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June 8, 2020

VIA ELECTRONIC TRANSMISSION

Ms. Christi Grimm
Acting Inspector General
Office of Inspector General
U.S. Department of Health & Human Services
330 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Acting Inspector General Grimm:

We write today in an effort to work with your office to protect and educate Medicaid recipients, specifically those living in nursing homes and assisted living facilities around the country, and to educate such providers to prevent improper and unlawful practices.

According to reports by the Federal Trade Commission (FTC)¹ and organizations, such as the American Association of Retired Persons (AARP),² some residents covered under Medicaid have been directed to hand over their Economic Impact Payments to the nursing home or assisted living facility in which they reside. This practice, which reportedly has occurred in facilities across the country, is contrary to the provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which authorized these payments.³ We ask that your office look into these practices targeting elderly Americans and individuals with disabilities and issue alerts to raise awareness that this practice is improper and contrary to congressional intent.

¹ See Press Release, Federal Trade Commission (FTC), "FTC Alerts Consumers About Nursing Homes and Assisted Living Facilities Taking Stimulus Checks From Medicaid Patients" (May 15, 2020) *available at* <https://www.ftc.gov/news-events/press-releases/2020/05/ftc-alerts-consumers-about-nursing-homes-assisted-living>.

² Katherine Skiba, American Association of Retired Persons (AARP), "Nursing Homes Can't Take Stimulus Checks From Medicaid Residents" (May 19, 2020), *available at* <https://www.aarp.org/caregiving/financial-legal/info-2020/nursing-homes-medicaid-stimulus-checks.html>.

³ See Coronavirus Aid, Relief, and Economic Security Act [hereinafter "CARES Act"]; P.L. 116-136.

On May 15, 2020, the FTC alerted the public of reports that some nursing homes and assisted living facilities had improperly taken Economic Impact Payments from residents enrolled in Medicaid program.⁴ Some residents reportedly were advised that, due to their status as Medicaid recipients, their Economic Impact Payment was a resource owed to their nursing home or assisted living facility,⁵ according to the Iowa Attorney General. Similar reports have emerged in states such as Oregon, where the Oregon Attorney General released a “Scam Alert,” warning of similar reported incidents and characterizing the confiscation of the checks as “unlawful.”⁶

The Economic Impact Payments authorized under Section 2201 of the CARES Act are tax credits, not taxable income, and Congress expressly intended that any refund be disregarded in the administration of federal programs and federally assisted programs.⁷ As such, these payments generally cannot be considered resources for purposes of federal benefits programs such as Medicaid.⁸ Accordingly, nursing homes and assisted living facilities cannot take these payments away from residents who are enrolled in the Medicaid program solely on that basis.⁹ The FTC’s alerts to the public are important, but we believe more could be done to alert the residents of these facilities, many of whom are frail and elderly, as well as the facilities themselves about the unlawful nature of this practice.

Specifically, because the population being targeted are Medicaid recipients, we encourage the U.S. Department of Health and Human Services Office of Inspector General (OIG) to issue two alerts, one to the public and a second to the operators of such facilities, to ensure that residents of these facilities are protected from confiscation of their Economic Impact Payments. The issuance of such alerts is consistent with the OIG’s prior practice of alerting the

⁴ See Press Release, FTC, *supra* note 1.

⁵ Lois Greisman, Elder Justice Coordinator, FTC, “Did a nursing home or assisted living facility take your stimulus check?” (May 15, 2020), available at <https://www.consumer.ftc.gov/blog/2020/05/did-nursing-home-or-assisted-living-facility-take-your-stimulus-check>.

⁶ Oregon Dep’t of Justice, “Has your living facility tried to take your stimulus money from you?” (May 27, 2020), available at <https://www.doj.state.or.us/media-home/news-media-releases/your-stimulus-money-is-yours-alone/>.

⁷ See 26 U.S.C. § 6409.

⁸ Ctrs. for Medicare and Medicaid, “Families First Coronavirus Response Act (FFCRA), Public Law No. 116-127 Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-136 Frequently Asked Questions (FAQs)” (Apr. 13, 2020) (noting that “. . . the Recovery Rebates may not be counted as income, and, for 12 months, as resources, in non-MAGI financial eligibility determinations.”), available at <https://www.medicaid.gov/state-resource-center/downloads/covid-19-section-6008-CARES-faqs.pdf#page=16>.

⁹ See CARES Act (P.L. 116-136), *supra* note 3 at § 2201. See also 26 U.S.C. § 6409.

public when Medicare or Medicaid recipients are impacted by fraudulent schemes.¹⁰ The OIG also has taken steps in the past to alert providers, in an effort to end unlawful practices.¹¹

In closing, thank you for your attention to this important matter. We look forward to your response. If you have any questions, please contact Evelyn Fortier and Rachael Soloway of Chairman Grassley's staff or David Berick and Anne Dwyer of Ranking Member Wyden's staff at (202) 224-4515.

Sincerely,



Charles E. Grassley
Chairman
Committee on Finance



Ron Wyden
Ranking Member
Committee on Finance

¹⁰ U.S. Dep't of Health and Human Serv., Office of the Inspector Gen., "Fraud Alert: Genetic Testing Scam" (Sept. 27, 2019), available at https://oig.hhs.gov/fraud/consumer_alerts/alerts/genetic scam.asp?utm_source=website&utm_campaign=genetic scam.

¹¹ U.S. Dep't of Health and Human Serv., Office of the Inspector Gen., "Special Fraud Alert: Laboratory Payments to Referring Physicians" (June 25, 2014), available at https://oig.hhs.gov/fraud/docs/alertsandbulletins/2014/OIG_SFA_Laboratory_Payments_06252014.pdf.