United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510–6200

July 24, 2008

Via Electronic Transmission

The Honorable Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, S.W.
Washington, DC 20201

Dear Inspector General Levinson:

On May 8, 2008, I requested that the Office of the Inspector General at the Department of Health and Human Services (OIG) reexamine the fiscal year (FY) 2006 durable medical equipment (DME) error rate developed by the Centers for Medicare & Medicaid Services (CMS) and to advise me of its findings. That request was based on allegations received by my office from a CMS employee/whistleblower noting that CMS had not conducted an appropriate medical record review when it calculated the FY 2006 DME error rate.

Last week, on July 17, 2008, your Deputy Inspector General for Audit Services and other HHS OIG staff members briefed me and members of both my staff and of Senator Baucus' staff on some very disturbing preliminary findings: CMS may have significantly understated the DME error rate for 2006. As you might imagine, these preliminary findings raise concerns that the error rates for years other than 2006 may be understated and that the error rates for other types of providers may be understated as well.

Additionally, in a letter dated November 14, 2003 addressed to Dara Corrigan, I requested that the OIG:

- monitor CMS's implementation of the error rate process, and
- examine the information obtained by its Comprehensive Error Rate Testing (CERT) medical review contractor, AdvanceMed.

More specifically, I was concerned about the change in methodology being advocated for the error rate and the change in the error rate determination going from OIG-performed Medicare error rate reviews (1996 to 2002) to the CMS-directed reviews (starting in 2003). Your office also issued several reports on CMS's error rate process to address my concerns.

One report in particular addressed CMS's statistical methodology for estimating the Medicare fee-for-service error rate. The report noted that in comparing the CMS-developed error rate with the error rates produced by OIG, the results might differ,

specifically in areas such as claims from home health agencies (HHAs), DME suppliers, and chiropractors, because of the underlying differences in methodology. I am concerned that these methodological differences may contribute to the underreporting of improper payments.

For example, past OIG work identified a significant improper payment rate for HHA services. However, CMS reported that for FY 2007, the payment error rate for HHAs was 1.4 percent. One of the allegations pertaining to the DME error rate was that it was "unrealistically low." It seems to me that the HHA error rate may also be "unrealistically low."

Indeed, when I was the Chair of the Senate Select Committee on Aging, a hearing that I held on HHAs revealed the ease with which individuals could scam the system for personal benefit. Accordingly, based on the current concerns regarding the integrity of the 2006 Medicare error rate, coupled with the dramatic error rate reduction in HHA payments, many questions arise. For example is the lower HHA error rate the result of program improvement or underreporting? Moreover and perhaps most importantly, could the error rate methodology differences between CMS and the OIG account for the substantial HHA error rate decline?

In an effort to insure the integrity of Medicare funds and to obtain answers to these questions, I request that OIG conduct a comprehensive review of the CERT HHA error rate process, including, but not limited to those audit procedures performed in the recent review of the CERT DME error rate process. Thank you in advance for your continued assistance in this matter and I would appreciate you keeping me advised on these matters.

Sincerely,

Charles E. Grassley
Ranking Member