authorizes the APTC payment and the IRS

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<sup>1</sup> HHS OIG issued a report in June 2015 which I addressed by letter on June 17, 2105; *see* Letter from Sen. Charles E. Grassley, Chairman, Sen. Comm. on the Judiciary to the Hon. Andrew M. Slavitt, Acting Administrator, Centers for Medicare & Medicaid Services (June 17, 2015).

<sup>2</sup> U.S. Dep’t of Health & Human Services Office of Inspector Gen., A-02-14-02025, CMS Could Not Effectively Ensure That Advance Premium Tax Credit Payments Made Under the Affordable Care Act Were Only for Enrollees Who Paid Their Premiums (Dec. 2015) [hereinafter Dec. 2015 HHS OIG Report].

<sup>3</sup> Dec. 2015 HHS OIG Report at iii.

<sup>4</sup> *Id.* at 2.

reconciles the APTC payments with the allowable tax credit.<sup>5</sup> Information is always changing, however, due to enrollees missing payments, not making payments, or simply opting out of the program.

It is this constant changing of information that can cause irregularities and ultimately “[f]ederal funds may be at risk (e.g., there is a risk that funds were authorized for payments to QHP issuers in the incorrect amounts).”<sup>6</sup> When HHS OIG issued the December report, CMS was using an “interim plan” to manage the flow of information between the QHP issuers and CMS.<sup>7</sup> Under this plan, issuers provided CMS a monthly template of enrollment and payment data which aggregated confirmed enrollment and APTC totals.<sup>8</sup> Additionally, the issuers provided attestation pages assuring that all the information provided was true.<sup>9</sup> Based only on the information provided by the issuers, CMS would authorize APTC payments.<sup>10</sup> However, the information was not provided on an enrollee-by-enrollee basis, which, according to HHS OIG, is the reason why CMS cannot ensure APTCs were provided to only those who paid premiums.

CMS claimed – after HHS OIG issued its draft of the December report – that the interim plan would only be used until January 2016 when CMS would require all issuers to use a new automated computerized system for payment based on enrollee-by-enrollee tracking.<sup>11</sup> In addition, HHS OIG made two recommendations for CMS to improve the APTC payment system ensuring that less taxpayer dollars were at risk.<sup>12</sup> HHS OIG first recommended that CMS “establish policies and procedures to calculate APTC payments without relying solely on QHP issuers’ attestations, including QHP assurances, that enrollees have paid their premiums.”<sup>13</sup> Second, HHS OIG recommended that CMS share more APTC payment data with the IRS in order to allow IRS to “verify the data reported on each individual’s Form 1095-A.”<sup>14</sup>

To the first recommendation, CMS concurred but simply responded by outlining its current process which compares data month to month and tracks changes in enrollee premium payments to account for enrollment changes, such as when an enrollee misses payment, drops out of a plan, and should not receive APTC.<sup>15</sup> However, this does not respond to HHS OIG’s recommendation since this process depends upon first receiving and relying upon the information provided monthly by the issuers – the attestations and QHP assurances. The only responsive policy or procedure you mention is the new proposed automated system that was supposed to launch this month, which would rely less on issuer-provided attestations and more on enrollee-payment data.<sup>16</sup>

To the second recommendation, CMS was silent. HHS OIG noted that, “[i]f CMS provided APTC payment data to the IRS throughout the year, the IRS could verify the accuracy of the Form 1095-A.”<sup>17</sup> It is important to take every reasonable step to protect the taxpayer from waste, fraud, and abuse. We look forward to an explanation as to why CMS did not directly address the second recommendation.

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<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.* at iii.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 7 n.21.

<sup>12</sup> *Id.* at 8.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 13.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 8.

In light of the ongoing risk that the ACA places upon taxpayer dollars and the lack of progress that you have made to address the concerns of HHS OIG in its last two reports, please answer the following questions and provide the following information:

1. Have you launched the new automated policy-based payment process that will track APTC payments on an enrollee-by-enrollee basis? If not, please explain the delay. If the new payment process has been launched, how many QHP issuers are using it? How many are not using it?
2. Please explain the improvements of the new automated system that have purportedly advanced its capabilities beyond the interim plan including a description of the responsibilities of issuers, CMS, and the IRS and what information each entity receives from whom.
3. If you have not launched the new automated system, have you implemented new policies and procedures to calculate and verify APTC payments that are independent of the attestations and assurances of QHP issuers? If not, why not? If so, please provide an explanation and any supporting documentation of these new policies.
4. Do you believe that HHS OIG's second recommendation with respect to sharing APTC data with the IRS is unreasonable? If so, please explain.
5. Do you plan on implementing HHS OIG's second recommendation to share APTC data with the IRS for it to have the chance to independently verify this information? If not, why not? If so, how will you communicate this information to the IRS?

Thank you in advance for your cooperation with this request. Please number your responses according to their corresponding questions and respond no later than March 4, 2016. If you have questions, please contact Josh Flynn-Brown at (202) 224- 5225 or Kim Brandt at (202) 224-4515.

Sincerely,



Orrin G. Hatch  
Chairman  
Senate Committee on Finance



Chuck Grassley  
Chairman  
Senate Judiciary Committee