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

October 1, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244

Dear Administrator Verma:

I am writing today with concerns about Medicaid payments being made on behalf of deceased individuals. I encourage the Centers for Medicare and Medicaid Services (CMS) to expand its efforts to prevent, identify, and reduce payment risks, and enhance program oversight to eliminate fraudulent or improper Medicaid payments for ineligible individuals.

Recent reports by two government watchdog agencies suggest that multiple State Medicaid agencies have made payments to managed care organizations for deceased individuals, and in some cases, the improper payments continued for as long as two years after the date of death.[1] CMS can recoup the Federal share of such payments in the event they are discovered,[2] but almost a dozen reports by the Government Accountability Office (GAO) and the Office of Inspector General at the Department of Health and Human Services (OIG) suggest that multiple States struggle with this issue, and greater CMS leadership is needed to resolve it. These GAO and OIG reports also underscore the importance of enhanced program oversight by CMS as well as greater collaboration and cross-checking of data by State officials.[3]

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[1] U.S. DEP'T. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *Illinois Medicaid Managed Care Organizations Received Capitation Payments After Beneficiaries' Deaths*, Report No. A-05-18-00026 (Aug. 2019), *available at* https://oig.hhs.gov/oas/reports/region5/51800026.pdf; *see also California Medicaid Managed Care Organizations Received Capitation Payments After Beneficiaries' Deaths*, Report No. A-04-18-06220 (May 7, 2019); *cf.* U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid Managed Care Improvements Needed to Better Oversee Payment Risks*, GAO 18-528 (July 2018), *available at* https://www.gao.gov/assets/700/693720.pdf.

[2] *See, e.g.*, Title XIX of the Social Security Act, § 1903(u).

[3] *See supra* note 1 (noting the OIG reports focused on Illinois and California); *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid: CMS Needs to Better Target Risks to Improve Oversight of Expenditures*, GAO-18-564 (Aug. 2018), *available at* https://www.gao.gov/assets/700/693748.pdf; *Medicaid: CMS Should Take Steps to Mitigate Program Risks in Managed Care*, GAO-18-291 (May 2018), *available at* https://www.gao.gov/assets/700/691619.pdf; *Improper Payments: Actions and Guidance Could Help Address*

For example, in 2015, GAO compared the beneficiary and provider identity information shown in Medicaid claims data from four selected States to the Social Security Administration's full Death Master File (DMF). [4] Using this comparison method, GAO determined that payments were made by these four states on behalf of at least 200 individuals who were deceased, and these unallowable payments totaled at least $9.6 million in calendar year 2011 alone.[5]

More recently, GAO issued a report criticizing CMS for insufficient guidance to State agencies and for gaps in program integrity oversight that "are inconsistent with federal control standards, as well as CMS's goals… [.]"[6] GAO indicated last year that "CMS is missing an opportunity to develop more robust program integrity safeguards that will help mitigate payment risks in Medicaid managed care."[7] One such payment risk described by GAO in its 2018 report is payments to managed care organizations for deceased beneficiaries and other ineligible individuals.[8]

The HHS OIG also has conducted selected audits of Medicaid payment records in recent years, and these audit reports (which were released after CMS's rule was finalized in 2016)[9] identified over $200 million in unallowable capitation payments to managed care organizations on behalf of the deceased. The reason that State officials are not dis-enrolling beneficiaries after their dates of death, the OIG concluded, often is because State Medicaid agencies are not cross-checking beneficiary records against death records kept by other agencies in their own State or other States. (GAO's 2018 report explains that stakeholders found that this problem is fueled by insufficient

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Issues and Inconsistencies in Estimation Processes, GAO-18-377 (May 2018), *available at* https://www.gao.gov/assets/700/692207.pdf. *Cf.* U.S. DEP'T. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *Georgia Managed Care Organizations Received Medicaid Capitation Payments After Beneficiaries' Deaths* ["Managed Care Organizations" is hereinafter referred to as "MCOs" and "After Beneficiaries' Deaths" is hereinafter referred to as "ABD" for the remainder of this FN only.], Report No. A-04-15-06183 (Aug. 2019); *Ohio MCOs Received Medicaid Capitation Payments ABD*, Report No. A-05-16-00061 (Sept. 2019) (noting that Ohio's Medicaid agency spent over $50 million in improper payments); *Wisconsin MCOs Received Medicaid Capitation Payments ABD*, Report No. A-05-17-00006 (Sept. 2018); *Tennessee MCOs Received Medicaid Capitation Payments ABD*, Report No. A-04-15-06190 (Dec. 2017); *Texas MCOs Received Medicaid Capitation Payments ABD*, Report No. A-06-16-05004 (Nov. 2017); *Florida MCOs Received Medicaid Capitation Payments ABD*, Report No. A-04-15-06182 (Nov. 2016), *available at* https://oig.hhs.gov/reports-and-publications/oas/cms.asp.

[4] U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid: Additional Actions Needed to Help Improve Provider and Beneficiary Fraud Controls*, GAO 15-313 (May 2015) (noting that these four states—Arizona, Florida, New Mexico, and New Jersey—had about 9.2 million beneficiaries and accounted for 13 percent of all fiscal year 2011 Medicaid payments, based on GAO's findings), *available at* https://www.gao.gov/assets/680/670208.pdf.

[5] *Id.* at 8.

[6] U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid Managed Care: Improvements Needed to Better Oversee Payment Risks*, GAO 18-528 (May 2018), *available at* https://www.gao.gov/assets/700/693418.pdf.

[7] *Id.* at 30. *See also Improper Payments: Actions and Guidance Could Help Address Issues and Inconsistencies in Estimation Processes*, GAO-18-377 (May 2018) (noting HHS's programs were the only ones reviewed by GAO that reported that the root cause of its improper payments were due to insufficient documentation.), *available at* https://www.gao.gov/assets/700/692207.pdf.

[8] *Id.* (noting that most of the issues identified have been cases of states making per member per month payments ("PMPM") to managed care organizations on behalf of people who are ineligible).

[9] 42 CFR § 438.3(c)(2) (stating that "[c]apitation payments may only be made by the State and retained by the MCO, PIHP or PAHP for Medicaid-eligible enrollees.").

staffing, high staff turnover, and lack of expertise in information technology, on the part of State Medicaid agencies.)[10] To illustrate:

- ***California:*** In 2019,[11] the OIG noted that only six of 184 Medicaid capitation payments to managed care organizations in its audit sample were correct.[12] About 29% of the remaining unallowable payments occurred over a year after the Medicaid beneficiary's death, and at least 10% continued for *more than two years* after the date of death.[13] These errors, resulting in $71 million in overpayments for the deceased, "occurred because the State did not disenroll beneficiaries after their dates of death were identified or collaborate with other agencies to identify or verify dates of death."[14]

- ***Florida:*** Florida paid $26.2 million to managed care organizations for capitation payments on behalf of the deceased in a five-year period, the OIG reported in 2016.[15] In 55% of these cases, "the State agency did not identify enrolled beneficiaries who were identified as deceased in FMMIS [Florida Medicaid Management Information System] and did not make appropriate adjustments," the OIG noted.[16] The overpayments "occurred because the State agency did not timely update" dates of death in FMMIS, and "the beneficiaries' enrollments were not updated once they were identified as deceased."[17] The "State agency had inadequate policies and procedures to identify and correct inaccurate death information received through its three sources of death data," the OIG concluded.[18]

- ***Georgia:*** As reported by the OIG in August 2019, about 15% of Medicaid capitation payments for the deceased were for individuals whose dates of death were available in other State systems.[19] About 8 percent of the unallowable payments were made for

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[10] U.S. GOV'T ACCOUNTABILITY OFFICE, *Medicaid Managed Care: Improvements Needed to Better Oversee Payment Risks*, GAO-18-291 (July 26, 2018), *available at* https://www.gao.gov/assets/700/693418.pdf.

[11] U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *California Managed Care Organizations Received Medicaid Capitation Payments After Beneficiaries' Deaths*, Report No. A-04-18-06220 (May 2019), *available at* https://oig.hhs.gov/oas/reports/region4/41806220.pdf; *see also* Brittany De Lea, "California made $71M worth of unallowable Medicaid payments to dead people," FOX BUSINESS (May 15, 2019) (stating that "Capitation payments are made by the state, usually monthly, to a managed-care company for the medical services of each beneficiary enrolled under the state plan. These payments are made regardless of whether the beneficiary receives services for the period."), *available at* https://www.foxbusiness.com/healthcare/california-improper-medicaid-payments.

[12] *Id.* (noting that of 184 capitation payments, only six were correct, while the other 178 were made on behalf of deceased individuals and thus were unallowable).

[13] U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *California Medicaid Managed Care Organizations Received Capitation Payments After Beneficiaries' Deaths*, Report No. A-04-18-06220 (May 2019), *available at* https://oig.hhs.gov/oas/reports/region4/41806220.pdf.

[14] *Id.* at 5.

[15] U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *Florida Managed Care Organizations Received Medicaid Capitation Payments After Beneficiaries' Death*, Report No. A-04-15-06182 (Nov. 5, 2016), *available at* https://oig.hhs.gov/oas/reports/region4/41506182.pdf.

[16] *Id.* at ii.

[17] *Id.* at 5.

[18] *Id.* at 7.

[19] U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *Georgia Medicaid Managed Care Organizations Received Capitation Payments After Beneficiaries' Deaths*, Report No. A-04-15-06183 (Aug. 9, 2019), *available at* https://oig.hhs.gov/oas/reports/region4/41506183.pdf.

individuals who could be identified as deceased through alternative sources, and about three percent were made to those whose dates of death were identified in Georgia's Medicaid information system, GAMMIS.[20] Most, or 74%, of these unallowable payments were made to those "with dates of death prior to a system conversion date."[21]

- ***Illinois:*** In 2015, Illinois enacted a measure requiring its human services agency to cross-check Medicaid recipient names with death records kept by another State agency, [22] to prevent future payments on behalf of the deceased. But even after this law's enactment, the State still spent $4.6 million on Medicaid coverage for the deceased in a two-year period, according to the OIG's 2019 report. These latest overpayments led the OIG to recommend that Illinois add dates of death to the records of deceased beneficiaries previously marked in the system as "inactive."[23]

- ***Tennessee:*** "Tennessee did not always stop making capitation payments after a beneficiary's death, despite its efforts to identify and recover any allowable payments," the OIG noted in a December 2017 report.[24] The State made overpayments of $2.7 million ($1.8 million Federal share) for the deceased, and the OIG found that the State was unable to recover 13 of 120 capitation payments for the deceased.[25] According to the OIG, "the unallowable payments occurred because Tennessee did not collaborate" with other State and Federal agencies and "did not use additional sources or alternative procedures to determine the reason its data were incorrect, inconsistent, or missing."[26]

- ***Texas:*** The OIG found that Texas had made $6.4 million in capitation payments for the deceased in calendar years 2013 through 2015.[27] "Though some payments were recovered," as of 2017, $1.8 million had "yet to be recovered and … $840,587 was paid for beneficiaries who we could not determine to be deceased."[28] The OIG recommended that the State, among other steps, "strengthen its policies and procedures for identifying deceased beneficiaries and denying Medicaid benefits and ending eligibility to prevent future unallowable payments."[29]

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[20] *Id.* at 4.
[21] *Id.*
[22] Ben Szalinski, *Audit Finds Illinois Spent $4.6M on Medicaid Coverage for Dead People, Illinois Policy* (Sep. 9, 2019), *available at* https://www.illinoispolicy.org/audit-finds-illinois-spent-4-6m-on-medicare-coverage-for-dead-people/.
[23] *Id.*
[24] U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *Tennessee Managed Care Organizations Received Medicaid Capitation Payments After Beneficiary's Death*, Report No. A-04-15-06190 (Dec. 22, 2017), *available at* https://oig.hhs.gov/oas/reports/region4/41506190.pdf.
[25] *Id.* at 16.
[26] *Id.* at 6.
[27] U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *Texas Managed Care Organizations Received Medicaid Capitation Payments After Beneficiary's Death*, Report No. A-04-15-05004 (Nov. 2017), *available at* https://oig.hhs.gov/oas/reports/region6/61605004.pdf.
[28] *Id.* at i.
[29] *Id.* at 6.

- ***Wisconsin:*** The State made 1,654 capitation payments totaling almost $600,000 ($347,822 Federal share) on behalf of the deceased, the OIG reported last fall.[30] Because the "State agency did not always identify and process Medicaid beneficiaries' death information," the OIG recommended, among other reforms, that Wisconsin "strengthen its policies and procedures for identifying deceased beneficiaries and correctly entering" dates of death in a State database to ensure that dates of death are recorded in a timely manner.[31]

Finally, at least four State auditors also have reported millions of dollars in unallowable Medicaid capitation payments to managed care organizations for the deceased. For example, a fiscal year 2018 audit by Rhode Island's Auditor General attributed $11 million in such improper payments to "system and operating deficiencies" that "impacted the timely termination of Medicaid eligibility upon death which resulted in capitation payments being made for ineligible individuals."[32] The Louisiana Legislative Auditor, in a 2017 audit, found that the state Department of Health "paid $637,745 in improper capitation payments to managed care organizations for 203 deceased Medicaid recipients over a 4-year period."[33]

Such strikingly similar findings from multiple State audits and OIG audits over the past three years perhaps point to a wider problem than CMS has previously acknowledged.[34] Assuming, as seems likely, that States other than those subject to these selected audits also made Medicaid payments for deceased individuals, the total amount of improper payments by all States may exceed the roughly $250 million that State and Federal government auditors have identified to date. Furthermore, unless OIG audits are routinely conducted of every State Medicaid agency (or unless CMS is doing its own program oversight to annually verify each State's compliance with 42 CFR § 438.3(c)(2)), some payments for the deceased may not come to light or be recovered by the taxpayers.

The problem of improper payments for the deceased likely is not unique to the Medicaid program, and might have been anticipated by CMS where, as here, the HHS OIG previously

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[30] U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *Wisconsin Managed Care Organizations Received Medicaid Capitation Payments After Beneficiaries' Deaths*, Report No. A-04-15-05004 (Sep. 2018), *available at* https://oig.hhs.gov/oas/reports/region5/51700006.pdf.

[31] *Id.* at 5.

[32] STATE OF RHODE ISLAND OFFICE OF AUDITOR GENERAL, *Fiscal Year 2018 Single Audit Report – Schedule of Findings and Questioned Costs* at D-87 (Apr. 2019), *available at* http://www.oag.ri.gov/reports/SA_RI_2018.pdf.

[33] LOUISIANA LEGISLATIVE AUDITOR, Medicaid *Audit Unit: Improper Payments for Deceased Medicaid Recipients*, Louisiana Department of Health (Nov. 29, 2017), *available at* https://www.lla.la.gov/PublicReports.nsf/077B8098FDA14B76862581E7005E3482/$FILE/00016A43.pdf.

[34] 81 *Fed. Reg.* 27498-27537 (May 6, 2016) (stating that "we [CMS] have become aware of instances in a couple of states where capitation payments were made for enrollees that were deceased and the capitation payments were not recouped by the state from the managed care plans. It is unclear to us why such capitation payments would be retained by the managed care plans as these once Medicaid-eligible enrollees are no longer Medicaid-eligible after their death….Therefore, we are including language in § 438.3(c) to specify that capitation payments may only be made by the state and retained by the MCO, PIHP or PAHP for Medicaid-eligible enrollees. As a corollary of this requirement and while we assume that states and managed care plans already operate in such a manner, we advise states to have standard contract language that requires individuals that are no longer Medicaid-eligible to be disenrolled from the managed care plan."), *available at* https://www.govinfo.gov/content/pkg/FR-2016-05-06/pdf/2016-09581.pdf.

identified a similar issue in its 2013 report on the Medicare program.[35] That earlier audit report, which detected unallowable payments for deceased Medicare beneficiaries dating back to 2009, led the OIG to recommend that CMS institute reforms.[36]

CMS should institute reforms to prevent, rather than simply recoup, wasteful Medicaid payments. For example, CMS should revisit and possibly upgrade its existing tools for preventing Medicaid fraud, waste, and abuse. The agency should identify new tools, in addition to its most recent informational bulletin[37] to help States identify providers or managed care organizations that submit high numbers of improper Medicaid claims that received managed care payments from states for the deceased. CMS also should promote the adoption of protocols or policies to ensure that State Medicaid agencies can quickly and efficiently compare Medicaid payment claims against death records kept by other State or Federal agencies.

To this end, please provide the following information no later than October 18, 2019.

1. Please explain, and describe the extent to which, CMS has conducted its own data mining or performed compliance reviews of State Medicaid agencies to detect unallowable Medicaid payments, particularly payments made on behalf of deceased individuals. For example, to what extent is CMS doing regular program reviews as described in 42 C.F.R. § 430.32(a)? If CMS is not doing such reviews, please explain why.

2. Has CMS verified that State Medicaid agencies now use standard contract language requiring managed care organizations to promptly notify the state when beneficiaries have a change in circumstance that might make them ineligible? How many states have contracts in compliance with this requirement?[38]

3. The managed care rules require managed care organizations to promptly notify the state when there is a change in circumstance that may affect eligibility.[39] How do states define the term "promptly?" Has CMS provided states any guidance on what constitutes prompt notification?

4. What steps has CMS taken in response to the recommendations made by GAO in its 2018 report,[40] with which CMS concurred, and to what extent has CMS helped States resolve

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[35] U.S. DEPT. OF HEALTH AND HUMAN SERV., OFFICE OF INSPECTOR GEN., *Medicare Payments Made on Behalf of Deceased Beneficiaries in 2011*, OEI-04-12-0013 (Oct. 2013) (finding that OIG studies and audit reports prior to 2011 identified Medicare payments made on behalf of deceased beneficiaries) *available at* https://oig.hhs.gov/oei/reports/oei-04-12-00130.pdf.

[36] *Id.* at 19 (noting that these improper payments were often the result of fraudsters submitting false claims and assuming the identities of people who are deceased). *See also* Blake Ellis, *Medicare paid $23 million to dead people*, CNN (Nov. 1, 2013), *available at* https://money.cnn.com/2013/11/01/pf/medicare-deceased/.

[37] CTRS. FOR MEDICARE & MEDICAID SERVICES, *Oversight of State Medicaid Claiming and Program Integrity Expectations*, (June 20, 2019), *available at* https://www.medicaid.gov/federal-policy-guidance/downloads/cib062019.pdf.

[38] *See supra* note 34.

[39] 42 C.F.R. § 438.608(a)(3).

[40] *See supra* note 1 (GAO-18-528).

the improper payment issues outlined by the OIG in at least eight audit reports[41] issued over the last three years?

5. Please provide copies of any written policies or formal guidance that CMS has issued to encourage State Medicaid agencies to periodically consult the SSA's DMF to verify an individual's Medicaid eligibility. What actions has CMS taken to ensure states are complying with its policies and guidance regarding consultations with SSA's DMF or other sources?

6. Please describe any online databases or other tools, other than the DMF, by which CMS or a State Medicaid agency might readily identify Medicaid payments on behalf of a deceased resident of one State whose death has been recorded by another State.

    a. To what extent has CMS collaborated with other federal agencies or departments, such as the Social Security Administration or U.S. Department of Agriculture, which also must periodically verify the payment eligibility of individuals seeking Federal assistance?

7. Please provide copies of any written policies, procedures, or guidance that CMS has issued in the last three years in response to OIG audit reports suggesting that State Medicaid agencies are improperly making capitation payments on behalf of deceased beneficiaries.

8. What is the status of CMS recoupment of payments made in error for deceased beneficiaries?

    a. What additional steps are needed in order to recoup these funds?

    b. Describe any other regulatory (or legislative) changes that might be necessary to ensure that CMS can successfully recoup improper Medicaid payments for deceased beneficiaries, given the 2018 proposed rule,[42] which is not yet codified.

Thank you for your attention to this important matter. If you or your staff have any questions, please contact Evelyn Fortier or Rachael Soloway of my Committee staff at (202) 224-4515.

Sincerely,

Charles E. Grassley
Chairman
Committee on Finance

[41] *See supra* note 3.
[42] *Medicaid Program; Medicaid and Children's Health Insurance Plan (CHIP) Managed Care*, 83 Fed. Reg. 57264 (proposed Nov. 14, 2018) (to be codified at 42 C.F.R. pt. 438 and pt. 457).