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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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May 12, 2010

Tony Strange
Chief Executive Officer and President
Gentiva Health Services Inc
3350 Riverwood Parkway, Suite 1400
Atlanta, GA 30339

Via Electronic Transmission

Dear Mr. Strange:

As the Chairman and Ranking Member of the Senate Committee on Finance (Committee), we have a responsibility to the more than 45 million Americans who receive health care under the Medicare program to monitor whether safe and appropriate care is provided to beneficiaries and to ensure that program dollars are spent appropriately. This includes monitoring healthcare providers participating in the Medicare program, including home health agencies. While Medicare's home health benefit is essential to the more than three million beneficiaries who receive health care services within the comfort of their own homes, it has been vulnerable over the years to fraud, waste and abuse.

A recent article in the *Wall Street Journal* explored the relationship between the Centers for Medicare & Medicaid Services (CMS) home health payment policies and the utilization rates of some home health agencies (HHAs). The Medicare data reviewed for the article suggest HHAs intentionally increased utilization for the purpose of triggering higher reimbursements.

From 2000 through 2007, under the Medicare home health prospective payment system (PPS), home health agencies received an additional \$2,200 in addition to the base reimbursement rate when HHAs made over nine therapy visits. During this period, the *Wall Street Journal*, reported that the number of patients a certain home health company visited 10 times was three times higher than the number of beneficiaries visited nine times. In fact, a former employee of this home health company stated that she had to "have ten visits to get paid" and "the tenth visit was not always medically necessary."

Starting in 2008, CMS revised home health PPS rules to provide additional payments at six, 14, and 20 therapy visits. These additional payments also became graduated within these intervals. The home health industry apparently changed their utilization patterns as a result of these payment policy changes. In March 2010, the Medicare Payment Advisory Commission (MedPAC) found:

In 2008, the share of therapy episodes with decreased payments under the new system – those in the range of 10 to 13 therapy visits – dropped by about one-third...Conversely, volume increased for therapy episodes that have higher payment under the revisions. For example, in 2008 payment episodes with six to nine visits increased by 30 percent, and the share of these episodes increased from 9 percent to 12 percent. At the higher end of the visit distribution, payment for episodes with 14 or more therapy visits increased by 26 percent, and the share of these episodes increased from 12 percent to 15 percent. The immediate change in utilization demonstrates that home health providers can quickly adjust services to payment changes in the therapy visit thresholds.

According to an analysis by the *Wall Street Journal*, therapy visits by one of the leading home health companies followed these shifts. Apparently, the percentage of patients getting 10 therapy visits from one home health company dropped by 64 percent in 2008 from 2007. Also, the percentage of “patients of another home health company getting 10 visits dropped by 50 percent, while the percentage that got six visits increased 8 percent. The percentage of patients getting 14 visits rose 33 percent and the percentage getting 20 visits increased 41 percent.”

The findings reported in the *Wall Street Journal* article are of great concern to us, especially since they appear to be confirmed by MedPAC’s research. These findings suggest that HHAs are basing the number of therapy visits they provide on how much Medicare will pay them instead of what is in the best interests of patients.

In order to assist us in understanding more about these issues, please make the following available:

- 1) For each calendar year from 2006 through 2009, provide data showing the distribution in one day intervals from 1 to 30 of therapy visits for therapy episodes (episodes which include at least one therapy visit) by both number and percentage.ⁱ
- 2) For each calendar year from 2006 through 2009, provide data showing the average score at admission for Medicare patients that received therapy visits for each of the following activities of daily living as reported in the Outcomes and Assessment Information Set (OASIS):
 - a. Walking/Ambulation;
 - b. Hygiene;
 - c. Continence;
 - d. Dressing;
 - e. Eating;

- f. Toileting; and
 - g. Transferring.
- 3) For each calendar year from 2006 through 2009, also provide:
 - a. The total number of Medicare home health patients that received therapy visits from your company for that year;
 - b. The total amount of Medicare reimbursement your company received for home health episodes that qualified for additional payments because of therapy visits provided; and
 - c. The total amount of Medicare reimbursement your company received.
- 4) All internal documents, records, and communications relating to the 2008 Medicare payment revisions for home health therapy visits from January 1, 2007 to the present. Include copies of all audit reports conducted internally and externally including draft and unfinished versions.
- 5) All internal policies and guidelines regarding the number of therapy visits provided per home health episode. Please include any prior policies and guidelines from January 1, 2007 to the present, including all modifications to those policies.
- 6) For each state in which you provide home health services, provide a list of the 10 physicians from whom you received the highest number of referrals for home health services in each of the calendar years 2006, 2007, 2008, and 2009. For each physician, please include the physician's specialty, location, and the number of referrals.
- 7) For each physician identified in the response to question 6, please provide all payments or transfers of value from your company, or any entity acting at your company's direction, to that physician for calendar years 2006, 2007, 2008, and 2009. This information should include:
 - a. The recipient's name, business address, and specialty;
 - b. A description of the form of payment or transfer of value (cash, stock, travel, meals, etcetera);
 - c. A description of the nature of payment or transfer of value (royalty, consulting, speaking fee, gift, etcetera); and
 - d. The date of payment.
- 8) Provide copies of all marketing materials produced for patients and physicians for calendar years 2006, 2007, 2008, and 2009.
- 9) Provide all copies of guidance or instructions to marketing staff on appropriate physician and patient marketing practices (including payments and transfers of value to physicians) for calendar years 2006, 2007, 2008 and 2009.
- 10) Indicate whether your company has a compliance program, and if so:

- a. Indicate whether you provide a toll free number for purposes of reporting inappropriate marketing activities;
 - b. Indicate the number of times in each of the calendar years 2006, 2007, 2008 and 2009 complaints were received regarding marketing activities as well as the nature and resolution of each complaint;
 - c. Provide documentation on the compliance program including previous policies from 2006 to the present.
- 11) Provide copies of all physician attestation forms with an explanation of the process for physician attestations for calendar years 2006, 2007, 2008, and 2009.
- 12) Indicate whether your home health agency employs medical directors. If so, please provide the following:
- a. Identify the duties and responsibilities of medical directors for your home health agencies;
 - b. The average number as well as range of physicians that serve your home health agencies;
 - c. The five most common specialties that are represented by medical directors across all your home health agencies;
 - d. The average number of physicians in each of the specialties identified in question 12.b. that serve as medical directors at a home health agency of your company;
 - e. The percentage of medical directors that are full or part-time employees of your company and the percentage of medical directors that serve under contractual arrangement; and
 - f. For medical directors that serve under contractual arrangements, identify the method of compensation as well as the average number and range of hours worked per week.

We would appreciate a response from you no later than June 2, 2010. In cooperating with the Committee's review, no documents, records, data or information related to these matters shall be destroyed, modified, removed or otherwise made inaccessible to the Committee.

Thank you for your attention to this important matter. Should you have any questions regarding this letter, please contact [Senate Finance Committee staff]. All formal correspondence should be sent electronically in PDF format to [staff].

Sincerely,



Charles E. Grassley
Ranking Member



Max Baucus
Chairman

ⁱ Please provide this information in a chart closely resembling the following:

	2006	2007	2008	2009
One therapy visit	X/Y%	X/Y%	X/Y%	X/Y%
Two therapy visits	X/Y%	X/Y%	X/Y%	X/Y%
... therapy visits	X/Y%	X/Y%	X/Y%	X/Y%
Total Medicare home health patients that received therapy visit	XXX	XXX	XXX	XXX
The total Medicare home health reimbursement for episodes that qualified for additional payments because of therapy visits provided;	\$XX,XXX	\$XX,XXX	\$XX,XXX	\$XX,XXX
Total Medicare home health reimbursements	\$XX,XXX	\$XX,XXX	\$XX,XXX	\$XX,XXX

GENERAL INSTRUCTIONS

1. In complying with this document request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. In addition, produce documents that you have a legal right to obtain, documents that you have a right to copy or have access to, and documents that you have placed in the temporary possession, custody, or control of any third party.
2. No documents, records, data or information requested by the Committee shall be destroyed, modified, removed or otherwise made inaccessible to the Committee.
3. If the document request cannot be complied with in full, it shall be complied with to the extent possible, which shall include an explanation of why full compliance is not possible.
4. In complying with this document request, respond to each enumerated request by repeating the enumerated request and identifying the responsive document(s).
5. In the event that a document is withheld on the basis of privilege, provide the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
6. Each document produced shall be produced in a form that renders the document susceptible of copying.
7. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same document.
8. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, or control.

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9. This request is continuing in nature. Any document, record, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon location or discovery subsequent thereto.
 10. All documents shall be Bates stamped sequentially and produced sequentially.

GENERAL DEFINITIONS

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to the following: memoranda, reports, statistical or analytical reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (E-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disc, or videotape. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “records” is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded

electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.

3. The terms “relate,” “related,” “relating,” or “regarding” as to any given subject means anything that discusses, concerns, reflects, constitutes, contains, embodies, identifies, deals with, or is any manner whatsoever pertinent to that subject, including but not limited to documents concerning the preparation of other documents.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa to bring within the scope of this document request any information which might otherwise be construed to be outside its scope. The masculine includes the feminine and neuter genders to bring within the scope of this document request any information that might otherwise be construed to be outside its scope.
5. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, written, electronic, by document or otherwise, and whether face to face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise. Documents that typically reflect a “communication” include handwritten notes, telephone memoranda slips, daily appointment books and diaries, bills, checks, correspondence and memoranda, and includes all drafts of such documents.