



August 26, 2010

The Honorable Charles E. Grassley  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Senator Grassley,

Thank you for your letter regarding my nomination to be Administrator of the Centers for Medicare and Medicaid Services.

Prior to my appointment, like all nominees to positions within the Administration that require Senate confirmation, my nomination underwent a Congressionally established process to ensure the thorough review of any potential conflicts of interest that could arise as a result of my financial interests or relationships. As part of that process, I completed and submitted a Public Financial Disclosure Report (SF-278) to the Office of Government Ethics and the Designated Agency Ethics Official (DAEO) at the Department of Health and Human Services (HHS). Through this stringent review process, it was determined that certain actions were needed to avoid the potential for any conflicts of interest – or even the appearance of conflicts of interest – under the Standards of Ethical Conduct for Employees of the Executive Branch. As you noted, to deal with these identified interests or relationships, I agreed to take those actions that I outlined in a letter dated April 16, 2010 from me to HHS's DAEO. As part of the regular nominee review process, this letter (or "ethics agreement") was also reviewed by the Office of Government Ethics prior to my signature to ensure my compliance with all applicable ethics laws and regulations. Copies of my SF-278 and ethics agreement were provided to the Senate Finance Committee in April 2010 as part of the routine nomination process.

As you may know, as part of the nominee ethics review process, nominees are required to report sources of more than \$5,000 compensation received by the nominee or his business affiliation for services provided directly by him during any one year of the reporting period. Accordingly, my nomination ethics review included clients of, and donors to, the Institute for Healthcare Improvement (IHI) who paid in excess of \$5,000, and for whom I personally provided services. Any ethics issues arising from my prior work with those IHI clients and donors are reflected in and addressed by my SF-278 and ethics agreement, both of which were provided to the Committee in April in connection with my formal nomination. As explained above, I have no financial interest in IHI. Likewise, I also have no financial interest in IHI's clients or donors.

You can be assured that I will comply with all of the recusal and other obligations contained in my ethics agreement. Since being appointed as Administrator, I have completed all of the resignations that I agreed to in the ethics agreement (in cases where my affiliation with those entities had not already ended prior to my appointment). Additionally, I have initiated actions to divest my financial interests in the stocks listed on page one of my ethics agreement. I will complete divestiture of these stocks within 90 days of my appointment, if not sooner.

You also asked whether any waiver of any conflict has been issued to me by the Secretary or any other Administration official. To date, no waiver has been issued to me. However, as part of the nominations ethics review process, HHS officials and I reviewed all my former clients to determine whether any required recusals would prevent me from effectively fulfilling my duties as CMS Administrator. It was determined that two of my former clients – Kaiser Permanente and The Commonwealth Fund – would have a particularly significant role in providing input to officials at CMS on policy matters related to health care quality, Medicare payment reform, and health care reform implementation, and that it would therefore be important for me to participate in discussions that are likely to include participation by The Commonwealth Fund or Kaiser Permanente. Accordingly, as I stated in my ethics agreement, I will seek a limited authorization, pursuant to 5 C.F.R. § 2635.502(d), and a limited waiver of the Administration's policy restrictions contained in Paragraph 2 of the Ethics Pledge with regard to these two former clients.

I do not have a financial interest in either of these former clients. If a limited waiver and limited authorization are granted, I understand that I will be permitted to participate in certain particular matters involving specific parties in which either Kaiser Permanente or The Commonwealth Fund is a party or represents a party. However, this limited waiver and limited authorization, if granted, will not permit my participation in any particular matter involving specific parties that has a direct and predictable effect on the financial interest of either of these entities, including such matters as contracts, grants, audits, investigations, party disputes, litigation, administrative appeals, and similar transactions or proceedings involving either as identified parties.

Additionally, you asked about my relationship with the Institute for Healthcare Improvement (IHI), my former employer. I have resigned my position with IHI. Moreover, I do not have an equity interest or any other financial interest in IHI. I did not receive a severance payment from IHI. You also asked specifically whether IHI continues to provide benefits to me or my family, including health care coverage. Upon my resignation from the position of President and Chief Executive Officer of IHI, I forfeited all benefits from IHI except for my vested Supplemental Executive Retirement Plan as described in my ethics agreement and SF-278. As a result, IHI does not currently and will not provide any benefits to me or my family, including health care coverage. Moreover, although I have no financial interest in IHI, under the terms of the ethics agreement and the more stringent policy requirements of the Administration as set forth in Executive Order 13490, entitled "Ethics Commitments by Executive Branch

Personnel" (the Ethics Pledge), for a period of two years after my appointment, I will not participate personally and substantially in any particular matter involving specific parties in which IHI is a party or represents a party.

Finally, I noted your request for IHI's last three Forms 990, along with schedule B for each year. As you may know, while much of the information included in the Form 990 for IHI and other tax-exempt organizations is available to the public, schedule B is not. I remain committed to doing whatever I can to comply with your request and any other request from the Committee for information related to my nomination. However, because the information you requested includes non-public documents in the possession of my now former employer, it is not within my power to comply with your entire request. The publicly available portions of IHI's last three Forms 990 (for years 2006, 2007, and 2008) are enclosed for your review.

Again, thank you for your letter. I hope you find this information helpful.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald Berwick", with a stylized flourish at the end.

Donald Berwick

Enclosures