



1 equipment companies, Med-care Diabetic and Medical Supplies  
2 and U.S. Healthcare Supply to provide testimony about their  
3 companies' business practices, including how their companies  
4 market and promote medical equipment supplies to patients  
5 and their doctors.

6 We also wanted the company representatives to address  
7 sample reviews by CMS which show very high error rates and  
8 denial rates for durable medical equipment payments made to  
9 the companies by the government.

10 After receiving the Subcommittee's invitation to  
11 testify, both individuals, through their attorneys, declined  
12 to appear voluntarily before the Subcommittee. Because  
13 Ranking Member Johnson and I continue to believe that these  
14 companies could provide useful information that would assist  
15 the Subcommittee in its oversight of this very important  
16 government program, we issued subpoenas to compel their  
17 attendance at today's hearing.

18 I regret that we were forced to use subpoenas to have  
19 the opportunity to ask these questions. I believe these  
20 witnesses today can provide important insights about both  
21 the operations of their industry and the oversight and  
22 performance of the government.

23 I also welcome the opportunity to have a constructive  
24 dialogue about how to make the system more efficient and  
25 effective. I look forward to discussing those issues with

1 the witnesses today

2 It is the custom of this Subcommittee to swear in all  
3 witnesses that appear before us. So, if you do not mind, I  
4 would ask you to stand.

5 Do you swear that the testimony that you will give  
6 before this Subcommittee will be the truth, the whole truth,  
7 and nothing but the truth so help you God?

8 Mr. Letko. Yes.

9 Dr. Silverman. Yes.

10 Senator McCaskill. Thank you very much.

11 Let the record reflect the witnesses have answered in  
12 the affirmative.

13 We will be using a timing system today. We ask that  
14 your oral testimony be no more than five minutes and your  
15 written testimony can be put in the record at whatever  
16 length that you would so desire.

17 The first witness to come before us today is Mr. John  
18 Letko of U.S. Healthcare Supply LLC.

19 Mr. Letko, it is my understanding that--let me start  
20 with this. What is your company's primary business purpose?

1                   TESTIMONY OF JON LETKO, U.S. HEALTHCARE SUPPLY,  
2                   LLC

3           Mr. Letko. Chairman McCaskill, I would like to answer  
4 your question, but based upon the advice of my counsel, I  
5 respectfully decline at this time to answer your question  
6 based on my Fifth Amendment rights in the Constitution.

7           Senator McCaskill. Okay. We respect that right under  
8 the Constitution, and we thank you for being here today. We  
9 know that your company has been speaking to the press about  
10 this issue and we are hopeful that at some point in time  
11 your company will be in a position that you could speak to  
12 the committee under oath in the same manner that you are  
13 willing to speak to the press about this issue and we thank  
14 you for being here today and you are dismissed.

15          Mr. Letko. Thank you.

16          Senator McCaskill. The record should reflect that Mr.  
17 Letko has availed himself of the privileges afforded under  
18 the Fifth Amendment of the Constitution to not give  
19 testimony that might incriminate him. The Subcommittee  
20 hereby respects that right to decline to answer the  
21 questions and the witness has been excused.

22                   [Witness excused.]

23          Senator McCaskill. Now, we will now go to you, to Mr.  
24 Silverman. Mr. Silverman, we appreciate you being here and  
25 I am hopeful that we will be able to get a lot of good

1 information out of you today.

2 Let me start by asking what your role at the company  
3 is.

4 Dr. Silverman. Good afternoon, Madam Chairperson. I  
5 would like to make an opening statement.

6 Senator McCaskill. I am sorry. Go ahead.

7 Dr. Silverman. Thank you, ma'am.

8 Senator McCaskill. We are not used to what just  
9 happened so I got a little off my script here. So, go ahead  
10 and make your statement. I appreciate it.

11 Dr. Silverman. Thank you, Madam Chairman.

1                   TESTIMONY OF STEVE SILVERMAN, MD, MED-CARE  
2                   DIABETIC AND MEDICAL SUPPLIES

3           Dr. Silverman. I welcome the opportunity to be here at  
4 this meeting today. My name is Dr. Steve Silverman. I  
5 received an AS degree in biology in 1975 from Nassau College  
6 in New York. I attended the University of Missouri in  
7 Columbia, Missouri from 1975 to 1976. I then graduated from  
8 Logan College of Chiropractic in Chesterfield, Missouri in  
9 1979 with a dual degree, a BS in human biology and a Doctor  
10 of Chiropractic.

11           I am licensed in the States of Florida and New York. I  
12 started a multi-specialty center in Florida from 1979 to  
13 1998. The name of my practice was American Med-Care  
14 Centers, comprised of chiropractors, medical doctors, and  
15 exercise physiologists.

16           We served private insurance as well as Medicare  
17 patients. In 1999 I left the practice group to form a  
18 medical supply company named Med-Care Diabetic and Medical  
19 Supplies Incorporated.

20           Today, my company has in excess of 435 employees all  
21 located in the United States. Medicare represents less than  
22 one half of our revenues. We are accredited by the Joint  
23 Commission. We are duly licensed in all 50 states and  
24 territories and I appreciate the opportunity to be here and  
25 look forward to your questions.

1           Senator McCaskill. Thank you very much. You indicated  
2 in your opening statement that half of your company's  
3 revenues are Medicare?

4           Dr. Silverman. Yes, ma'am.

5           Senator McCaskill. What percentage of the revenues--  
6 are any of the revenues attributed to Medicaid?

7           Dr. Silverman. No. A very small percentage, ma'am.

8           Senator McCaskill. Okay. So basically, you are half  
9 Medicare and half private pay?

10          Dr. Silverman. We are also, we have a licensed  
11 pharmacy in all 50 states. We have licensed pharmacists and  
12 pharmacy techs. So, the other aspect of our income comes  
13 through our pharmacies.

14          Senator McCaskill. I see. Okay. Do you know what  
15 percentage of that might be Medicare D?

16          Dr. Silverman. No, ma'am.

17          Senator McCaskill. Was that information that you could  
18 possibly obtain for the committee?

19          Dr. Silverman. I am sure I can obtain the information.

20          Senator McCaskill. That would be helpful. Thank you.

21          And, you may have said this in your opening statement  
22 and I missed it. Did you indicate, is this a privately-  
23 owned company or publicly-owned?

24          Dr. Silverman. It is privately-owned, Madam  
25 Chairperson.

1           Senator McCaskill. What did your company received in  
2 2012? What was the total amount of money you received from  
3 medical equipment supply payments from Medicare in 2012?

4           Dr. Silverman. To the best of my knowledge, it was  
5 approximately \$35 million.

6           Senator McCaskill. And, is that average for the last  
7 four or five years? Is that approximately what you received  
8 on a consistent basis or is that significantly more than you  
9 received in prior years?

10          Dr. Silverman. It is not significantly more. You  
11 know, we have been in business since 1999; and subsequently  
12 as years have gone on, our revenues have increased.

13          Senator McCaskill. I want to make sure that you know I  
14 would never ask you to provide any information about  
15 specific actions that you may or may not be addressing in  
16 various inquiries that are being made by other parts of the  
17 government, but I am only interested in what actions you  
18 have taken in response to the finding by CMS that you had  
19 such a high percentage of claims that should have been  
20 denied.

21          In the sample of more than 1200 claims, they said that  
22 99 percent of them should have been declined and they found,  
23 the authors found that over 400 of the more than 590  
24 Medicare claims reviewed were improper and demanded  
25 repayment in overpayments. I assume you are aware of these

1 findings.

2 Dr. Silverman. The first time I became aware of any of  
3 the information that you are stating was from your last  
4 Subcommittee meeting. I do not know if you are specifically  
5 addressing my company.

6 Senator McCaskill. I am.

7 Dr. Silverman. Okay. We have requested information  
8 regarding those statements and we have yet to receive it.  
9 But may I just state that as a result of what I read from  
10 the last meeting, we went back, we are part of the large  
11 provider outreach program for CMS. We have in excess of  
12 200,000 patients and CMS has asked us and we voluntarily  
13 agreed to work with them. So, we get report cards every  
14 quarter from--I was able to go back and review our CERT  
15 error rates. From 2010 through most recently of 2012, our  
16 error rates were anywhere between 3 and 7.8 percent.

17 Senator McCaskill. So--

18 Dr. Silverman. And--excuse me.

19 Senator McCaskill. Go ahead. I am sorry.

20 Dr. Silverman. Some of the error rates were based upon  
21 equipment that is not paid for by Medicare. In other words,  
22 if a patient requested insulin or syringes to treat their  
23 diabetes, it is not a covered item from Medicare.

24 So, we have to submit those claims to Medicare, and  
25 those claims then get rejected so that we can bill their

1 other insurance. That is just an example of how some of  
2 these claims are attributed to an error rates.

3 Senator McCaskill. Okay. So, I am confused. CMS is  
4 telling us that your error rate, that when they look closely  
5 at reviews, 400 of 590 claims reviewed were improper. And,  
6 you are saying that you did not know until the hearing that  
7 they had demanded repayment for overpayment on some of  
8 those?

9 Dr. Silverman. To my knowledge, we have not been  
10 demanded repayment for overpayment on anything, on any of  
11 those items brought up.

12 Senator McCaskill. So, this is really important that  
13 you came today because what you are telling me is CMS is  
14 telling you to pay them back and you are saying they never  
15 told you to pay them back.

16 Dr. Silverman. I am not saying that. I do not know--  
17 to my knowledge, I have no understanding of CMS asking us to  
18 pay back, and I am not really clear of where the report and  
19 what period that report is from. I requested the  
20 information. Our attorneys requested to review the  
21 information, and I have not been able to review it yet.

22 Senator McCaskill. We certainly can give you all the  
23 information that has been part of the public record as part  
24 of this hearing, and I can assure you that no one will beat  
25 down the door faster at CMS to resolve what appears to be a

1 huge discrepancy in the information that they have provided  
2 and the information that you are representing today. They  
3 cannot say that you have a gross problem with improper  
4 payments and then you not know anything about it.

5 So, clearly there is a break down here.

6 Dr. Silverman. I appreciate that and that is one of  
7 the reasons I am here today basically just to clear up these  
8 issues and not to muddy our name but, you know, we work  
9 closely with CMS and we would be very happy to go over those  
10 results.

11 And, you know, in the last, since 1999 I can tell you  
12 that we have had a small, a small majority of audits, never  
13 any prepayment audits, and we had actually voluntarily in  
14 2012 given back \$750,000 back to CMS.

15 So, I look forward to working with CMS closely and I  
16 would like to clear it up just as quickly as--

17 Senator McCaskill. Well, I can facilitate you getting  
18 with CMS I cannot assure you.

19 Dr. Silverman. Thank you.

20 Senator McCaskill. And we will get to the bottom of  
21 it--

22 Dr. Silverman. Okay.

23 Senator McCaskill. --because I want to be confident  
24 that the problem that is out there which it is a problem in  
25 that we have had--and that is why I want to talk about the

1 specifics. I mean, you understand how your committee came  
2 to light?

3 Dr. Silverman. "Your committee"?

4 Senator McCaskill. I mean how your company came to  
5 light to this Committee?

6 Dr. Silverman. From the last meeting, yes, yes,  
7 Senator.

8 Senator McCaskill. That it was a doctor that contacted  
9 us that she was having a great deal of difficulty getting  
10 you to stand down in your marketing of these devices to one  
11 of her patients.

12 Dr. Silverman. I would like to comment on that issue  
13 if you let me.

14 Senator McCaskill. Absolutely. I am going to ask you  
15 some questions about it but go ahead.

16 Dr. Silverman. Do you want to ask those?

17 Senator McCaskill. No. Go ahead.

18 Dr. Silverman. Thank you, Senator.

19 I was able to review the testimony from the physician  
20 regarding the claims that her patient were, was cold called  
21 basically by our company, and I have empathy towards her in  
22 regards to getting many faxes and many paperworks. Many of  
23 my friends are physicians and the they would much rather  
24 practice medicine than be bogged down with faxes and  
25 paperwork.

1           In this instance, the doctors stated that she was  
2 representing her patient and the patient was cold called and  
3 the evidence shown was a fax request from our company, Med-  
4 Care Diabetic and Medical Supplies, for authorization to  
5 give this patient CPAP equipment.

6           Our policies and procedures regarding advertising,  
7 basically we advertise on a website and web health sites.  
8 Every one of our advertising basically has a box that a  
9 patient must check that essentially gives express written  
10 permission for our company, Med-Care Diabetic and Medical  
11 Supplies, to call them.

12           In this particular instance with this physician's  
13 patient, we have documentation showing express written  
14 permission from this patient to allow our staff to call  
15 them.

16           So, number one--

17           Senator McCaskill. Do you know where--this is Mrs.  
18 Pariseau?

19           Dr. Silverman. Ah. Can I mention names?

20           Senator McCaskill. Sure. Her letters and faxes and  
21 her information.

22           Dr. Silverman. Dr. Kennedy's patient, and I just want  
23 to be respectful of any HIPAA guidelines so. Dr. Kennedy's  
24 patient was not Mrs. Pariseau, and also I would like to add  
25 that Dr. Kennedy's patient--

1 [Pause.]

2 Senator McCaskill. Okay. I want to make sure you see  
3 these. Did you get copies of the letters that I am  
4 referring to?

5 Dr. Silverman. I have a copy of Dr. Kennedy's letter  
6 to you.

7 Senator McCaskill. Right.

8 Dr. Silverman. I just want to also state regarding  
9 this patient, this patient did not have Medicare benefits.  
10 Her benefits were actually United Healthcare, which is a  
11 private insurance.

12 Senator McCaskill. Okay.

13 Dr. Silverman. So in this instance, Dr. Kennedy is  
14 basically stating the patient did not request any of these  
15 devices or products, but we have expressed written  
16 permission from this patient for our office to contact her.

17 They were not cold calls, and the only other evidence  
18 that was presented was a prescription faxed to Dr. Kennedy  
19 where she had said that the patient did not require a CPAP  
20 machine because they already had one.

21 At this point, we did not further contact the patient.  
22 I have the patient's name. Do you need the patient's name?

23 Senator McCaskill. You are welcome to put it in the  
24 record.

25 Dr. Silverman. It is Linda Hultz.

1 Senator McCaskill. Right.

2 Dr. Silverman. And, the patient was not contacted  
3 again. We did not contact Dr. Kennedy after this. The  
4 patient was never billed, shipped supplies.

5 Senator McCaskill. Okay. So, let me back up about the  
6 written consent. So, you are saying you are not calling  
7 patients until you have expressed written consent?

8 Dr. Silverman. Yes, ma'am. Our program has been  
9 reviewed and approved by CMS.

10 Senator McCaskill. And, is the written consent in the  
11 form most times of somebody checking a box on an Internet  
12 ad?

13 Dr. Silverman. The written consent on our website  
14 shows that the patient, we explain our privacy policy to the  
15 patient and we also explain the fact that the patient is  
16 agreeing to be called Med-Care.

17 Senator McCaskill. Tell me exactly how they get there.  
18 Say it is my, say it is my elderly aunt, and she is looking  
19 up something about her diabetes, and she sees an ad on that  
20 page, and she clicks on that ad. It says you can get free  
21 testing equipment.

22 Dr. Silverman. We do not ever state anything free.

23 Senator McCaskill. Okay. You can get testing  
24 equipment at little or no cost to you.

25 Dr. Silverman. Yes, ma'am.

1           Senator McCaskill. I think that is the phrase that is  
2 most frequently used.

3           Dr. Silverman. Yes, ma'am.

4           Senator McCaskill. Little or no cost to you, and you  
5 click on that box. And, then where does she go?

6           Dr. Silverman. She immediately gets an e-mail from our  
7 company, and the e-mail basically--

8           Senator McCaskill. Without her entering in her e-mail  
9 address she gets an e-mail from you?

10          Dr. Silverman. No, no. I am sorry, Ma'am. On our  
11 website, we have--

12          Senator McCaskill. So, she clicks through and she gets  
13 to your website.

14          Dr. Silverman. Yes. There is a place on the website.

15          Senator McCaskill. And, she has to fill in her e-mail  
16 address.

17          Dr. Silverman. Her name, her e-mail address, and our  
18 telephone number--

19          Senator McCaskill. So, the woman who--

20          Dr. Silverman. --then there is a box that she needs to  
21 check that gives, she is giving us express written  
22 permission to contact, and those are the CMS guidelines.

23          Senator McCaskill. Okay. And, are there any that you  
24 are calling that you are giving some way other than that  
25 visit to your website?

1 Dr. Silverman. No, ma'am.

2 Senator McCaskill. So, you do not have any other  
3 methods. So, if someone does not have a computer and they  
4 are saying that they got a call from you and you had a  
5 doctor's name, you had their named, and you said that you  
6 were Med-Care and they thought you meant Medicare because  
7 your name sounds just like Medicare, you do not think that  
8 that is really happening?

9 Dr. Silverman. No, ma'am. First of all, we do not  
10 present ourselves as Medicare.

11 Senator McCaskill. Why did you name yourself that  
12 then?

13 Dr. Silverman. My medical office was named American  
14 Med-Care Centers; and when I left that office, that name was  
15 still in use. So, I just abbreviated it to Med-Care  
16 Diabetic and Medical Supplies.

17 Senator McCaskill. And, it is just a convenience or a  
18 coincidence that when someone calls and says this is blah  
19 blah blah from Med-Care that elderly people just might  
20 accidentally think they are talking to Medicare.

21 Dr. Silverman. We do not present ourselves that way.

22 Senator McCaskill. So, do they say we are not  
23 Medicare?

24 Dr. Silverman. We say we are Med-Care Diabetic and  
25 Medical Supplies; and if a patient were to ask, are you

1 Medicare, of course, we say no, we are not Medicare.

2 Senator McCaskill. Okay. Do you have any contracts  
3 with third parties to get phone numbers, call lists, or  
4 information about Medicare beneficiaries?

5 Dr. Silverman. No, ma'am.

6 Senator McCaskill. And, you are not buying lists from  
7 anyone?

8 Dr. Silverman. No, ma'am.

9 Senator McCaskill. Okay.

10 Dr. Silverman. Our advertising is purely web-based;  
11 and like I said, the Joint Commission and CMS has reviewed  
12 it and has approved it.

13 Senator McCaskill. Okay. Have you been investigated  
14 for violating this prohibition on direct marketing?

15 Dr. Silverman. In terms of investigated by whom?

16 Senator McCaskill. By CMS.

17 Dr. Silverman. We had a corrective action procedure  
18 this past fall. Our advertising, CMS had done their yearly  
19 inspections last summer and we had given them copies of our  
20 advertising.

21 In a couple of our advertisements, the patient request  
22 to be contacted was in our privacy policy. So, CMS reviewed  
23 this and they essentially wanted us to be more clear about  
24 where it was.

25 So, there were a few ads that, like I said, were in the

1 privacy policy and we corrected that. CMS, it was called a  
2 corrective action procedure. CMS approved it. They  
3 reviewed all of our advertising and--

4 Senator McCaskill. So, now do you have to check two  
5 boxes? One that you understand the privacy policy and one  
6 you are willing to be contacted?

7 Dr. Silverman. No, just the willing to be contacted.  
8 Our privacy policy is in regards to HIPAA, and we want our  
9 patients to understand that their patient information is  
10 protected.

11 Senator McCaskill. Okay. So, the only action they can  
12 take is clearly delineated now "I am willing to be contacted  
13 by your company"?

14 Dr. Silverman. Yes. And, CMS, just getting back to  
15 CMS, we were retroactively approved. We never lost any  
16 billing. We never lost any licensure. They just wanted  
17 clarification; and unfortunately, it was over Christmas.  
18 So, it took a little bit of a period of time but, you know,  
19 it was fine.

20 That is the only actions that my company has had, and I  
21 have been billing Medicare since I started out in practice  
22 since 1979 without major incident.

23 Senator McCaskill. So, I am back to Mrs. Pariseau.  
24 She claims that you called her and that she had no idea what  
25 was going on and that she did not understand that she was

1 talking to a company and that she thought it was Medicare  
2 because you had all of her information.

3 She indicated she never asked for a prescription and  
4 yet she is getting a letter that says our sleep apnea  
5 prescriptions have been approved.

6 Dr. Silverman. In this particular instance, Senator  
7 McCaskill, I was also able to go back to our records and we  
8 have a form, a document that basically has shown that Mrs.  
9 Pariseau has given us express written permission to contact.

10 Senator McCaskill. And, how did you get that.

11 Dr. Silverman. She apparently went on a website and  
12 filled out that document.

13 Senator McCaskill. Will you share those documents with  
14 us?

15 Dr. Silverman. Absolutely.

16 Senator McCaskill. Okay. So, I would like to see  
17 where Mrs. Pariseau gave you permission, and where did you  
18 get her phone number?

19 Dr. Silverman. On the website, the patient fills out  
20 her name, her e-mail address, her phone number.

21 Senator McCaskill. So, she gave you her phone number  
22 on a website.

23 Dr. Silverman. Yes, ma'am, and that is why when we  
24 contact them, you know, again just to talk about our current  
25 marketing, the patient gets an e-mail right away; and if

1 they do not want to be contacted, they had the right to be  
2 put on a do not call this and we do not contact.

3 Senator McCaskill. What if she does not respond to  
4 your e-mail? Do you send her a letter?

5 Dr. Silverman. No. We contact her by phone; and then  
6 at that point in time, if the patient has any confusion, the  
7 patient says I did not fill this out, I do not want the  
8 supplies, then we apologize. We tell them we are sorry we  
9 bothered them, and no further actions are taken.

10 Senator McCaskill. Okay. So, in this instance, you  
11 are saying Mrs. Pariseau went on your website, she filled in  
12 her e-mail address, she filled in her phone number, and then  
13 you send her an e-mail.

14 Did she respond to your e-mail or not respond to your  
15 e-mail?

16 Dr. Silverman. No. We contacted the patient and then  
17 we sent out prescriptions--

18 Senator McCaskill. Wait. I want to know how you  
19 contacted her. You are saying the first thing she did is  
20 she went on your website and she gave you all this personal  
21 information.

22 Dr. Silverman. Yes, ma'am.

23 Senator McCaskill. Then, you are saying that you  
24 contacted her. Did you contact her by e-mail first?

25 Dr. Silverman. No, ma'am, by phone.

1           Senator McCaskill. Okay. So, you did not e-mail her.  
2 I thought you just said you always e-mailed them.

3           Dr. Silverman. It is the policy of our office to e-  
4 mail. In this particular instance, I would think that,  
5 according to our office policy, we would have e-mailed her.  
6 I have no e-mail back from her so I do not have any  
7 documentation to show you.

8           But our next procedure, once we receive the  
9 documentation that allows us to call, we then call the  
10 patient and speak with the patient and we get their  
11 insurance information from the phone call. We ask them  
12 about the type of supplies they are desiring and we get the  
13 position information so we can contact the physician for a  
14 prescription for that item.

15          Senator McCaskill. Okay. So, in this instance, you  
16 did not, you do not know whether you e-mailed her or not but  
17 you know what you call her.

18          Do you know for sure whether you e-mailed Mrs. Pariseau  
19 or not?

20          Dr. Silverman. I do not know for sure.

21          Senator McCaskill. So, you are saying the policy would  
22 be that you would e-mail her; and that if she does not  
23 respond to your e-mail, then you call her?

24          Dr. Silverman. No, ma'am. The express policy of our  
25 office is if the patient gives us permission to contact

1 them, we call them on the phone.

2 Senator McCaskill. Oh, okay. So, the e-mail is  
3 superfluous to the policy. The policy is--

4 Dr. Silverman. The e-mail is another fail-safe method  
5 that we actually put in place to protect citizens and to  
6 protect their rights so as not to bother them.

7 But if a patient gives us express permission to call  
8 them, then we call them; and if there are any issues at that  
9 time, we resolve the issues; and if the patient does not  
10 want us to follow-up with a physician's request for  
11 supplies, we do not send out a physician's request.

12 Senator McCaskill. And, I want to apologize to you  
13 because I should have spent sometime on your website and I  
14 should have already seen all of this and I wish I had of  
15 because I would be much better at questioning you now had I.

16 But does it expressly say on the website, you can call  
17 me?

18 Dr. Silverman. Yes, ma'am.

19 Senator McCaskill. Okay.

20 Dr. Silverman. It says--

21 Senator McCaskill. So, they know when they are filling  
22 in their phone number that they are asking for you to call  
23 them?

24 Dr. Silverman. Yes. Yes, ma'am.

25 Senator McCaskill. Okay.

1 Dr. Silverman. Yes, Senator.

2 Senator McCaskill. So, Mrs. Pariseau, according to  
3 you, filled in this website, gave her phone number, but she  
4 did not give her doctor's name or her prescription, did she?

5 Dr. Silverman. Yes, Senator, she gave--

6 Senator McCaskill. On the website?

7 Dr. Silverman. Not on the website. Once the patient--

8 Senator McCaskill. Well, I am still at the website.

9 Dr. Silverman. The patient basically grants us  
10 expressed permission to call them.

11 Senator McCaskill. Okay. Now, she says when you  
12 called her, you already knew our name, her prescriptions,  
13 and her doctor. Is she mistaken?

14 Dr. Silverman. Yes, ma'am.

15 Senator McCaskill. So, that is not true.

16 Dr. Silverman. To my knowledge, I can--

17 Senator McCaskill. Would there be any way your company  
18 would have her name, her prescriptions, and her doctor  
19 before you talk to her?

20 Dr. Silverman. No, ma'am.

21 Senator McCaskill. Okay.

22 Dr. Silverman. We have all this--

23 Senator McCaskill. So, you understand from her  
24 perspective you called her, you said you were Med-Care, you  
25 knew her doctor, you knew her prescription, this is what she

1 is telling us.

2 You knew her doctor, you knew her prescriptions, and  
3 then she started getting letters that she needed to sign off  
4 on her getting her new sleep apnea machine.

5 Dr. Silverman. I would like to explain to you, because  
6 if that is this woman's perception, that is her perception.  
7 But I would like to explain to you our policies and  
8 procedures.

9 In this instance, her perception is incorrect. Based  
10 upon her requesting information for us to contact her, we  
11 then will phone her; and at that point, we would get her  
12 physician information. We would get her insurance  
13 information; and at that point if she did not want any  
14 further contact from our company or if she had  
15 misconceptions of who we were, we would have straightened it  
16 out right then and there.

17 But in this particular instance, we were given the name  
18 of her physician and then we contacted her physician. We  
19 then sent the patient a new patient letter which, again from  
20 our perspective, introduces our company, introduces our  
21 procedures, and again tells the patient that no further  
22 action is taken in the future unless we speak to them again.

23 So, we sent out the new patient letter; and from the  
24 last hearing, you basically attributed that to aggressive  
25 sales advertising. But from my perspective, it is good

1 patient management and care because it is another way of  
2 explaining the program to the patient. It is another way of  
3 the patient not going forward with the program.

4 Senator McCaskill. I appreciate that, Dr. Silverman.  
5 I do.

6 Dr. Silverman. Thank you.

7 Senator McCaskill. I am coming at this from the  
8 perspective of the Medicare patient who is complaining to  
9 Congress that she was aggressively marketed in a way that  
10 made her uncomfortable, that she did not understand how this  
11 happened or why it happened and that, you know, this is a  
12 problem. I guess, you know--

13 Dr. Silverman. Thank you for allowing me to explain  
14 that.

15 Senator McCaskill. From your perspective, I get that  
16 that is what you think occurred. I--

17 Dr. Silverman. And again, Senator, we have--

18 Senator McCaskill. Is it possible that any of your  
19 people working for your company, are they compensated based  
20 on how much they sell?

21 Dr. Silverman. No, ma'am.

22 Senator McCaskill. There is no commissions?

23 Dr. Silverman. They are a salaried employee.

24 Senator McCaskill. No commissions?

25 Dr. Silverman. They--

1           Senator McCaskill. I want to make sure. You are  
2 saying that everybody at your company makes the same amount  
3 no matter how many machines--

4           Dr. Silverman. No, ma'am.

5           Senator McCaskill. --they sell.

6           Dr. Silverman. They have incentives, yes.

7           Senator McCaskill. Okay. And, the incentives are  
8 based on how many machines they sell.

9           Dr. Silverman. Not necessarily machines. There is no  
10 monetary basis but it is based upon who they speak to and  
11 how many orders they get.

12          Senator McCaskill. Okay. So, it is based on how many  
13 orders they get?

14          Dr. Silverman. Yes, ma'am.

15          Senator McCaskill. And, the orders are for machines.  
16 They are for braces or they are for apnea or for diabetic  
17 testing. I mean, let us not mince words here. You get  
18 compensated more money if you sell more.

19          Dr. Silverman. I mean, we are an equal opportunist  
20 employees.

21          Senator McCaskill. Of course. I get that and I am  
22 not--

23          Dr. Silverman. But it is--

24          Senator McCaskill. Listen. The government set up a  
25 system here that allowed what I think at one point people

1 believed it would be a free market of competition that would  
2 drive costs down. It turns out without competitive bidding  
3 and a free-for-all among seniors in terms of marketing that  
4 it did not work out that way

5 So now, we are trying to put the cow back in the barn  
6 in a way that protects legitimate businesses that have this  
7 equipment that they want to sell and have a right to make a  
8 profit.

9 Dr. Silverman. Yes.

10 Senator McCaskill. But I guess when we revised, when  
11 the regulations were revised on direct marketing that  
12 prohibited in-person contacts, when they tried to revise  
13 them to include e-mails and instant messaging, do you  
14 understand that perhaps those changes might be necessary?

15 Dr. Silverman. I follow all the standards and rules.  
16 I do not make the rules. But believe me, based upon my past  
17 and I am very aware of consumer, protecting the consumer but  
18 regarding the rules and regulations, we are regulated, we  
19 are inspected, and whatever the rules and regulations are  
20 there I give our best effort for myself and all my employees  
21 to follow them.

22 Senator McCaskill. And I appreciate that. I guess I  
23 am asking you about changing the rules. Do you see a  
24 benefit other than, I mean, this is kind of mean because I  
25 am asking you, are you okay with the rule that is going to

1 allow you to sell less because, you know, if you are worried  
2 about selling more this is not going to help you.

3 Dr. Silverman. I am not worried about selling more. I  
4 want to play by the rules.

5 Senator McCaskill. Okay. Well, if you are not worried  
6 about selling more, do you understand that it seems, I  
7 think, a little weird that you would try to, even if someone  
8 clicked, believe me, my mother who I miss very much click a  
9 lot of things on the Internet she should not have clicked.

10 Dr. Silverman. Yes, ma'am.

11 Senator McCaskill. She gave out a lot of information  
12 that she should not have given. I kept saying, mom, bridge,  
13 play bridge. E-mail your grandchildren.

14 With a senior population, do not you think if they need  
15 medical equipment, it should come from their doctor and not  
16 from a go-between between the patient and the doctor that is  
17 contacting the patient directly even if you are actually  
18 following the rules that allows you, for purposes of this  
19 hypothetical, assuming every single person you call is  
20 somebody who has given you their phone number and their name  
21 and their e-mail on your website--

22 Dr. Silverman. Yes.

23 Senator McCaskill. --every single phone call that you  
24 make is attributable to that, assuming that that is correct,  
25 and I got to tell you that is a hard assumption for me to

1 make but I am going to make it out of deference to your  
2 testimony.

3 Dr. Silverman. I have documentation.

4 Senator McCaskill. Do you understand that it seems  
5 from this side of the table that it would make a lot more  
6 sense for that marketing to go on to the doctor as to the  
7 efficacy of your equipment, the reliability and efficiency  
8 of your company, your customer service, and that the doctor  
9 should be the only one making the decision or requesting  
10 that the patient gets the equipment?

11 Dr. Silverman. I have been a physician for many years  
12 so I can talk to the you from both sides from an office  
13 standpoint, and I still think that patients do have rights  
14 to choose who they want to get services from.

15 Sometimes patients are intimidated by their physician.  
16 They do not agree with their physician. They do other  
17 things. So, I think primarily a patient has the right to  
18 choose.

19 As far as--

20 Senator McCaskill. Do you think that these seniors,  
21 though, are making knowing choices? You know the ones --

22 Dr. Silverman. I--

23 Senator McCaskill. Do you think when my mom ended up  
24 with five diabetic testing machines, you think that is  
25 because she needed five.

1 Dr. Silverman. You know, we have--

2 Senator McCaskill. Or do you think it was because she  
3 kept getting contacted because the company had had her as a  
4 patient before and they had the right to contact her again  
5 and say, hey, we have got a new and improved model we can  
6 send you out at little or no cost to you--

7 Dr. Silverman. I do not--

8 Senator McCaskill. --which read underneath that means  
9 the Federal Government is going to pay for it?

10 Dr. Silverman. I do know that everything we do is  
11 based upon signed prescriptions from physicians. So, the  
12 physicians are basically telling their patients that they  
13 can go and utilize our services. So that is that from that  
14 perspective.

15 Going back to your original question regarding  
16 physicians, I do not know if a physician can efficiently  
17 offer all these medical devices to their patients. It is an  
18 industry that is very, very regulated. It is an industry  
19 that requires a lot of work, and physicians are busy  
20 treating their patients. So--

21 Senator McCaskill. No, I do not mean them do--I do not  
22 mean them provide it. I mean that they are the ones that  
23 contact you and--

24 Dr. Silverman. You know, again--

25 Senator McCaskill. --Pariseau's doctor would call, I

1 mean, a member of my family got a sleep apnea machine. It  
2 did not happen because somebody, he did not click a website.

3 I mean, you know, the member of my family that got it,  
4 you know, what happened? He went to the doctor. He had a  
5 sleep test, and the doctor said, I am going to prescribe you  
6 this machine and here is three choices you have of the  
7 equipment. Here is the relative pros and cons of each kind  
8 of the equipment, and you can call all three of these  
9 companies and they will talk to you about their equipment or  
10 you can pick one. That is completely up to you but you need  
11 this machine.

12 It was not that he had gone on a website and clicked  
13 and put in his phone number and then gotten a call and said  
14 at little or no cost to you, we are going to run this fax to  
15 your doctor's office and see if we can get them to sign off  
16 and you are good to go.

17 Dr. Silverman. I understand; but again if the doctor  
18 did not want that patient to utilize our services and  
19 supplies, they just would not sign that prescription.

20 Senator McCaskill. So maybe, do you think if we are  
21 going to try to tighten it up that we need to begin at the  
22 doctor's office and give them some kind of disincentive to  
23 sign off on these prescriptions without actually looking at  
24 the files and discussing it with the patient?

25 Dr. Silverman. I am not a policy maker so, you know--

1           Senator McCaskill. Well, maybe that is the answer.  
2 Maybe we stop it there. Maybe we stop it there. Does your  
3 company have a surety bond?

4           Dr. Silverman. Yes, ma'am.

5           Senator McCaskill. Tell me what you think about--

6           Dr. Silverman. I am sorry. I am sorry. Regarding  
7 this patient, we actually have prescriptions signed from the  
8 physician saying the patient can get services from our  
9 company.

10          Senator McCaskill. Was that before or after you sent  
11 her the letters?

12          Dr. Silverman. At the same time. We sent out a new  
13 patient letter and we request a prescription from the  
14 physician. So, we have physician authorization to treat  
15 this patient.

16          What happened in this particular instance, to be  
17 perfectly honest and blunt with you, the physician's  
18 prescription was not filled out correctly. The physician  
19 did not date the prescription.

20          So, we were not able to supply this patient with their  
21 supplies, and we had contacted the physician's office  
22 telling--

23          Senator McCaskill. It was a good thing because they  
24 did not want it.

25          Dr. Silverman. Well, in that case, what happened was,

1 based upon the fact that the physician did not fill out the  
2 prescription, there was somewhat of a time lag and then we  
3 contacted the patient. At that point, the patient said that  
4 she decided to stay with her original provider, and that is  
5 essentially what happened in this case.

6 Senator McCaskill. Okay. Well, we will go back and  
7 obviously I want to see the documentation from your end on  
8 this and we will go back and analyze this case. Obviously,  
9 this is one case out of, we have got a lot of people that  
10 contacted our office.

11 Dr. Silverman. Yes, ma'am, and that being said, I  
12 would like you to speak to counsel regarding releasing the  
13 information that you are requesting.

14 Senator McCaskill. Well, how about, I think that is  
15 fine if I get the permission of the patient.

16 Dr. Silverman. Yes.

17 Senator McCaskill. Obviously, I do not think you have  
18 any HIPAA concerns if I have the permission of the patient.

19 Dr. Silverman. I have no--

20 Senator McCaskill. She contacted us. We did not--

21 Dr. Silverman. As long as we are compliant, Senator, I  
22 have no concerns.

23 Senator McCaskill. Okay. Tell me what you think about  
24 the competitive bidding program.

25 Dr. Silverman. Excuse me, Senator.

1 [Pause.]

2 Dr. Silverman. I would very much like to answer your  
3 question regarding competitive bidding but just for your  
4 information also when you request documents, we have a  
5 patient comment report that is dated that has all the  
6 comments from the patient.

7 Senator McCaskill. Great. We will look forward to  
8 seeing that.

9 Dr. Silverman. Okay. My opinion on competitive  
10 bidding is I am in favor of competitive bidding. I have  
11 some concerns based upon the pricing. I have some concerns  
12 based upon the capacity.

13 I think that for diabetic patients, there are 25  
14 million diabetic patients in the country and competitive bid  
15 contracts were awarded to only 10 to 15 providers.

16 Senator McCaskill. As compared to how many providers  
17 are out there now?

18 Dr. Silverman. I do not know the exact number of  
19 providers but there are thousands and thousands. You know,  
20 at one point there were 50,000 providers, and the CMS has  
21 done its job, and its policies have gotten rid of a lot of  
22 the providers in that who were not doing the job properly.

23 But there is an estimate that maybe there will be a  
24 thousand providers to participate in competitive bidding;  
25 and out of the thousand, 10 to 15 providers will be able to

1 help people requiring diabetic testing supplies.

2 So, in this instance, that chosen provider is going to  
3 need a large capacity office to really provide these seniors  
4 with product, and I fear that there will be confusion. I  
5 fear that seniors will not know where to turn. I fear that  
6 they will not be able to test, and it is well documented  
7 that if patients do not test themselves, their disease can  
8 get worse. The medical bills skyrocket. That is my  
9 concern.

10 Senator McCaskill. And, you know, I appreciate; and  
11 one of the reasons that I am trying to work in this area is  
12 because I think it is ripe for confusion, and I think the  
13 current system allows a lot of that also.

14 I think that is one of the reasons why we had so many  
15 people contact our office on this subject. When asked if  
16 they have been solicited for medical equipment directly, we  
17 got a lot of people that, you know, stepped up and those are  
18 the ones that are paying attention to what is being said in  
19 the news or on TV about Congress.

20 And frankly, most people right now in America just hope  
21 we go away. So, the fact that we had a lot, that is from a  
22 pretty small universe because there is a lot of people out  
23 there for a lot of good reasons who are not paying much  
24 attention to us.

25 Dr. Silverman. I appreciate you protecting the

1 consumer and it is my job too to do the right thing.

2 Senator McCaskill. And the Treasury both, I mean,  
3 because both of them are obviously--frankly, you know,  
4 people having lots of people trying to sell them equipment,  
5 while it is disruptive and confusing to seniors, what it  
6 really is is expensive for the Medicare program.

7 Dr. Silverman. I think that is the answer with  
8 competitive bidding. I just hope that it will be efficient  
9 and not cause more confusion to seniors.

10 Senator McCaskill. Does Mr. Porush have any  
11 relationship with Med-Care at the current time?

12 Dr. Silverman. Yes. Mr. Porush is an employee, not an  
13 owner, a Med-Care Diabetic and Medical Supplies.

14 Senator McCaskill. Okay. Is he a consultant or an  
15 employee?

16 Dr. Silverman. He is an employee.

17 Senator McCaskill. And, how long has he been an  
18 employee?

19 Dr. Silverman. He has been an employee since 2004.

20 Senator McCaskill. Okay. Is the information that was  
21 contained in the Forbes article about Mr. Porush and Florida  
22 residents complaining about your company's sales tactics  
23 including cold calling Medicare recipients to persuade them  
24 to order diabetic supplies, did that pre-date the  
25 regulations that do not allow cold calling, the cold calling

1 complaints that were written about in the Forbes article?

2 Dr. Silverman. I do not know. But the Forbes article  
3 in my opinion, is not true.

4 Senator McCaskill. Okay. So, was there a time that  
5 your company did do cold calling?

6 Dr. Silverman. To my knowledge, no.

7 Senator McCaskill. Okay. I will--we deeply appreciate  
8 you being here, and I will make sure that we get you  
9 information that you want from us that is part of the public  
10 record. There may be some information CMS has given us that  
11 we have used to prepare for this hearing that we are not at  
12 liberty to give you and vice versa.

13 We would appreciate any documentation you can give us.  
14 In fact, we would provide to you some of the names of the  
15 people that complained about being contacted by your company  
16 when they do not believe they had ever given you permission  
17 to contact them and we would appreciate you providing us the  
18 documentation that they had given you the express  
19 authorization to contact them.

20 Dr. Silverman. Yes, Senator.

21 Senator McCaskill. How would it change your business  
22 model if you could no longer get people to give you their  
23 phone numbers on a website?

24 Dr. Silverman. We would no longer do that. So, I am  
25 sure--

1           Senator McCaskill. What percentage of your business  
2 comes from the calls you make to seniors from the numbers on  
3 your website?

4           Dr. Silverman. Well, you know, I do not have those  
5 numbers.

6           Senator McCaskill. But you could get them.

7           Dr. Silverman. Yes, ma'am. But also I would like to  
8 state again that less than half of our revenues are from  
9 seniors.

10          Senator McCaskill. No, I am not talking--I am talking  
11 about within the Medicare space.

12          Dr. Silverman. Yes.

13          Senator McCaskill. I mean frankly the prescription  
14 stuff, that is another hearing for another day. You can  
15 look forward to that, Dr. Silverman. We will get there.

16          Dr. Silverman. I would be happy.

17          Senator McCaskill. I am on a mission. We are going to  
18 bring down these health care costs in a way that is not  
19 harmful to seniors. If we can do it at all, we are going to  
20 try to do it because Medicare is going to bust this country  
21 if we are not careful. We cannot afford to be running the  
22 Medicare program the way it has been run.

23          Dr. Silverman. I appreciate the opportunity for you to  
24 allow me to, you know, explain some of the misconceptions  
25 from the last meeting and clear up our name.

1           Senator McCaskill. Well, what I would like is to find  
2 out of the Federal Government stream of money, the 35  
3 million last year, what percentage of that came from you  
4 being contacted by a doctor versus you contacting a patient.

5           Dr. Silverman. Okay. If I can provide that  
6 information to you, I will be happy to.

7           Senator McCaskill. I bet you have got it because it is  
8 going to be very hard for you to give incentives if people  
9 cannot prove that they were the ones that actually moved the  
10 product, and so I am betting you have got it internally, and  
11 it would be very helpful for us to see what percentage of  
12 your business is coming from the contact to seniors.

13           And, do you believe if we took that away, if we change  
14 the rule and said, you cannot call patients directly, you  
15 can only, they can only receive their prescriptions through  
16 recommendation of their doctors--

17           Dr. Silverman. Well, I think competitive bidding is  
18 the answer to that right now. You know--

19           Senator McCaskill. Because you are not going to  
20 advertise anymore because it is not going to be--

21           Dr. Silverman. Well, it is a capacity issue. You  
22 know, with competitive bidding, we are going to be busy  
23 enough just trying to deal with capacity so.

24           Senator McCaskill. Are you going to be one of the  
25 participants?

1 Dr. Silverman. We look forward to participating.

2 Senator McCaskill. And so, have you been awarded?

3 Dr. Silverman. At this present time, we are waiting  
4 approval and our bid is being reviewed. So, we look forward  
5 to participating.

6 Senator McCaskill. Then, you would be part of the 93  
7 cities that are going to be rolled out this summer?

8 Dr. Silverman. Yes, and I think we have the capacity.  
9 Because of our large facility and the amount of employees, I  
10 think we are a perfect candidate to make this program  
11 successful.

12 Senator McCaskill. Well, then, we probably will not  
13 see the last of you then. You can look forward to more  
14 appearances in front of this Committee. I know you cannot  
15 wait.

16 Dr. Silverman. I am becoming comfortable.

17 Senator McCaskill. Thank you, Dr. Silverman.

18 Dr. Silverman. Thank you, Senator.

19 Senator McCaskill. The hearing is adjourned.

20 [Whereupon, at 2:50 p.m., the Subcommittee was  
21 adjourned.]