



U.S. SENATE COMMITTEE ON

Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

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For Immediate Release

Friday, March 25, 2005

Grassley, Baucus work to ensure effective Medicare appeals process for beneficiaries

WASHINGTON – Sens. Chuck Grassley and Max Baucus continue their oversight of the transfer of responsibility for Medicare appeals from the Social Security Administration to the Department of Health and Human Services.

In a letter today, the senators spelled out specific concerns about the plans under way for this transfer, including the accessibility of Medicare officials to beneficiaries pursuing appeals, the role of the administrative law judges who will adjudicate appeals, and adequate staffing resources.

Congress shifted responsibility for these appeals between the federal agencies as part of the Medicare Modernization Act enacted in 2003. The transfer is to begin on July 1, 2005, and be completed by October 1, 2005.

Grassley is chairman and Baucus is ranking member of the Senate Committee on Finance. The text of their letter follows here.

March 25, 2005

The Honorable Michael O. Leavitt
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Jo Anne B. Barnhart
Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Secretary Leavitt and Commissioner Barnhart:

We are writing to you as part of our continued oversight of the transfer of responsibility for Medicare appeals as mandated by section 931 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). The MMA requires that the transfer of

responsibility for Medicare appeals from the Social Security Administration (SSA) to the Department of Health and Human Services (HHS) occur no earlier than July 1, 2005 and no later than October 1, 2005. In the Plan for the Transfer of Responsibility for Medicare Appeals (Transfer Plan) then-Secretary Thompson and Commissioner Barnhart submitted to Congress on March 25, 2004, the agencies stated their intention to transfer responsibility over the period beginning July 1, 2005 and ending October 1, 2005.

As we approach the one year anniversary of your Transfer Plan and the beginning of the 100-day countdown to the transfer, we have serious concerns that the implementation of the Transfer Plan is replete with material and systematic problems that will hinder a successful transfer. While our concerns are far reaching-and by no means limited to those discussed herein-we believe that six major components of the transfer need to be addressed. The six issues we feel jeopardize your success are: the number and location of field offices, the extensive use of video teleconferencing (VTC) and the availability of VTC sites, hiring and staffing of the offices for the new appeals entity, the supervisory role of administrative law judges (ALJs), training of all employees, as well as the establishment of sub-regulatory policies and procedures to govern the process. A failure in the implementation of any one of these areas threatens the integrity of the Medicare program and has serious consequences for each of the almost 42 million Americans that has coverage under Medicare. While we recognize that each of your agencies bears its own responsibilities for the transfer, the law holds both of you responsible and we thought it only appropriate to share our concerns with both HHS and SSA.

We both work to ensure that access and fairness remain paramount in the appeals process as the Medicare program continues to expand and evolve. As the number of individuals receiving medical care covered by Medicare continues to increase, especially with implementation of the new prescription drug benefit, the volume of appeals will continue to rise as well. Faced with this pending increase in appeals, our concerns with ensuring access, fairness and due process for beneficiaries have taken on an even greater sense of urgency. In an effort to minimize our concerns, we have been working closely to catalogue your progress in implementing the transfer. Based upon information you have provided, we have some specific concerns regarding the ability of both HHS and SSA to successfully and completely implement the transfer by the statutorily mandated deadline and in accordance with your own Transfer Plan.

First, we are very concerned with the number and location of the field offices being established as part of the Medicare appeals process at HHS. Section 931 of the MMA required an appropriate geographic distribution of ALJs that would allow "timely access" to such judges. It has been brought to our attention that current planning calls for only three field offices - located in Cleveland, OH, Irvine, CA, and Miami, FL - and a headquarters office, located in Arlington, VA. While we understand the need to design the process with an eye on controlling costs, we feel that three offices do not rise to the level of a geographic distribution as envisioned by Congress in enacting the MMA. Additionally, we believe three is so few offices that there is the distinct possibility that many elderly and/or disabled Medicare beneficiaries will face significant difficulty in obtaining meaningful access to ALJs.

We have attempted to understand the rationale underlying your decisions regarding field offices. So far, we are unaware of any specific reasons for limiting the number to three. In relation to the locations you selected and the areas of the country each office is intended to serve, you provided some information that was intended to support your choices of Cleveland, Irvine

and Miami to us and the Government Accountability Office (GAO). Unfortunately, we believe that some of your information was incorrect. Specifically, HHS reported to the GAO that Region 9, the San Francisco region, had the fewest cases. That is in direct conflict with information we have received from SSA. Furthermore, HHS told the GAO that its Cleveland office and its Miami office would have roughly equivalent workloads. Again, the information we have from SSA does not lead us to the same conclusion.

In response to our concern and apparently conflicting information, we request that you provide us with the details of how the decision to have only three field offices was made, why the three cities were chosen, and how you intend to distribute staff and other resources to accommodate the anticipated workloads in each office. Furthermore, we would like to know how your agencies have and can continue to work together to achieve a geographic distribution that serves Medicare beneficiaries throughout the country and that satisfies the letter and spirit of the MMA.

The second concern we have is related to our first, in that the limited number of field offices will inevitably require a majority of cases to be heard via VTC. We understand the financial and practical benefits that VTC can provide, however we are concerned with the ability of HHS to implement full-scale VTC service to all areas of the country by the transfer deadline. We are not convinced that HHS has made sufficient progress at this point to make VTC a realistic part of its initial operation. Our understanding is that several key steps remain before HHS can incorporate VTC into its process. Specifically, HHS has only 100 days to acquire the necessary equipment and facilities to utilize such services, either on its own or by agreement with other agencies or entities; to ensure privacy on all ends of the VTC connection; to make provisions for evidence to be submitted or shared during the video-conference; to make accommodations for those who have disabilities (including hearing and visual impairments); to make provisions for the record to be made available to the appellant prior to a VTC appeal; and to ensure its ability to formulate a complete record of proceedings conducted by VTC.

Both of you have informed us that you are working on a way by which HHS can share SSA's existing VTC resources, but that no resolution has been reached. We hope that you can come to an agreement soon, and we expect to be made aware of the details of any such agreement. Furthermore, given SSA's extensive use of and apparent success with VTC, we are disappointed that working together you have not progressed further on developing this aspect of the process HHS is establishing. With such anticipated heavy reliance on VTC, these are not issues that can wait to be resolved. Accordingly, we request that you provide us with a written plan detailing how each of these questions will be addressed as HHS prepares to include and rely on VTC hearings as part of its Medicare appeals operation.

Thirdly, we have concerns regarding the staffing of the three field offices and the headquarters office. While you have discussed, generally, the types of employees that will be housed in the offices, we have yet to see an organization chart that documents the structure of the field offices or the headquarters office, and any differences between and among them. Further, it is our understanding that no hiring has taken place yet. While we realize that there is a lengthy hiring process, especially for ALJ's, we are concerned that no staff, including management, is on board yet. In fact, we understand that several of the position descriptions and vacancy announcements have not even been written.

A separate but related concern regards the Supervisory ALJ position. Based on the vacancy announcement HHS posted, it appears that its ALJs will take on a significant supervisory role. If true, that would be a notable departure from current ALJ positions at SSA. We would like to better understand exactly how HHS plans to use its ALJs, as we are extremely wary of the possibility of ALJs devoting their time to non-adjudicatory matters and not being able to meet the statutorily-mandated decision-making timeframe. We request that HHS address our staffing-related concerns by providing us with a detailed organizational chart for each field office and the headquarters office, an update on the hiring process for all positions you seek to fill and a complete description of the three different positions for ALJs at HHS - the Chief ALJ, the Managing ALJs and the Supervisory ALJs.

Our fifth concern relates to training. As you have indicated, many of the ALJs who will be part of the new appeals system will have little or no experience with administrative adjudication. In order to help ensure that there is as smooth a transition as possible, we believe that adequate time to educate new ALJs is vital. To help ease our concerns regarding the training of ALJs we request that you provide us with a calendar or timeline for training the ALJs and an outline of the training curriculum, including the substance of the training, the location and method of training (i.e., in-person or web-based) and the identity of the trainer(s). Please also provide this information for training other members of the staff, including attorneys, paralegals and clerical staff. To the extent that staff in the headquarters office will receive different or additional training, please provide that information as well.

The final concern we would like to raise relates to the policies and procedures to be developed to provide managerial and administrative support for the Medicare appeals process. This "nuts and bolts" area is a potential pitfall to successful implementation and we believe it can be avoided through careful and thoughtful planning. These sub-regulatory policies are a necessity and, all too often, get overlooked. In order to avoid any omissions in these policies, we ask that your staffs provide a detailed briefing to our staffs regarding the sub-regulatory policies that will be implemented (such as managerial functions, accounting and other day-to-day matters). In addition to policies, this briefing should include discussion of the contingency planning you are doing to prepare for the possibility that you will not be able to implement your Transfer Plan as originally intended.

In closing, we would like to remind Secretary Leavitt of the commitment he made to us during his confirmation hearing to ensure that HHS provides us current and detailed information regarding decisions associated with the transfer and development of the new ALJ appeals entity. We ask Commissioner Barnhart to similarly commit and to continue to work with us to ensure a smooth transition. We would interpret your commitments as extending to the GAO as well, which continues its work on this matter at our request. With both of you fully committed to establishing an appeals process that ensures access and fairness, we look forward to a successful outcome to this endeavor.

Given that time is of the essence on this matter, please coordinate with our staffs regarding this letter by April 1, and provide responses no later than April 8. Thank you in advance for your cooperation.

Sincerely,

Charles E. Grassley
Chairman

Max Baucus
Ranking Member