November 4, 2013

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare & Medicaid Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Administrator Tavenner:

We are writing to express our concerns that the Centers for Medicare & Medicaid Services (CMS) has not taken sufficient steps to screen Medicare providers who pose a risk to beneficiaries and taxpayers.

The Social Security Act requires CMS to exclude individuals from participation in any federal health care program, including removal from the list of authorized Medicare providers, if they have been convicted of Medicare-related crimes, patient neglect or abuse, or felonies related to health care fraud or controlled substances. Yet, disturbingly, it appears that at least some individuals convicted of such offenses may continue to remain on the list of eligible providers.

We know that you share with us a strong commitment to reduce waste and fraud in the Medicare system. CMS has taken strides to improve its screening of its list of providers, including physicians, authorized to charge Medicare for health care services. However, some recent analysis performed by our offices raises serious questions as to whether current provider screening is adequate. We are concerned, moreover, that the examples identified by our analysis may be illustrative of a larger problem.

Specifically, we were able to readily identify at least 16 physicians who are enrolled in the Medicare program, and who have been convicted of a crime that requires CMS to exclude the individual from participation in Medicare or any other federal health care program (see Attachment). These examples were not the result of a complete analysis of every provider, but do represent cases easily identified using open sources.

To enable Congress to better understand CMS’s current efforts to take action against providers who are convicted of crimes that are supposed to result in mandatory exclusion from Medicare, please provide our offices with the following answers and information:

1) Describe the criteria, process, and timeframes for disenrolling such providers (i.e., who is disenrolled from the program, who is not, and why)?

2) Has CMS established interagency agreements with other federal and state agencies to ensure that it receives felony conviction information in a timely manner?

Social Security Act, Sec. 1126(a) (42 U.S.C. §1320a-7(a)).
3) How does CMS use data captured by the Federation of State Medical Board, which aggregates enforcement actions against providers that lead to the loss of a medical licence, in order to proactively flag potentially problematic providers?

4) For each of the providers listed in the Attachment, please indicate:
   a. Whether the provider is currently on the list of authorized Medicare providers;
   b. If the provider is not currently on the list of authorized Medicare providers, when the individual was removed from the list; and
   c. If the provider is currently on the list of authorized Medicare providers, why that individual has not been removed from the list.

5) Federal regulations require that physicians and non-physician practitioners report any adverse legal action, such as a felony conviction, to CMS within 30 days of the reportable event. If a provider fails to report such adverse action, CMS is required to collect overpayments back to the date of the reportable adverse action. For each of the providers listed in the Attachment, please indicate:
   a. Whether the provider complied with the reporting requirement for adverse actions;
   b. Whether the provider billed the Medicare program for services furnished to beneficiaries after the date of their conviction or guilty plea, and whether CMS collected any overpayments back to the date of such event; and
   c. Whether the provider ordered or certified services for Medicare beneficiaries after the date of their conviction or guilty plea.

In addition to the mandatory exclusions discussed above, the Social Security Act gives CMS the option to exclude individuals for a number of other offenses, including misdemeanors relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the provision of health care services or a government funded program, as well as individuals whose state medical licenses have been revoked or suspended. Under federal regulations, CMS may also revoke a provider’s billing privileges if it determines that a felony offense is detrimental to the best interests of the Medicare program and its beneficiaries. Please explain the criteria and process that CMS uses to determine whether to exclude a provider who commits an offense that would allow for such a “permissive exclusion.”

We look forward to hearing from your office on this matter. We kindly request a reply by December 15th, 2013.

With best personal regards we are,

Sincerely yours,

Thomas R. Carper
Chairman

Tom A. Coburn, M.D.
Ranking Member

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2 42 C.F.R. § 424.516.
3 42 C.F.R. § 424.565.
4 Social Security Act, Sec. 1128(b) (42 U.S.C. 1320a-7(b))
5 42 C.F.R. § 424.535.
<table>
<thead>
<tr>
<th>Practitioner Name</th>
<th>State</th>
<th>National Provider Identifier</th>
<th>Date of Conviction or Plea Agreement</th>
<th>Criminal Action</th>
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<tbody>
<tr>
<td>Dr. Gilbert Christopher Aragon</td>
<td>New Mexico</td>
<td>1417917816</td>
<td>May 11, 2012</td>
<td>Pled guilty and sentenced based on a five-count criminal information charging him with the following offenses: (1) conspiracy to acquire prescription drugs by fraud, forgery, fraud, deception, and subterfuge; (2) obtaining prescription drugs by fraud, forgery, deception, and subterfuge; (3) unlawfully distributing prescription drugs without a legitimate medical purpose; (4) using the identity of another person to obtain prescription drugs by fraud, forgery, deception, and subterfuge; and (5) corruptly persuading a witness to make false statements. <a href="http://www.fbi.gov/albuquerque/press-releases/2013/physician-from-raton-sentenced-to-prison-for-trafficking-in-prescription-drugs">link</a></td>
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<tr>
<td>Dr. John A. Gianoli III</td>
<td>Florida</td>
<td>1548488166</td>
<td>June 15, 2012</td>
<td>Found guilty of illegally distributing or causing the distribution of oxycodone outside the course of his professional practice by illegally prescribing oxycodone. <a href="http://www.justice.gov/usao/flm/press/2012/june/20120618_Gianoli.html">link</a></td>
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<td>Dr. Warren Williams</td>
<td>Louisiana</td>
<td>1962620237</td>
<td>August 23, 2012</td>
<td>Pled guilty to one count of Misprision of a Felony, specifically the Illegal Distribution of a Schedule II Controlled Substance. <a href="http://www.deadiversion.usdoj.gov/crim_admin_actions/doctors_criminal_cases.pdf">link</a></td>
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| Dr. Diana Carver          | Kansas        | 1265408835                  | October 2, 2012                    | Pled guilty to one count of health care fraud and one count of unlawfully prescribing controlled substances.  
| Dr. Pramod Raval          | Michigan      | 1386612612                  | October 26, 2012                   | Convicted of one count of conspiracy to commit health care fraud and one count conspiracy to solicit and receive illegal cash kickbacks for patient referrals in violation of the federal healthcare anti-kickback statute.  
http://www.justice.gov/opa/pr/2012/October/12-crm-1297.html                                                                                          |
| Dr. Je Song               | Pennsylvania  | 1568509099                  | State Medical Board of Pennsylvania, November 2012 | License indefinitely suspended for not less than ten years based upon his conviction for a felony drug violation in Federal Court.  
http://www.portal.state.pa.us/portal/server.pt/community/disciplinary_actions/12528                                                                 |
| Dr. Anthony J Kirk        | Michigan      | 1144330556                  | November 26, 2012  
(Guilty Plea) April 4, 2013 (Sentenced) | Pled guilty to health care fraud  
| Dr. Barrett Doyle Whitefield | Texas       | 1578530960                  | January 17, 2013                   | Pled guilty to conspiring to possess with intent to distribute controlled substances.  
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<td>Dr. Steven Armus</td>
<td>Illinois</td>
<td>1982601704</td>
<td>State Medical Board of Illinois, February 2013</td>
<td>Pled guilty to federal charges of conspiracy to distribute cocaine in the amount greater than five kilograms. <a href="http://www.idfpr.com/Forms/DISCOPLN/2013_02dis.pdf">http://www.idfpr.com/Forms/DISCOPLN/2013_02dis.pdf</a></td>
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<tr>
<td>Dr. Lynn Foret</td>
<td>Louisiana</td>
<td>1205816642</td>
<td>April 18, 2013</td>
<td>Pled guilty to defrauding Medicare, Medicaid and private insurance companies out of close to $1 million. <a href="http://www.justice.gov/usao/law/news/wdla20130416.html">http://www.justice.gov/usao/law/news/wdla20130416.html</a></td>
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<tr>
<td>Dr. Christine Daniel</td>
<td>California</td>
<td>1285889782</td>
<td>September 2011 (convicted)</td>
<td>Convicted of four counts of mail and wire fraud, six counts of tax evasion and one count of witness tampering. <a href="http://www.justice.gov/usao/cac/Pressroom/2013/071.html">http://www.justice.gov/usao/cac/Pressroom/2013/071.html</a></td>
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<td>Dr. Whan Sil Kim, also known as “Victoria Kim”</td>
<td>California</td>
<td>1194891887</td>
<td>July 2012</td>
<td>Pled guilty to receiving illegal remunerations related to health care referrals, admitting that she fraudulently referred Medicare beneficiaries to Greatcare Home Health, Inc. in return for kickbacks. <a href="http://www.justice.gov/usao/cac/Pressroom/2012/176.html">http://www.justice.gov/usao/cac/Pressroom/2012/176.html</a></td>
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<td>Dr. Sandesh Rajaram Patil</td>
<td>Kentucky</td>
<td>1902866619</td>
<td>June 5, 2013</td>
<td>Plead guilty to charges that he falsely recorded the severity of patients' illnesses in order to receive payment for numerous heart procedures. <a href="http://www.fbi.gov/louisville/press-releases/2013/london-physician-pleads-guilty-to-health-care-fraud-charges-in-first-case-of-its-kind-in-kentucky">Source</a></td>
</tr>
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<td>Dr. Edozie Chukwudinma Okereke</td>
<td>Louisiana</td>
<td>1568458198</td>
<td>June 12, 2013 (sentenced)</td>
<td>Guilty Plea to submitting billing codes for treatment not covered under Medicare. Okereke was providing routine foot care, such as toenail clipping, and then “upcoding” or submitting codes for services that Medicare would cover. <a href="http://www.justice.gov/usao/law/news/wda20130612a.html">Source</a></td>
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