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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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<http://help.senate.gov>

November 10, 2015

Mr. Andy Slavitt
Acting Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Ms. Jocelyn Samuels
Director
Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201

Dear Mr. Slavitt and Ms. Samuels:

We write today to request information on how the Department of Health and Human Services (HHS) is working to support and protect victims of medical identity theft. We share concerns about the Americans who are at a greater risk of medical identity theft as a result of the growing number of data breaches at healthcare organizations.

Data breaches in the healthcare industry have surged in the past year due to major cyberattacks on Anthem BlueCross BlueShield (Anthem)¹, Premera Blue Cross (Premera)², CareFirst BlueCross BlueShield (CareFirst)³, Excellus BlueCross BlueShield (Excellus),⁴

¹ Abelson, Reed. "Data Breach at Anthem May Forecast a Trend." *The New York Times*. 6 February 2015.

<http://www.nytimes.com/2015/02/07/business/data-breach-at-anthem-may-lead-to-others.html>

² "Premera Blue Cross Says Data Breach Exposed Medical Data." *The New York Times*. 17 March 2015.

<http://www.nytimes.com/2015/03/18/business/premera-blue-cross-says-data-breach-exposed-medical-data.html>

³ Peterson, Andrea. "Cyberattack on CareFirst exposes data on 1.1 million customers in D.C., Md. and Va." *The Washington Post*. 20 May 2015. <https://www.washingtonpost.com/blogs/the-switch/wp/2015/05/20/cyberattack-on-carefirst-exposes-data-on-1-1-million-customers-in-d-c-md-and-va/>

⁴ "Cyber breach hits 10 million Excellus healthcare customers." *USA Today*. 10 September 2015.

<http://www.usatoday.com/story/tech/2015/09/10/cyber-breach-hackers-excellus-blue-cross-blue-shield/72018150/>

and UCLA Health System (UCLA).⁵ According to the HHS Office of Civil Rights (OCR) breach portal, these 5 incidents alone may have affected up to 105 million individuals. Sizeable and damaging breaches continue as a result of traditional threats, including unauthorized access and disclosure and loss or theft of laptops.⁶ In total, OCR's breach portal indicates that nearly 154 million individuals were affected by 1367 reported data breaches at healthcare organizations.⁷ We are concerned that data theft will continue to rise and will result in an increase in medical identity theft.

Medical identity theft is "the appropriation or misuse of a patient's or a provider's medical identifying information (such as a Medicare identification number) to fraudulently obtain or bill for medical care."⁸ This crime can have serious financial repercussions for victims, including paying large out-of-pocket costs for medical bills incurred by thieves in their name, diminished credit scores, and loss of health insurance.⁹ Thieves also can file claims in victims' names for expensive services and medical equipment, rendering victims unable to access those services and equipment later when they truly need it.¹⁰

Medical identity theft can also lead to adulteration of victims' medical records when thieves obtain services in their name. Faulty records that contain a false diagnosis, or inaccurate blood type can result in dangerous health repercussions, including receipt of improper medical treatment.¹¹ While patients have the right to view and request corrections to their medical records under the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, there is widespread confusion about how this rule applies in the case of a thief's information being comingled with that of his or her victim's. The Ponemon Institute reported that nearly one in five victims of medical identity theft were refused access to their medical records "due to laws protecting the privacy of the identity thief."¹² Furthermore, in recent years, CMS has demonstrated reluctance to correct Medicare billing records for victims of medical identity theft due to fears such corrections would negatively impact

⁵ Hackett, Robert. "UCLA Health System data breach may affect millions." *Fortune*. 17 July 2015. <http://fortune.com/2015/07/17/ucla-health-system-data-breach/>

⁶ Department of Health and Human Services, Office of Civil Rights Breach Portal. https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf

⁷ Id.

⁸ Department of Health and Human Services, Office of Inspector General. "CMS Response to Breaches and Medical Identity Theft," October 2012. <http://oig.hhs.gov/oei/reports/oei-02-10-00040.pdf>

⁹ Testimony of Gary Cantrell, Deputy Inspector General for Investigations, Department of Health and Human Services, before the United States Senate Special Committee on Aging. October 7, 2015. http://www.aging.senate.gov/imo/media/doc/OIG_Cantrell_10_7_15.pdf

¹⁰ Department of Health and Human Services, Office of Inspector General. "CMS Response to Breaches and Medical Identity Theft." October 2012. <http://oig.hhs.gov/oei/reports/oei-02-10-00040.pdf>.

¹¹ Testimony of Gary Cantrell, Deputy Inspector General for Investigations, Department of Health and Human Services, before the United States Senate Special Committee on Aging. October 7, 2015. http://www.aging.senate.gov/imo/media/doc/OIG_Cantrell_10_7_15.pdf

¹² Medical Identity Fraud Alliance. "2014 Annual Study on Medical Identity Theft." The Ponemon Institute. February 2015. <http://medidfraud.org/2014-fifth-annual-study-on-medical-identity-theft/>
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beneficiaries deductible and coinsurance status, CMS internal accounting systems, and civil and criminal prosecutions.¹³

Medical identity theft can also lead to significant losses for the Medicare Trust Funds and taxpayers. Reports of identity theft-related fraud in these programs are alarming. In one case, a transnational organization established a “ghost” medical clinic which billed Medicare for over \$1 million in services.¹⁴ In another, an organized crime ring operated at least 118 phony clinics in 25 states, submitting over \$100 million in Medicare claims.¹⁵ A recent report estimated that fraud added as much as \$98 billion, or nearly 10 percent, to total annual Medicare and Medicaid spending.¹⁶

Medical identity theft is a unique crime with consequences for victims that stretch beyond those associated with financial identity theft. To help assess the adequacy of current efforts to mitigate medical identity theft and the resources currently being offered to victims, we respectfully request that you answer the following questions by November 24, 2015:

1. What support does HHS provide to federal, state, and local law enforcement officials to aid their response to medical identity theft?
2. What services does CMS offer to Medicare and Medicaid beneficiaries who suspect they are victims of medical identity theft? How long do individuals who report identity theft to CMS have to wait for a response?
3. In addition to OCR’s publicly available list of breaches affecting 500 or more individuals, do OCR and CMS track reported cases of medical identity theft? If so, please provide summary of this information and a description of how this information is collected. Please include an assessment of whether this number captures the full number of cases, or if HHS believes this is an underreported crime? If HHS does not track this information, does any other federal agency?
4. Please explain the effect of the recent breaches at healthcare organizations on Medicare and Medicaid programs. Has CMS observed an increase in fraud? Were Medicare and Medicaid beneficiary numbers compromised as part of these breaches? What has CMS done to prepare for a possible increase in fraud? Have beneficiaries with compromised information been properly notified?

¹³ Department of Health and Human Services, Office of Inspector General. “CMS Response to Breaches and Medical Identity Theft.” October 2012. <http://oig.hhs.gov/oei/reports/oei-02-10-00040.pdf>. Page 19.

¹⁴ Testimony of Gary Cantrell, Deputy Inspector General for Investigations, Department of Health and Human Services, before the United States Senate Special Committee on Aging. October 7, 2015. http://www.aging.senate.gov/imo/media/doc/OIG_Cantrell_10_7_15.pdf

¹⁵ Id.

¹⁶ “The \$272 billion swindle.” *The Economist*. 31 May 2014. <http://www.economist.com/news/united-states/21603078-why-thieves-love-americas-health-care-system-272-billion-swindle>

5. How does HHS collect data for inclusion in its Compromised Numbers Checklist database? Does HHS use the data collected under the HIPAA Breach Notification Rule to monitor potential breach victims for subsequent medical identity theft? Please provide current data reflecting the number of names in the Compromised Numbers Checklist database, and any associated risk ratings for those numbers.
6. Does HHS track the financial and medical impact of identity theft on victims? If so, please provide this information. If HHS does not track this information, does any other federal agency?
7. What support or educational resources does HHS offer for helping consumers and contractors protect against, identify, and respond to medical identity theft?
8. How do OCR and CMS coordinate medical identity theft prevention and mitigation efforts?
9. What support does HHS provide to federal, state, and local law enforcement officials to aid their response to medical identity theft?
10. Does HHS believe that HIPAA Privacy Rule gives a victim of medical identity theft the right to access his or her health record if it contains a thief's health information? Has HHS encountered confusion on this matter previously? If so, what steps has HHS taken to address the confusion over the meaning of the Privacy Rule on this matter?
11. In response to recommendations the 2012 HHS OIG report "CMS Response to Breach and Medical Identity Theft," CMS stated that "adjustment of beneficiary billing records [for victims of medical identity theft] could have a negative impact on criminal and civil prosecutions and on the underlying integrity of the Medicare claims processing system."¹⁷ What steps has CMS taken to ensure that victims of medical identity theft retain access to needed services and do not suffer undue financial burden without compromising criminal and civil prosecutions?
12. Does HHS monitor the effects of data breaches at non-covered entities, such as the Office of Personnel Management, on incidence of medical identity theft? Does HHS believe that recent data breaches at non-covered entities have resulted in increased medical identity theft?

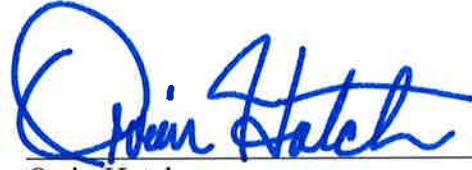
¹⁷ Department of Health and Human Services, Office of Inspector General. "CMS Response to Breaches and Medical Identity Theft." October 2012. <http://oig.hhs.gov/oei/reports/oei-02-10-00040.pdf>. Page 19.

We appreciate your prompt response to these important questions. If you have any questions, please have your staff contact Virginia Heppner with Chairman Alexander's Health, Education, Labor and Pensions Committee staff at (202) 224-6770, Kim Brandt with Chairman Hatch's Finance Committee staff at (202) 224-4515, Carly Rush with Ranking Member Murray's Health, Education, Labor and Pensions Committee staff at (202) 224-2931, or Dan Goshorn with Ranking Member Wyden's Finance Committee staff at (202) 224-7800.

Sincerely,



Lamar Alexander
Chairman
Senate Committee on Health, Education
Labor, and Pensions



Orrin Hatch
Chairman
Senate Committee on Finance



Patty Murray
Ranking Member
Senate Committee on Health, Education
Labor, and Pensions



Ron Wyden
Ranking Member
Senate Committee on Finance