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3 HEARING ON WASTE, FRAUD AND ABUSE: A CONTINUING THREAT TO

4 MEDICARE AND MEDICAID

5 WEDNESDAY, MARCH 2, 2011

6 House of Representatives,

7 Subcommittee on Oversight and Investigation

8 Committee on Energy and Commerce

9 Washington, D.C.

10 The subcommittee met, pursuant to call, at 10:02 a.m.,
11 in Room 2322 of the Rayburn House Office Building, Hon. Cliff
12 Stearns [Chairman of the Subcommittee] presiding.

13 Members present: Representatives Stearns, Terry,
14 Myrick, Murphy, Burgess, Bilbray, Gingrey, Scalise, Gardner,
15 Griffith, Barton, DeGette, Schakowsky, Gonzalez, Dingell and
16 Waxman (ex officio).

17 Staff present: Stacy Cline, Counsel, Oversight; Todd
18 Harrison, Chief Counsel, Oversight/Investigations; Sean

19 Hayes, Counsel, Oversight/Investigations; Debbie Keller,
20 Press Secretary; Peter Kielty, Senior Legislative Analyst;
21 Carly McWilliams, Legislative Clerk; Andrew Powaleny, Press
22 Assistant; Krista Rosenthal, Counsel to Chairman Emeritus;
23 Ruth Saunders, Detailee, ICE; Alan Slobodin, Deputy Chief
24 Counsel, Oversight; Sam Spector, Counsel, Oversight; John
25 Stone, Associate Counsel; Kristin Amerling, Democratic Chief
26 Counsel and Oversight Staff Director; Phil Barnett,
27 Democratic Staff Director; Brian Cohen, Democratic
28 Investigations Staff Director and Senior Policy Advisor;
29 Karen Lightfoot, Democratic Communications Director and
30 Senior Policy Advisor; Ali Neubauer, Democratic Investigator;
31 and Anne Tindall, Democratic Counsel.

|
32 Mr. {Stearns.} Good morning, everybody, and let me
33 welcome everybody to the Subcommittee on Oversight and
34 Investigation of Energy and Commerce.

35 We convene this hearing of the Subcommittee on Oversight
36 and Investigation today to examine the efforts of the
37 Department of Health and Human Services and the Centers for
38 Medicare and Medicaid Services to address fraud, waste and
39 abuse in the Medicare and Medicaid programs.

40 This issue is of great importance to us. During this
41 Congress and the last, I introduced the Medicare Fraud
42 Prevention Act, which would increase the criminal penalties
43 for those convicted of defrauding the Medicare program. As a
44 Member of Congress from Florida, I have personally seen how
45 this issue can greatly impact my State and its citizens.
46 During my town hall meetings last week, many of my
47 constituents shared their concerns with stories about waste,
48 fraud and abuse in Medicare.

49 Recently, the Government Accountability Office listed
50 the Medicare and Medicaid programs as ``high risk.'' High-
51 risk programs are identified as having greater vulnerability
52 to fraud, waste and abuse and mismanagement. As much as \$60
53 billion is lost to Medicare fraud every year. This is an
54 estimate because the exact number is unknown. When my staff

55 asked the folks from CMS how much fraud was being carried
56 out, they had no idea.

57 So it is hardly news that the Medicare and Medicaid
58 programs are at high risk. GAO has listed Medicare as high
59 risk since 1990 and Medicaid as high risk since 2003. Over
60 the years, this committee has had countless hearings on this
61 subject and yet nothing seems to change. The volume of
62 Medicare fraud and the corresponding cost to the taxpayer
63 continues to go up and up and up.

64 Meanwhile, the stories we hear from States like Florida
65 continue to horrify taxpayers. News reports have indicated
66 that Medicare fraud is rapidly eclipsing the drug trade as
67 Florida's most profitable and efficient criminal enterprise.
68 With Medicare fraud, the penalties are lower and the threat
69 of violence is nonexistent. Meanwhile, seniors who notice
70 that their Medicare number is being used for fraudulent
71 schemes often find themselves begging the government to do
72 anything about it, often with no results.

73 The types of fraud we are seeing run the gamut from
74 fraudulent billing schemes to the actual creation of fake
75 storefronts to sell durable medical equipment and then bill
76 it to Medicare. Once the criminals get their money from
77 Medicare, they close up shop and open a new storefront in a
78 new location and start the scam all over again.

79 The Administration says that additional measures are
80 being put in place to screen Medicare providers and
81 suppliers, and halt payments when there are credible
82 allegations of fraud. These are good and these are necessary
83 steps to take, but only if they work, but GAO has said that
84 there is much more work to be done.

85 In 2014, the Administration health care will implement
86 massive changes. Medicare will be cut and Medicaid will
87 expand. According to the Chief Actuary of Medicare and
88 Medicaid, 20 million people will be dumped onto the Medicaid
89 rolls and \$575 billion will be cut from Medicare. While we
90 are all committed to repealing this onerous law on this side,
91 we also must do our best to end fraud before 2014. If we
92 can't stop fraud now, how are we going to do so while
93 simultaneously adding 20 million people to Medicaid?

94 We have to make sure that the focus remains on
95 preventing fraud and abuse. Unfortunately, CMS uses a pay
96 first, check later system. That must change. We need to
97 check first, and pay later before taxpayers' funds are
98 wasted. CMS needs to fix its verification system to prevent
99 these kinds of crimes or we will never get a handle on this
100 problem.

101 Every dollar that is lost to fraud is one that is not
102 spent on medical care for those in need. Fraud raises the

103 costs of health care for all Americans. Since Obamacare will
104 raise those costs even further, it is absolutely necessary
105 that we get a handle on Medicare and Medicaid fraud.

106 So I look forward to hearing what the Federal Government
107 is doing to get Medicare and Medicaid fraud and abuse under
108 control.

109 [The prepared statement of Mr. Stearns follows:]

110 ***** COMMITTEE INSERT *****

|
111 Mr. {Stearns.} My remaining 1 minute I will give to the
112 gentleman from Texas, Mr. Barton.

113 Mr. {Barton.} Thank you, Mr. Chairman.

114 The easiest thing in Washington to do is talk about
115 waste, fraud and abuse and the hardest thing in Washington to
116 do is to actually do something about it. As Chairman Stearns
117 just said, on both sides of the aisle we have had numerous
118 hearings about waste, fraud and abuse in Medicare and
119 Medicaid and yet the problem still obviously persists. We
120 can't even get a direct answer as to what the scope of the
121 problem is. It is an \$800 billion combined program. Is it
122 10 percent? Ten percent would be \$80 billion a year. Is it
123 5 percent? That would be \$40 billion. Is it 1 percent?
124 That would be \$8 billion. Nobody knows.

125 Mr. Chairman, I hope on a bipartisan basis this
126 subcommittee and the full committee under your leadership and
127 under the leadership of Ranking Member Waxman and Chairman
128 Upton in this Congress actually do something about it. With
129 a \$1.5 trillion budget deficit annually, there is no question
130 that money spent here will be money that we get a huge return
131 on investment.

132 I look forward to hearing from our witnesses and I hope
133 that they have some solutions in addition to helping us

134 define the scope of the problem.

135 With that, Mr. Chairman, I yield back.

136 [The prepared statement of Mr. Barton follows:]

137 ***** COMMITTEE INSERT *****

|
138 Mr. {Stearns.} I thank the gentleman, and I recognize
139 the ranking member from Colorado, Ms. DeGette.

140 Ms. {DeGette.} Thank you very much, Mr. Chairman.

141 Mr. Chairman, Medicare and Medicaid fraud have been
142 persistent problems that have plagued both Democratic and
143 Republican Administrations, as you have said, and it costs
144 Americans billions of dollars every year. It affects health
145 care providers at every level in the programs themselves and
146 also in the private sector.

147 Today's hearing will focus on a very worthy target of
148 oversight: waste, fraud and abuse in these two systems.
149 Medicare and Medicaid provide millions of people with access
150 to medical services and so it is a vital concern to this
151 committee that we maintain their integrity.

152 Fortunately, as you said, it is important to try to get
153 a handle on Medicare and Medicaid fraud, and that is also a
154 high priority for President Obama. Beginning in 2009, the
155 Obama Administration made fighting fraud a priority. These
156 efforts expanded even more after passage of the Affordable
157 Care Act, which contains dozens of provisions designed to
158 help fight Medicare and Medicaid fraud.

159 The Administration asked for and received additional
160 funding to fight health care fraud in both 2009 and 2010.

161 They have reorganized within HHS and they have started
162 several new collaborations with law enforcement authorities
163 to uncover and prevent health care fraud.

164 In May of 2009, HHS and DOJ announced the creation of
165 the Health Care Fraud Prevention and Enforcement Team, or
166 HEAT, designed to coordinate Cabinet-level agency activities
167 to reduce fraud. Under the HEAT program, HHS and DOJ have
168 expanded the use of dedicated strike force teams, placing law
169 enforcement personnel in locations that are identified as
170 health care fraud hotspots. These teams carried out the
171 largest health care fraud takedown in U.S. history last
172 month, netting over 100 arrests in just one day. The work
173 undertaken by the strike force teams has led to criminal
174 charges against 829 defendants for defrauding Medicare of
175 almost \$2 billion. There is an answer to your question about
176 the extent of this.

177 The Administration's efforts have been a huge success
178 for taxpayers, with a return on investment that would make
179 most hedge fund managers jealous. And thanks to landmark
180 health care reform law passed by Congress last year, HHS and
181 law enforcement authorities now have a host of new tools and
182 new funding to fight fraud.

183 The Affordable Care Act contains dozens of new
184 provisions to fight Medicare and Medicaid fraud. The most

185 important changes allow CMS to apply a preventative model in
186 its antifraud efforts. For years, CMS employed, as you said,
187 a ``pay and chase'' model of enforcement, simply paying
188 fraudsters' claims, then attempting to recover its losses.
189 Now, CMS has new authority to keep fraudsters out of Medicare
190 and Medicaid in the first place.

191 The Affordable Care Act contains stiffer enrollment
192 requirements for all providers, mandates enhanced background
193 checks, adds new disclosure requirements, and calls for
194 onsite visits to verify provider information. It requires
195 that providers create internal compliance programs, and it
196 contains several provisions aimed directly at fighting fraud
197 in, as you mentioned, the high-risk durable medical equipment
198 and home health programs.

199 The government's ability to act once it has uncovered
200 fraud or the possibility of fraud is also enhanced by the
201 Affordable Care Act. The Secretary now has authority to
202 enact moratoria on enrolling new providers if she believes
203 that such enrollments will increase fraud risks, and she can
204 suspend payments to providers where there is a substantiated
205 allegation of fraud. Once fraud has been proven, the
206 Affordable Care Act provides stiffer monetary penalties and
207 expands the HHS Inspector General's authority to exclude
208 violators from the Medicare and Medicaid programs.

209 Data sharing and collection between CMS, states, and
210 other federal health programs are modernized under the
211 Affordable Care Act, and the Affordable Care Act provides an
212 estimated \$500 million in increased funding over the next 5
213 years to fight fraud, money that will return billions of
214 dollars to the taxpayers. This expanded authority, combined
215 with the coordinated and focused attention of the Obama
216 Administration, has laid the groundwork for a new era in the
217 Federal Government's response to fraud.

218 Mr. Chairman, as you said, the GAO first designated
219 Medicare a high-risk program in 1990, and Medicaid joined the
220 high-risk list in 2003. I look forward to hearing from the
221 GAO about why this is the case and what can be done. I am
222 hoping that these new commitments that I just talked about
223 can really substantially reduce fraud and ultimately produce
224 the result that all of us want.

225 Mr. Chairman, if there is more than we can do to reduce
226 waste, fraud and abuse on a bipartisan level, I would be
227 eager to hear it and I would be happy to work with you and
228 your colleagues on both sides of the aisle to make sure that
229 we can do that because I think one thing we can agree on in a
230 bipartisan way is, nobody wants to see money wasted and we
231 certainly do not want to see fraud, waste and abuse in
232 Medicare and Medicaid.

233 And with that, I yield back.

234 [The prepared statement of Ms. DeGette follows:]

235 ***** COMMITTEE INSERT *****

|
236 Mr. {Stearns.} The gentleman from Texas, Mr. Burgess,
237 is recognized for 3 minutes.

238 Dr. {Burgess.} I thank the chairman and I thank our
239 witnesses for being here today. I know several of you we
240 have seen before and several of you we have seen several
241 times before, which just underscores the problem that at the
242 federal level we have really not done enough to address the
243 issue of fraud, and as the reports that we have in front of
244 us indicate that our Nation's government-run health care
245 system needlessly does waste billions of dollars each year
246 through programs that are ineffective and unfocused.

247 Fraud analysts and law enforcement officials estimate,
248 and we have heard the figures already, 10 percent, as Mr.
249 Barton did the math for us on an \$800 billion public program.
250 That is a substantial sum of money every year, and over a 10-
251 year budget window, it is really astounding. But 10 percent
252 of total health care expenditures are lost to fraud on an
253 annual basis.

254 The point has been raised by others, I have raised it
255 numerous times before, how much fraud is enough for us to
256 take notice? The answer that we all expect to see in the
257 amount of fraud is none, zero, zero tolerance, but in
258 reality, sometimes it is even as simple as just the lack of a

259 prosecutorial force with the background in prosecuting health
260 care laws cripples our ability to go after the people that
261 need to be gone after, and certainly that has been true in my
262 communities in north Texas where repeated violations by some
263 of the same people who have multiple provider numbers but a
264 single post office box, you can bust someone in the morning
265 but we are sending out payments to the same post office box
266 under a different provider number that afternoon. Clearly,
267 that has to stop.

268 Now, the Government Accountability Office has been able
269 to identify areas where they may have made recommendations to
270 the Centers for Medicare and Medicaid Services to prevent
271 improper payments, some really dating back almost a decade,
272 and they failed to fully implement them and that in fact has
273 caused fraud to rise. If we are serious about bringing down
274 the cost of health care and protecting the patient not just
275 reducing but eliminating fraud, that needs to be the goal for
276 which we strive.

277 Medicaid expansion under the landmark health care
278 legislation passed last year that has already been referenced
279 but Medicaid expansion under the Affordable Care Act is
280 estimated to exceed \$430 billion over the next 10 years.
281 Under current standards, taxpayers would be losing over \$40
282 billion a year to fraud.

283 Now, we also talk about the medical loss ratio and how
284 we are going to control costs in the private sector but I
285 would just simply ask, what is a more cogent indicator of
286 medical loss ratio than dollars that are lost to fraud?
287 Maybe we ought to include that in our calculation.

288 I realize the clock is misbehaving. Let me yield back
289 to the chairman because I think he has others he wants to
290 recognize.

291 [The prepared statement of Dr. Burgess follows:]

292 ***** COMMITTEE INSERT *****

|
293 Mr. {Stearns.} Thank you, Mr. Burgess.

294 Mr. Bilbray of California is recognized for 1 minute and
295 then Mr. Gingrey.

296 Mr. {Bilbray.} Thank you, Mr. Chairman.

297 Mr. Chairman, I think there are many ways of addressing
298 the potential or the existence of the fraud issue. I think
299 that one of the concerns that a lot of people had when we
300 were talking about expanding health care coverage last year
301 was the President stood on the podium and said I assure you
302 that those who are illegally in this country will not have
303 access to this system, though when the bill was passed there
304 was no requirement for verification, the same verification
305 required almost of every other federal program wasn't
306 included in that expansion of health care service. I would
307 like to make sure that we all address the fact that if you do
308 not verify, if you do not use the check system, you cannot
309 straight face in the American people and tell us that people
310 who are not qualified are going to be kept out of this
311 system. Just by saying they are not allowed to participate
312 in the system is as logical as saying that providers will not
313 create a fraud because we have said that they shouldn't do
314 it. There has got to be some checks and balances here.

315 And just as much as need to make sure that we are on top

316 and checking the providers of the services, we also have a
317 responsibility, especially after the President promised the
318 American people that they would not participate is to make
319 sure that we check and have a verification system for those
320 who are providing the services and those who are being
321 provided to those services, and I think not until we are
322 willing to do that across the board with all of our health
323 care system can we truly have our President stand up and
324 assure the American people with a straight face that no, we
325 are doing everything possible to make sure we fighting fraud
326 in this country and we make sure that every dollar spent on
327 health care in this country is going only to those who
328 qualify and only being provided under a legal system.

329 I yield back.

330 [The prepared statement of Mr. Bilbray follows:]

331 ***** COMMITTEE INSERT *****

|
332 Mr. {Stearns.} The gentleman yields back.

333 The gentleman from Georgia, Mr. Gingrey, is recognized
334 for 1 minute.

335 Dr. {Gingrey.} Mr. Chairman, thank you. I am very
336 pleased to welcome the witnesses on both the first and second
337 panel. I look forward to hearing their testimony.

338 I practiced medicine for 31 years, 26 of those years in
339 the specialty of obstetrics and gynecology, so this issue of
340 waste, fraud and abuse, particular in our Medicare and
341 Medicaid systems, is something that really, really gets to
342 me, and some of the comments that I have heard already this
343 morning, particular from the other side, you would almost
344 think that one of the reasons for adopting Obamacare or the
345 Affordable Care Act was so that we could succeed in combating
346 waste, fraud and abuse. I certainly don't agree with that,
347 and if it is true, then it will be more successful than the
348 bill has been in lowering the cost of health care to
349 individuals who are now uninsured. It will do more than it
350 has done in regard to medical liability reform that was
351 promised. It will do much more than providing a sustainable
352 rate of reimbursement to our hardworking health care
353 providers that was promised. So it kind of remains to be
354 seen what is in this bill that is going to make us more

355 successful in combating waste, fraud and abuse.

356 But in any regard, I look forward to hearing from the
357 witnesses and we do need to get a handle on this problem, and
358 I yield back.

359 [The prepared statement of Dr. Gingrey follows:]

360 ***** COMMITTEE INSERT *****

|
361 Mr. {Stearns.} I thank the gentleman, and Mr. Waxman,
362 the ranking member of the full committee, is recognized for 5
363 minutes.

364 Mr. {Waxman.} Thank you very much, Mr. Chairman.

365 Well, this hearing is a very useful one already because
366 we have the opportunity to educate two of our Republican
367 members about the accuracy of the legislation that we just
368 adopted. One of the reasons I am so proud of the Affordable
369 Care Act, the historic health care reform law signed by
370 President Obama last year, is that it contains dozens of
371 antifraud provisions. This legislation has the most
372 important reforms to prevent Medicare and Medicaid fraud in a
373 generation. According to the Congressional Budget Office,
374 these new fraud provisions will save over \$7 billion for
375 taxpayers.

376 The health care reform law shifts the prevailing fraud
377 prevention philosophy from pay and chase where law
378 enforcement authorities only identify fraud after it happens
379 to inspect and prevent. It allows CMS to impose moratoria on
380 enrolling new providers if the Secretary believes that such
381 enrollments will increase fraud risk. It allows the HHS
382 Secretary to close the barn door before the horses have left.

383 The new law also contains new penalties for fraudulent

384 providers and new data-sharing provisions to catch criminals,
385 and it provides hundreds of millions of dollars in new
386 funding to help CMS, the Inspector General and the Department
387 of Justice fight Medicare and Medicaid fraud, and we will
388 hear today about how the CMS and Inspector General have
389 already put these funds to work. I am proud of these efforts
390 to reduce fraud.

391 The second thing I want to point out is that the
392 legislation does not allow undocumented aliens to access
393 Medicare or Medicaid or the exchanges, and it is not just on
394 their self-affirmation that they are not here illegally, it
395 is based on an inspection that is required under the law.
396 That can be done in two ways. They can either check with
397 Social Security, get all the information to be sure that the
398 claimant is accurately stating his or her status, or they can
399 require the birth certificates and passports and other
400 information to be produced to show that they are not taking
401 advantage. So these oversight hearings have a real
402 opportunity to educate people.

403 I can't tell you how much I think this is an important
404 reason for our hearing. When we have health care fraud, it
405 robs the taxpayers of funds, affects the quality of care
406 provided to program enrollees and saps public confidence in
407 the Medicare and Medicaid programs. And that is why I see

408 fighting Medicare and Medicaid fraud as a critical need and
409 an issue where we should be able to achieve bipartisan
410 consensus.

411 But I am wary of those who use the existence of fraud in
412 these programs for the express purpose of undermining support
413 for them. I do not believe we should attempt to exaggerate
414 the scope of the problem just to foster ideological efforts
415 to cut or eliminate them. When I hear estimates of the
416 amount of Medicare and Medicaid fraud that have no basis in
417 fact, or when members confuse Medicare and Medicaid improper
418 payment rates that consists mostly of simple paperwork or
419 clerical errors with the rate of intentional fraud against
420 the programs, then I become concerned that members are just
421 using fraud as an excuse to bash these programs, not to
422 improve them.

423 The vast majority of Medicare and Medicaid providers are
424 compassionate and honest. The vast majority of beneficiaries
425 of these programs desperately need the care that is provided.
426 We need to be tough on fraud and tough on criminals who take
427 advantage of these programs and their beneficiaries, but we
428 cannot and should not blame the victim.

429 In January, every single Republican Member of Congress
430 voted to repeal the entire Affordable Care Act, including
431 essential antifraud provisions. In February, as part of the

432 Continuing Resolution, every single Republican voted to ban
433 the use of funds to implement the Affordable Care Act,
434 including the funds needed to implement the antifraud
435 provisions. That vote was penny-wise and pound-foolish.

436 We are going to hear from CMS, from the HHS Inspector
437 General and from GAO about the new authority and new funding
438 they have to eliminate Medicare and Medicaid fraud, thanks to
439 the Affordable Care Act, and I hope this testimony will make
440 some members reconsider their views. If we truly care about
441 protecting the taxpayer, we should support, not defund, the
442 Administration's initiatives to reduce Medicare and Medicaid
443 fraud.

444 I yield back the balance of my time.

445 [The prepared statement of Mr. Waxman follows:]

446 ***** COMMITTEE INSERT *****

|
447 Mr. {Stearns.} I thank the gentleman.

448 At this point we will go to our witnesses, and we have
449 our witnesses at the table. The first is Kathleen King,
450 Director of Health Care Division, Government Accountability
451 Office, GAO. She is the director of this health care team at
452 the U.S. Government Accountability Office, which is
453 responsible for leading various studies of the health care
454 system, specializing in Medicare management and prescription
455 drug coverage. She has more than 25 years' experience in
456 health policy and administration. She received her M.A. in
457 government and politics from the University of Maryland.

458 We have John Spiegel, who is Director of Medicare
459 Program Integrity, Centers for Medicare and Medicaid
460 Services. He has worked in various components of the Centers
461 for Medicare and Medicaid Services. After several years
462 working outside the public sector, he returned to federal
463 service in 2010 as the Director of the Medicare Program
464 Integrity Group.

465 Then we have Gerald Roy, who is Deputy Inspector General
466 for Investigations, Department of Health and Human Services.
467 He has served in OIG since 1995. He was also instrumental in
468 increasing OIG's civil and criminal conviction record and a
469 25 percent increase in OIG's monetary recoveries from \$3

470 billion in 2008 to over \$4 billion in 2009.

471 And then we have Omar Perez, Assistant Special Agent in
472 Charge, Health and Human Service Office of the Inspector
473 General, Miami Regional Office. He joined the department in
474 July 1998 and he has been promoted to special agent in
475 January 1999. He has led a number of successful criminal and
476 civil investigations and orchestrated Project Ghost Rider to
477 address fraudulent ambulance companies, Bad Medicine to
478 address Puerto Rico's Medicaid equivalent, and the First
479 Child Support Round in the U.S. Virgin Islands.

480 So I welcome our witnesses, and let me swear you in
481 first of all.

482 [Witnesses sworn.]

483 Mr. {Stearns.} Ms. King.

|
484 ^TESTIMONY OF KATHLEEN KING, DIRECTOR, HEALTH CARE DIVISION,
485 GOVERNMENT ACCOUNTABILITY OFFICE; GERALD T. ROY, DEPUTY
486 INSPECTOR GENERAL FOR INVESTIGATIONS, OFFICE OF THE INSPECTOR
487 GENERAL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; OMAR
488 PEREZ, ASSISTANT SPECIAL AGENT IN CHARGE, OFFICE OF INSPECTOR
489 GENERAL, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND
490 JOHN SPIEGEL, DIRECTOR OF MEDICARE PROGRAM INTEGRITY, CENTERS
491 FOR MEDICARE AND MEDICAID SERVICES, DEPARTMENT OF HEALTH AND
492 HUMAN SERVICES

|
493 ^TESTIMONY OF KATHLEEN KING

494 } Ms. {King.} Mr. Chairman, members of the subcommittee,
495 thank you for inviting me today to speak about our recent
496 high-risk report, specifically about Medicare. We have
497 continued to designate Medicare as a high-risk program
498 because of its complexity and susceptibility to improper
499 payment added to its size. This has led to serious
500 management challenges.

501 In 2010, Medicare covered 47 million elderly and
502 disabled beneficiaries and had estimated outlays of \$509
503 billion, making it the third largest federal programs in
504 terms of spending.

505 Currently, Medicare remains on a path that is fiscally
506 unsustainable in the long term. This heightens the urgency
507 for the Centers for Medicare and Medicaid Services to address
508 our recommendations, effectively implement new laws and
509 guidance and improve its management in four areas. Broadly,
510 these areas include reforming and refining payments,
511 improving program management, enhancing program integrity and
512 overseeing patient care and safety. Today I am going to
513 focus my oral comments on payments and program integrity.

514 With regard to reforming and refining payments, CMS has
515 implemented payment reforms such as for Medicare Advantage,
516 inpatient hospital and home health services. It has also
517 begun to provide feedback to physicians on their resource
518 use, which is positive but which could benefit from
519 additional refinement, and is developing a new payment system
520 that accounts for the cost and quality of care. But more
521 could be done. For example, we have recommended to CMS that
522 they consider implementing more front-end approaches to
523 controlling the growth of imaging services. In addition, we
524 recently found that although payments for home oxygen have
525 been reduced or limited several times in recent years,
526 further savings are possible.

527 In regard to program integrity, Congress recently passed
528 laws including the Improper Payments Elimination and Recovery

529 Act, the Patient Protection and Affordable Care Act and the
530 Small Business Job Act that provide authority and resources
531 and impose new requirements designed to help CMS reduce
532 improper payments.

533 The Administration has also issued executive memoranda
534 including one that requires agencies to check certain
535 databases known as the Do Not Pay List before making payments
536 to ensure that payments are not made to individuals who are
537 dead or entities that have been excluded from federal
538 programs. CMS is taking steps to implement these laws and
539 memoranda through regulations and other agency actions. In
540 2010, it created a new Center for Medicare and Medicaid
541 Program Integrity to better coordinate efforts to prevent
542 improper payments. CMS has been tracking its improper
543 payment rates in Medicare fee for service and Medicare Part C
544 and has established performance goals for reducing those
545 rates in the future. However, the agency has not reported a
546 single error rate for Part D and has not been able to
547 demonstrate sustained progress in lowering its improper
548 payment rates. So continued oversight is warranted.

549 Having a corrective action process in place to address
550 vulnerabilities that lead to improper payments is also
551 important to managing them effectively. Our work on recovery
552 auditing, which reimburses contracts on a contingency basis

553 to uncover payments that should not have been made found that
554 CMS had not developed an adequate process to address the
555 vulnerabilities that had been identified by the contractors.
556 Since it is important to address these issues going forward,
557 we recommended that CMS develop a robust corrective action
558 process.

559 Further, we issued a report in February 2009 that
560 indicated that Medicare continued to pay some home health
561 agencies for services that were not medically necessary or
562 were not rendered. To address this, we made several
563 recommendations including that CMS direct its contractors to
564 conduct post-payment reviews on home health agencies with
565 high rates of improper payments. CMS has not implemented
566 this and several other recommendations to improve its program
567 safeguards.

568 In conclusion, although CMS has taken many actions to
569 improve the integrity of the Medicare program, further action
570 is needed to ensure that payments are proper and
571 vulnerabilities to improper payments are addressed. We are
572 beginning new work to address some of these issues to
573 determine if additional agency or Congressional action might
574 be helpful.

575 Mr. Chairman, this concludes my statement. I would be
576 happy to answer any questions.

577 [The prepared statement of Ms. King follows:]

578 ***** INSERT 2 *****

|

579 Mr. {Stearns.} Thank you.

580 Mr. Roy.

|
581 ^TESTIMONY OF GERALD ROY

582 } Mr. {Roy.} Good morning, Chairman Stearns, Ranking
583 Member DeGette and distinguished members of the subcommittee.
584 I am Gerald Roy, Deputy Inspector General for Investigations
585 at the U.S. Department of Health and Human Services, Office
586 of Inspector General. Today I am privileged to have with me
587 OIG Assistant Special Agent in Charge Omar Perez of our Miami
588 Regional Office.

589 OIG is an independent nonpartisan agency committed to
590 protecting the integrity of more than 300 programs
591 administered by HHS. The Office of Investigations employs
592 over 450 highly skilled special agents who utilize state-of-
593 the-art investigative technologies and a wide range of law
594 enforcement actions including the execution of search and
595 arrest warrants. We are the Nation's premier health care
596 fraud law enforcement agency. Our constituents are the
597 American people, and we work hard to ensure their money is
598 not stolen or misspent. Over the past fiscal year, OIG
599 investigations have resulted in over 900 criminal convictions
600 and civil actions and over \$3.7 billion in recoveries.

601 Today I will discuss three critical aspects of OIG's
602 work: the Medicare fraud strike force model, corporate fraud

603 investigations and tools employed by OIG. The Medicare fraud
604 strike force model is a critical component of one of the
605 Administration's signature initiatives known as HEAT. This
606 is a joint effort by HHS and DOJ to leverage resources and
607 expertise to prevent fraud and abuse. Strike forces
608 concentrate antifraud efforts in geographic areas at high
609 risk for fraud. Strike force teams consisting of OIG agents
610 and our law enforcement partners are assigned to dedicated
611 prosecutors. Strike force cases are data driven, which
612 allows us to catch criminals in the act. We operate in nine
613 locations and we plan to expand to other high-fraud areas.
614 Last month, HEAT strike forces engaged in the largest federal
615 health care fraud takedown in our history, arresting over 100
616 defendants in nine cities associated with more than \$225
617 million in fraud. More than 300 OIG special agents led this
618 operation. The photos you see here today show our special
619 agents engaged in search and arrest activities.

620 We are also aggressively pursuing major corporations and
621 institutions that commit health care fraud on a grand scale.
622 Corporate fraud often involves complex kickbacks, accounting
623 and illegal marketing schemes. Some of these companies play
624 such a critical role in the health care delivery system that
625 they may believe that the OIG would never exclude them. Some
626 executives consider civil penalties and criminal fines just

627 the cost of doing business. As long as the profit from fraud
628 outweighs the cost, abusive corporate behavior will continue.
629 OIG plans to alter this cost-benefit calculus of executives
630 by more broadly employing one of the most powerful tools in
631 our arsenal: the authority to exclude individuals and
632 entities from participating in federal health care programs.
633 When there is evidence that an executive knew or should have
634 known of the underlying criminal misconduct of the
635 organization, OIG plans to exclude that executive from our
636 programs.

637 Recently, we assigned a special agent to the
638 International Criminal Police Organization, INTERPOL.
639 INTERPOL facilitates international investigative cooperation
640 between 188 member countries and more than 18,000 law
641 enforcement agencies in the United States. HHS OIG is the
642 first in the Inspector General community to have a special
643 agent assigned to INTERPOL. We have over 170 fugitives
644 running from health care fraud charges. We will leverage the
645 resources of INTERPOL's worldwide partners to bring them to
646 justice.

647 In February, OIG launched our most-wanted fugitive
648 website. The individuals you see on our top 10 fugitive
649 poster allegedly defrauded taxpayers of more than \$136
650 million. We have partnered with America's Most Wanted and

651 INTERPOL to feature our website and actively spread the word.
652 We are asking the public to help us bring these fugitives to
653 justice.

654 The bottom line: We are sending a clear message that
655 fraud will not be tolerated and our success represents a
656 prudent investment of taxpayer dollars. For every \$1 spent
657 on our health care fraud programs, we return over \$6 to the
658 Medicare trust fund.

659 Thank you for the opportunity to discuss our law
660 enforcement efforts and strategies. We are committed to
661 serving and protecting the Nation's most vulnerable citizens
662 and the federal health care programs on which they rely.

663 [The prepared statement of Mr. Roy follows:]

664 ***** INSERT 3 *****

|

665 Mr. {Stearns.} Thank you.

666 Mr. Perez, welcome.

|
667 ^TESTIMONY OF OMAR PEREZ

668 } Mr. {Perez.} Good morning, Chairman Stearns, Ranking
669 Member DeGette and distinguished members of the subcommittee.
670 I am Omar Perez, Assistant Special Agent in Charge with Human
671 and Health Services Office of Inspector General. I am
672 stationed in Miami and currently supervise agents assigned to
673 the Medicare strike force, and prior to assuming my position,
674 I was a member of one of the strike force teams. I am
675 honored for the invitation and opportunity to discuss our
676 efforts in combating health care fraud.

677 This morning, I am here to tell you what our agents and
678 I experience as criminal investigators on the front line in
679 this fight against health care fraud. Although the vast
680 majority of Medicare providers are honest, my job and our job
681 is to focus on those intent on stealing from the program. My
682 squad is actively engaged in criminal investigations,
683 testifying before grand juries, executing search and arrest
684 warrants and seizing bank accounts.

685 Medicare fraud is discussed openly on the streets of
686 south Florida because it is accepted as a safe and even way
687 to get rich quick. Now, the money involved is staggering.
688 We see high school dropouts making anywhere from \$100,000 to

689 millions a year. Typically, we see business owners, health
690 care providers, doctors and Medicare patients participate in
691 the fraud but now we see drug dealers and organized criminal
692 enterprises joining in.

693 Today I will describe the typical fraud scheme,
694 highlight Miami's investigative model, share success stories,
695 and finally discuss the evolution of fraud in south Florida.

696 Now, prior to the state of the strike force, Miami was
697 riddled with sham DME companies whose owners had one idea in
698 mind: steal from the program. In order to perpetrate the
699 fraud, nominee owners were recruited to place their names on
700 corporate documents, lease agreements and corporate bank
701 accounts, and in exchange were paid between \$10,000 to
702 \$20,000. Stolen patient information was obtained from
703 corrupt employees at hospitals, clinics and doctors' offices.
704 They also obtained lists of stolen physician identifiers, and
705 with these two key pieces of information submitted fraudulent
706 claims to Medicare for equipment that was never provided.
707 Once the money was deposited into the account, it was
708 withdrawn within days. The idea was to deplete the account
709 so that by the time Medicare even realized that there was a
710 fraud, there was no money left to recover.

711 These schemes are executed within a matter of months so
712 we developed a streamlined investigative approach to HEAT

713 investigations. The model includes the following steps to
714 help identify our targets: quickly obtain and analyze
715 Medicare claims, identify and obtain banking information,
716 obtain the corporate documents, and identify the medical
717 billing agent.

718 Now, the following examples highlight the successes of
719 our model. Two months ago, one of our agents received
720 information from a confidential source that a DME company was
721 submitting fraudulent claims. Through data analysis, we saw
722 that \$1.5 million was billed in just 3 weeks after a
723 corporate change of ownership. Further data analysis showed
724 that this company and another that we had under investigation
725 was billing for about the same 100 patients, so within 30
726 days the agents corroborated that fraud was taking place and
727 we were able to arrest the target. Using this model, he got
728 zero money. When we arrested him, we found a fake driver's
729 license and learned that he was about to purchase yet another
730 company under this assumed identity.

731 In another example, a source alleged a corporation
732 owning several community mental health centers was paying
733 patients to allow them to bill for services they were not
734 receiving. Data analysis and other investigative techniques
735 led to five individuals being indicted and arrested and seven
736 search warrants being executed simultaneously. Now, 2 weeks

737 ago, we indicted and arrested another 20 individuals
738 associated with this corrupt corporation and those arrested
739 included center directors, physicians, therapists, patient
740 recruiters and money launderers. The photographs you see are
741 of the lavish estate of a patient recruiter who also
742 laundered money for the corrupt corporation. We are finding
743 that criminals have migrated to other services within the
744 Medicare program including home health, community mental
745 health centers, physical and occupational therapy.
746 Historically, Medicare patients and doctors were not involved
747 but now we are finding that in many cases both are getting
748 paid to participate in the fraud.

749 Additionally, not only are we seeing criminals migrate
750 to other parts of the State but we know that they have
751 migrated to States adjacent to Florida and other parts of the
752 country like Georgia, North Carolina, Tennessee, West
753 Virginia and Michigan.

754 Thank you very much for the opportunity to discuss
755 strike force operations in the south Florida and the
756 investigative model that we utilize to protect the taxpayers
757 interest, and I certainly welcome the opportunity to address
758 any questions the panel has.

759 [The prepared statement of Mr. Perez follows:]

760 ***** INSERT 4 *****

|

761 Mr. {Stearns.} Thank you, Mr. Perez.

762 Mr. Spiegel.

|
763 ^TESTIMONY OF JOHN SPIEGEL

764 } Mr. {Spiegel.} Thank you. Chairman Stearns, Ranking
765 Member DeGette and members of the subcommittee, thank you
766 very much for the invitation to discuss the Centers for
767 Medicare and Medicaid Services' efforts to reduce fraud,
768 waste and abuse in the Medicare, Medicaid and Children's
769 Health Insurance programs and the new tools and authorities
770 provided in the Affordable Care Act. I am happy to be here
771 today appearing on behalf of Peter Buddetti, who is the
772 Director of the Center for Program Integrity where I work as
773 the Director of the Medicare Program Integrity Group.

774 Dr. Buddetti said from the beginning of the time on his
775 job that people are asking two questions repeatedly: why do
776 you let the perps into Medicare and Medicaid and why do you
777 continue to pay fraudulent claims? Well, I can tell you that
778 with the new authorities provided in the recent laws and the
779 commitment of the Administration in fighting fraud, we are
780 making progress on both fronts. Our approach will be keeping
781 people who don't belong in the programs out and we will be
782 kicking out fraudulent claims before they are paid. We now
783 have the flexibility to tailor resources to address the most
784 serious problems and quickly initiate activities in a

785 transformative way.

786 Under the leadership of Secretary Sebelius, CMS has
787 taken a number of administrative steps to better meet
788 emerging needs and challenging in fighting fraud and abuse.
789 For example, CMS consolidated the Medicare and Medicaid
790 Program Integrity Groups under a unified Center for Program
791 Integrity to pursue a more strategic and coordinated set of
792 program integrity policies and activities across both
793 programs. This change in structure and focus served our
794 program integrity well and has facilitated collaboration on
795 antifraud initiatives with our law enforcement partners in
796 the HHS Office of Inspector General and in the Department of
797 Justice and State Medicaid fraud control units as well. And
798 just last week we restructured the center to provide some
799 additional concentrated focus on the new initiatives that I
800 will be talking about in a little bit, some examples being
801 increased focus on data development and uses of analytics
802 that will help bolster our work.

803 The Affordable Care Act enhanced this organizational
804 change by providing an opportunity to develop policies across
805 all of our programs jointly. The act's division such as
806 enhanced screening requirements for new providers and
807 suppliers apply across all the programs, not just for
808 Medicare and not just for Medicaid. They are uniform across

809 the board. This ensures consistency obviously as one of the
810 goals that we try to pursue in our fraud and abuse
811 activities.

812 So many might argue that just rearranging the boxes
813 doesn't have much of a value but we think that having created
814 a Center for Program Integrity, it is on a par with other
815 major operating components within CMS. It sends a powerful
816 message that the Administration is seriously committed to
817 fighting fraud and it puts the bad actors on notice, and
818 because most success in anything comes from clarity of
819 purpose, we have made certain that our sights are firmly
820 fixed on the goal of ensuring correct payments are made to
821 legitimate providers for covered, reasonable and appropriate
822 services for eligible beneficiaries.

823 I would like to take a little time today to explain how
824 we have been transforming our fraud detection and prevention
825 work through the new approach on the poster over there. So
826 first, central to our goal is the shift away from identifying
827 fraud before it happens. We want to prevent things from
828 taking shape. We want to move away from ``pay and chase''
829 that we have relied on so heavily in the past. Second, we
830 don't want to be limited to a monolithic approach to fighting
831 fraud. Instead, we want to focus our efforts on the bad
832 actors who pose elevated risk. Third, we are taking

833 advantage of innovation and technology as we move quickly to
834 take action focused on prevention when possible. And fourth,
835 consistent with the Administration's commitment to being
836 transparent, we are developing performance measures that will
837 specify our targets for improvement. We are actively
838 engaging public and private partners from across the spectrum
839 because there is obviously much to learn from others who
840 engaged in the same endeavor of fighting fraud. We know the
841 private sector is victimized by the same schemes we see in
842 public programs in collaboration and communication among all
843 parties. And finally, we are committed to coordination and
844 integration of our activities across all the programs in CMS
845 based on best practices and lessons learned.

846 So as we move away from the old ways to more modern and
847 sophisticated successful approaches, we are continuing to
848 concentrate our actions--

849 Mr. {Stearns.} Just if you can, sum up. Your time is
850 over.

851 Mr. {Spiegel.} Okay. Sorry.

852 Mr. {Stearns.} Thank you.

853 Mr. {Spiegel.} Let me just get through this one
854 particular part and I will be finished.

855 Mr. {Stearns.} Can you just summarize?

856 Mr. {Spiegel.} Sure. We want to do a better job of

857 keeping people out before they get in. We want to move
858 quickly when we see those who have gotten in that are
859 potentially improper bills and take steps to reduce claims
860 payment error by 50 percent and get people out who don't
861 belong.

862 [The prepared statement of Mr. Spiegel follows:]

863 ***** INSERT 5 *****

|
864 Mr. {Stearns.} Thank you. With that, I will open up
865 with questions. Let me start with you, Mr. Spiegel. When I
866 looked at your résumé, it looks like you have been on the job
867 less than a year. You started June 2010. So you have really
868 been the man who is Director of Medicare Program Integrity
869 for less than one year. Is that correct?

870 Mr. {Spiegel.} That is correct.

871 Mr. {Stearns.} And you came from the private sector?

872 Mr. {Spiegel.} Most immediately.

873 Mr. {Stearns.} Okay. You might not have a handle on
874 this, but how much money, in your opinion, is lost to fraud
875 each year in the Medicare program precisely?

876 Mr. {Spiegel.} Well--

877 Mr. {Stearns.} Just precisely.

878 Mr. {Spiegel.} I would have to answer that question and
879 say that there is no actual one number--

880 Mr. {Stearns.} So you don't know? Is that fair enough?

881 Mr. {Spiegel.} That is correct.

882 Mr. {Stearns.} Now, 60 Minutes in September had an
883 exposé on Medicare, and they indicated it was \$60 billion,
884 and they had one witness who indicated it would be \$90
885 billion. Do you think it is fair to say that it is anywhere
886 from \$60 billion to \$90 billion based on what 60 Minutes

887 said?

888 Mr. {Spiegel.} Like all of us, I have heard the
889 estimates that have come from private groups as well as
890 government--

891 Mr. {Stearns.} Why is it so difficult to understand
892 what the figure is? If 60 Minutes has come up with it and
893 witnesses have come up with it, we had the Justice Department
894 give an estimate, why is it that you are the man in charge of
895 Medicare Program Integrity, why can't you give us an estimate
896 of what it is, approximately?

897 Mr. {Spiegel.} Well, because a lot of the estimates
898 that you cite and others cite contain information that deals
899 with things that aren't necessarily fraud. Some of them turn
900 out to be improper payments, things we want to know about but
901 they are really not fraud and it is not necessarily--

902 Mr. {Stearns.} All right. Mr. Waxman indicated in his
903 opening statement that these new requirements that are in the
904 Obamacare prevention will save us \$7 billion a year. Do you
905 think that is an accurate statement?

906 Mr. {Spiegel.} I believe Mr. Waxman cited CBO
907 estimates.

908 Mr. {Stearns.} Okay. Now, the problem is, it is a
909 program \$650 billion and they are saving \$7 billion. That is
910 probably about less than 1 percent. How can you effectuate

911 eliminating waste, fraud and abuse when you cut the program
912 \$550 billion like Obamacare does? So it is a question for
913 Ms. King. If you are actually cutting Medicare program,
914 wouldn't that make it difficult to prevent waste, fraud and
915 abuse just by axiomatic? Wouldn't it be self evident that
916 you can't cut a program that amount of money and still reduce
917 waste, fraud and abuse?

918 Ms. {King.} Mr. Chairman, I think that the reductions
919 in Medicare spending are reductions off the rate of growth
920 and not overall reductions in the size of the--

921 Mr. {Stearns.} Well, that is not how we understand it.
922 But Mr. Spiegel, let us go to Medicaid. How much is lost to
923 Medicaid, not Medicare, because you say you don't know. What
924 about Medicaid? What is the loss to fraud?

925 Mr. {Spiegel.} Well, it is the same issues that
926 surround trying to come up with a number for fraud in
927 Medicare.

928 Mr. {Stearns.} So you have no idea, not even
929 approximate? Okay.

930 Now, Ms. King, they are expanding Medicaid by another 20
931 million people they are going to add, and so if you are going
932 to expand and increase it, and Medicaid has a lot of fraud,
933 wouldn't that indicate that you are going to have increased
934 fraud?

935 Ms. {King.} I think it depends on what happens with the
936 new authorities that CMS was given in the Affordable Care Act
937 and how they are implemented.

938 Mr. {Stearns.} Let me say, the Republicans on this side
939 would be very glad to vote for any legislative measure to
940 prevent fraud. Any fraud measures, we would be glad to
941 implement. It is just we are worried about some of the
942 things I mentioned about.

943 So Mr. Spiegel, my concern is, before we expand Medicare
944 and Medicaid, we still don't know how much we lost to fraud
945 and you are the man in charge less than a year, so you are
946 saying at this point we just have no idea how much it is
947 going to, how much fraud, waste and abuse. So it seems to me
948 that if you don't even have a handle on what the amount is,
949 it is going to be very difficult to penetrate it down.

950 Let me ask a question to Mr. Roy and Mr. Perez. I
951 appreciate, Mr. Perez, I said in my opening statement, I just
952 said that Medicare fraud is rapidly eclipsing the drug trade
953 as far as most profitable and efficient criminal enterprise
954 system. This was comments based on the 60 Minutes exposé.
955 Do you think that is true?

956 Mr. {Perez.} Well, we certainly have seen some of our
957 investigations that individuals that used to participate in
958 the drug trade are now certainly involved in health care

959 fraud.

960 Mr. {Stearns.} Have you seen a lot of organized crime
961 involved in Medicare and Medicaid fraud, Mr. Roy?

962 Mr. {Roy.} Yes, sir. We are seeing--

963 Mr. {Stearns.} Just bring the mic just a little closer
964 to you, if you don't mind.

965 Mr. {Roy.} My apologies. We are seeing an uptick in
966 organized crime elements engaging in health care fraud,
967 whether it is in structured organizations like Eurasian
968 organized crime that we see out in Los Angeles to more loose-
969 -knit organizations that we see in Texas and the Miami,
970 Florida, area.

971 Mr. {Stearns.} Mr. Roy, this is probably putting you on
972 the spot but do you or Mr. Perez and your colleagues and your
973 talking, have you come up with what is a figure of how much
974 fraud? Would you venture a guess?

975 Mr. {Roy.} No, sir, I cannot.

976 Mr. {Stearns.} Would you venture a guess it is more
977 than \$7 billion a year?

978 Mr. {Roy.} Yes, sir, I would.

979 Mr. {Stearns.} And Mr. Perez, would you venture a guess
980 that the fraud in Medicare is more than \$7 billion a year?

981 Mr. {Perez.} I know we recovered \$3.7 billion, so
982 certainly I think--

983 Mr. {Stearns.} So what I am trying to say, Mr. Spiegel,
984 is here you have no idea what the fraud figure is and the
985 people to your right, and one has indicated that he has found
986 just in Florida \$3.5 billion, so you have--it is just
987 incomprehensible to me how you can come here this morning and
988 say you have no idea how much the fraud when the man to your
989 right has indicated that he can track \$3.5 billion himself
990 and so I think when Mr. Waxman mentioned \$7 billion, that is
991 just the tip of the bucket. That is just the tip, and there
992 is so much more there and I think Mr. Roy and Mr. Perez have
993 confirmed that.

994 My time is expired. I will turn to the ranking member,
995 Ms. DeGette.

996 Ms. {DeGette.} Thank you so much, Mr. Chairman.

997 Let me follow up on that, Mr. Spiegel, with you. I
998 believe the CBO estimated that the provisions of the
999 Affordable Care Act will save the taxpayers \$7 billion over
1000 the next 10 years. Is that correct?

1001 Mr. {Spiegel.} I believe that is what it says.

1002 Ms. {DeGette.} Is that the only money that the
1003 Administration intends to save on fraud in Medicare and
1004 Medicaid?

1005 Mr. {Spiegel.} No.

1006 Ms. {DeGette.} Could you explain, please, why that is

1007 not the--I don't want this to be misinterpreted that the
1008 Administration, that these are the only efforts that are
1009 going to be made. What other efforts are being undertaken to
1010 eliminate fraud, waste and abuse, briefly?

1011 Mr. {Spiegel.} First of all, however much the number is
1012 for fraud that is going on is too much.

1013 Ms. {DeGette.} Right. What other efforts are being
1014 undertaken to avoid fraud, waste and abuse, briefly?

1015 Mr. {Spiegel.} So we are implementing the new
1016 provisions of the Affordable Care Act that allow us to do a
1017 better job--

1018 Ms. {DeGette.} Okay. What other--Mr. Perez, do you
1019 have an answer? Oh, you are just trying to move the mic.

1020 Mr. {Spiegel.} I mean--

1021 Ms. {DeGette.} What I am saying is, the provisions of
1022 the Affordable Care Act are not the only provisions of law
1023 that help--

1024 Mr. {Spiegel.} Right. That is true.

1025 Ms. {DeGette.} --us to avoid waste, fraud and abuse.
1026 What other provisions in law that may be separate and apart
1027 from the \$7 billion are going to help us avoid fraud, waste
1028 and abuse?

1029 Mr. {Spiegel.} Okay. So in addition to the things that
1030 I was talking about with regard to provider screening, we

1031 have a whole range of activities that we do now and that we
1032 are going to do to oversee proper payments--

1033 Ms. {DeGette.} Okay. If you can supplement your answer
1034 in writing, that would be helpful.

1035 Mr. {Spiegel.} I would be happy to do so.

1036 Ms. {DeGette.} But in essence, what you are saying is,
1037 the \$7 billion is in addition to efforts that are being
1038 currently made?

1039 Mr. {Spiegel.} That is right.

1040 Ms. {DeGette.} Now, Mr. Perez, the efforts that you are
1041 undertaking, those are being undertaken under current law,
1042 right? Because the Affordable Care Act hadn't been
1043 implemented yet, correct?

1044 Mr. {Perez.} Yes, ma'am.

1045 Ms. {DeGette.} Okay. Now, Mr. Spiegel, perhaps you can
1046 talk about the enrollment screening requirements in the
1047 Affordable Care Act. Will they work to prevent enrollment by
1048 fraudulent providers?

1049 Mr. {Spiegel.} Yes.

1050 Ms. {DeGette.} And how are they different than previous
1051 requirements?

1052 Mr. {Spiegel.} Well, the new enrollment screening
1053 provisions allow us to focus on providers based on the risk
1054 that they pose, the risk of fraud that they pose. We have

1055 new and enhanced screening that we would be applying to those
1056 that pose the greatest risk like criminal background checks,
1057 database checks, fingerprinting for those that are posing the
1058 greatest risk. We have new approaches to consolidating our
1059 data and sharing data across Medicare and Medicaid so that
1060 both programs have access to information about, for example,
1061 providers that have been terminated from Medicaid that may be
1062 terminated from Medicare as well and vice versa. The
1063 particular provision that--one of the particular provisions
1064 in the provider screening rule we just published that may
1065 have the most effect is the Secretary's authority to impose
1066 temporary enrollment moratoria when she determines that there
1067 is a need to do that to combat fraud, waste and abuse.

1068 Ms. {DeGette.} Ms. King, do you believe that some of
1069 these new provisions that we have talked about today will add
1070 to our arsenal in being able to target waste, fraud and abuse
1071 and to eliminate it?

1072 Ms. {King.} Yes, we do. We have previously identified
1073 several areas where increased enforcement and action would be
1074 helpful. One of those is enrollment. One is them is in
1075 prepayment edits. One is in postpayment edits, contractor
1076 oversight, and the other is, the last is a robust process for
1077 corrective action, and the Affordable Care Act has provisions
1078 in several of these areas designed to enhance CMS's ability,

1079 and some of the key ones I think are on the enrollment side
1080 because preventing fraud is a lot better and easier than
1081 chasing after it when it has been committed so--

1082 Ms. {DeGette.} Correct, and these are new tools.

1083 Ms. {King.} Yes, they are.

1084 Ms. {DeGette.} But would you agree that some of the
1085 existing tools that CMS has could also be used in a robust
1086 way?

1087 Ms. {King.} Yes. Congress starting in 1997 in HIPAA
1088 created a program, a Medicare integrity program that was
1089 designed to focus on reducing improper payments and fraud and
1090 abuse, and that is what some of these activities that have
1091 been discussed today are funded from--

1092 Ms. {DeGette.} Thank you.

1093 Ms. {King.} --before the Affordable Care Act.

1094 Ms. {DeGette.} I yield back.

1095 Mr. {Stearns.} The gentlelady's time is expired. The
1096 gentleman from Texas, Mr. Barton, is recognized for 5
1097 minutes.

1098 Mr. {Barton.} Well, thank you, Mr. Chairman.

1099 Let us start off by saying that everybody on the dais
1100 here is anti fraud and abuse. John Dingell is anti fraud and
1101 abuse. Jan Schakowsky is anti fraud and abuse. Diana
1102 DeGette is anti fraud and abuse. The chairman is anti fraud

1103 and abuse. All of our freshmen down here in the front row
1104 are anti fraud and abuse on the Republican side. Dr. Murphy
1105 is anti fraud and abuse. I mean, we are all anti fraud and
1106 abuse, so this is not a partisan issue. But we are very
1107 frustrated. I have chaired hearings on this, John Dingell
1108 has chaired hearings on this, Diana DeGette has chaired
1109 hearings on this, Waxman has chaired hearings on this. I
1110 mean, it is so frustrating that we all agree it is a problem,
1111 we all want to solve the problem, and yet we still don't even
1112 know the scope of the problem.

1113 Now, why is that important? I believe that if you don't
1114 know what the problem is, you can't set goals on how to solve
1115 it. So let us say it is a 10 percent problem, which would be
1116 \$80 billion. Maybe a reasonable goal then would be to cut
1117 that by 25 percent in a given year, which would be \$16
1118 billion or \$20 billion. Maybe it is only a \$40 billion a
1119 year. But if you guys can't help us determine what the
1120 problem is, it is hard for us to decide how to set goals to
1121 solve it.

1122 So I am going to go through a series of questions here
1123 and they are kind of sophomore 101 questions, and hopefully
1124 you have got great answers to every one of them. My first
1125 question is--and I am going to ask Mr. Perez because you seem
1126 to be the guy at the table that actually can do something

1127 about it, not just study it or whatever but you can actually
1128 make things happen. Do you have the ability to seize assets
1129 of folks that you arrest and accuse of Medicare and Medicaid
1130 fraud?

1131 Mr. {Perez.} Well, first, Congressman, thank you very
1132 much for the vote of confidence. I certainly appreciate
1133 that. And the department does not have, or OIG does not have
1134 seizure authority but we do work in tandem with the Federal
1135 Bureau of Investigation or other entities that do you have
1136 the seizure authority.

1137 Mr. {Barton.} Does anybody within HHS have the ability
1138 to go out and actually seize physical assets, seize cash,
1139 seize equipment, or do you have to go to the FBI to do that?

1140 Mr. {Perez.} Currently, we have to use the FBI unless
1141 it is a civil proceeding.

1142 Mr. {Barton.} Would you like to have the authority, if
1143 Congress gave you the authority to seize assets?

1144 Mr. {Roy.} Sir, if I could respond to that? We would
1145 be more than happy to have that authority, but you have to
1146 understand that the size of our organization, taking on full
1147 seizure authority entails taking on a tremendous amount of
1148 additional assets to be able to seize that and care for that
1149 property and then liquidate that property. It is a
1150 tremendous undertaking that is probably--

1151 Mr. {Barton.} Right now I just want to know if you want
1152 to have the authority. Mr. Perez seems to think he would
1153 like it. You seem to think it is more trouble than it is
1154 worth.

1155 Mr. {Roy.} Well, Mr. Perez is in lockstep here. We
1156 will take any additional authority that comes our way and
1157 utilize--

1158 Mr. {Barton.} I only have another minute and 25
1159 seconds. Are there currently under existing programs
1160 taxpayer hotlines where people can phone in or mail in or
1161 Internet in tips on people they think are defrauding the
1162 government on billing claims? Do you have that?

1163 Mr. {Roy.} Yes, sir. OIG has 1-800-HHS-TIPS as our
1164 hotline.

1165 Mr. {Barton.} What about my friend here, Mr. Spiegel?
1166 Do you have those hotlines?

1167 Mr. {Spiegel.} We do. We have 1-800-Medicare. We have
1168 special hotlines in south Florida.

1169 Mr. {Barton.} Do you pay bonuses or some sort of a cash
1170 payment if the tip is followed up and actually proves to be
1171 correct?

1172 Mr. {Spiegel.} We have a set of rules around that, and
1173 yes, we have.

1174 Mr. {Barton.} How often is that used?

1175 Mr. {Spiegel.} It depends. Well, there is a number of
1176 criteria that define it. It hasn't been used all that often
1177 but it has been just recently actually.

1178 Mr. {Barton.} Do you have within your agency the
1179 ability to check internally for people that are employees
1180 that are part of scams in terms of credentialing people that
1181 shouldn't be or checking for folks that are paying bills that
1182 they shouldn't pay? Is there an internal ability to check
1183 within the system?

1184 Mr. {Spiegel.} There are. There is a number of
1185 contracting requirements in place to make sure that the
1186 people who actually make decisions on our behalf are
1187 following the rules.

1188 Mr. {Barton.} My last question. If it is not
1189 proprietary, how often does that type of investigation
1190 actually produce fraudulent activity within the system? In
1191 other words, 10 percent of the time that you check?

1192 Mr. {Spiegel.} I don't know the exact number. I would
1193 be glad to get back to you with that, though.

1194 Mr. {Barton.} Okay. Thank you, Mr. Chairman. And I
1195 will have some questions for the record.

1196 Mr. {Stearns.} Thank you, and recognize the chairman
1197 emeritus, Mr. Dingell from Michigan, for 5 minutes.

1198 Mr. {Dingell.} Mr. Chairman, I thank you and commend

1199 for this hearing. It is a very important matter, and I would
1200 note, I was one of the people who went with our very fine
1201 investigators when they were conducting the nine community
1202 raids on these malefactors that we are discussing today, and
1203 I want to commend you down there for the work that you are
1204 doing on this matter. I also want to commend the people from
1205 the Inspector General's Office, from the GAO and our friend,
1206 Dr. Spiegel.

1207 I would like to observe one thing very quickly. No
1208 environmental impact statements are filed by these criminals
1209 and they don't file any 10Ks or 10Qs so we can know what they
1210 are up to, and I want to say, Mr. Chairman, I commend you for
1211 having this hearing because moving this process forward is
1212 extremely important and there is a lot of money in the recent
1213 health care reform legislation which will make available to
1214 us the ability to make significant savings. I am not about
1215 to criticize our witnesses today or anybody else for not
1216 having the cost of these things. These criminals don't
1217 operate by the clear light of day.

1218 These questions are to Dr. Spiegel and to Ms. King. Dr.
1219 Spiegel and Ms. King, do you believe that the new tools
1220 included in the Affordable Care Act will help CMS to meet its
1221 goal? Yes or no.

1222 Ms. {King.} Yes, if they are implemented properly.

1223 Mr. {Spiegel.} Yes.

1224 Mr. {Dingell.} Again, if you please, funding for the
1225 health care fraud and abuse control program includes
1226 mandatory and discretionary funding. It is divided by CMS's
1227 integrity programs and law enforcement programs at the Office
1228 of the Inspector General and DOJ. The President's 2012
1229 discretionary request is \$581 million. If this funding is
1230 not provided, will CMS be able to hire the personnel
1231 necessary to implement the antifraud provisions included in
1232 the Affordable Care Act? Yes or no.

1233 Mr. {Spiegel.} Until we find out exactly how much would
1234 in fact be appropriated, we won't know exactly what we would
1235 be able to do but we know that are limited in our ability to
1236 plan right now.

1237 Mr. {Dingell.} If you don't get the money, you can't
1238 plan and you can't hire--

1239 Mr. {Spiegel.} And we wouldn't be able to--

1240 Mr. {Dingell.} --people to support the program work?

1241 Mr. {Spiegel.} We would have to ratchet back.

1242 Mr. {Dingell.} All right. Now, the Affordable Care Act
1243 requires high-risk providers and suppliers who want to enroll
1244 in Medicare, Medicaid CHIP to undergo a higher level of
1245 screening. This increases scrutiny will be critical in
1246 rooting out fraud, waste and abuse in susceptible programs.

1247 If the requested discretionary funding is not provided, will
1248 CMS be able to fully implement and utilize enhanced
1249 screening? Yes or no.

1250 Mr. {Spiegel.} Again, it would depend on the levels of
1251 funding that ended up--

1252 Mr. {Dingell.} The simple fact of the matter is, if you
1253 don't get that, you aren't going to be able to move forward.
1254 You aren't going to be able to move forward until you know
1255 that you are going to get it, and until you get it, you
1256 aren't going to be able to do the hiring and the other things
1257 that are necessary to bring your enforcement program up to
1258 date. Isn't that right?

1259 Mr. {Spiegel.} It would have a severe effect on that,
1260 yes.

1261 Mr. {Dingell.} Very good. Now, again, Dr. Spiegel, the
1262 Affordable Care Act requires data sharing among federal
1263 agencies to monitor and assess risk levels in program areas
1264 that improve identification of fraud. If the requested
1265 discretionary funding is not provided, will CMS be able to
1266 implement full data-sharing technology needed to coordinate
1267 monitoring and identifying sources of fraud across the
1268 federal agencies? Yes or no.

1269 Mr. {Spiegel.} No.

1270 Mr. {Dingell.} Now, again, Doctor, the goal of the

1271 antifraud provisions in the Affordable Care Act is to move
1272 CMS away from that wonderful practice of ``pay and chase''
1273 and preventing improper payments from happening in the
1274 beginning. While some improper payments may be due to honest
1275 mistakes, many, many criminals have made Medicare and
1276 Medicaid their targets and also the other programs of this
1277 character. CMS has already begun testing risk-scoring
1278 technology to predict and prevent fraud. If the requested
1279 discretionary funding is not provided, will CMS be able to
1280 fully test and pursue the technology? Yes or no.

1281 Mr. {Spiegel.} No.

1282 Mr. {Dingell.} This to Deputy Inspector General Roy.
1283 This last summer, as I had mentioned, I was fortunate enough
1284 to attend a ride-along with the Detroit Medicare's fraud
1285 strike force. That is nine communities. And I saw some of
1286 the most extraordinary practices by the criminals in making
1287 money at the expense of Medicare that you could ever believe
1288 possible. And so as the first Member to ever join Medicare
1289 strike force on a ride-along, I have enormous respect for the
1290 fine work that the strike forces are doing. They have the
1291 difficult task of not only rooting out fraud in our health
1292 system but protecting our neediest populations, the poor, the
1293 elderly and the sick, from the criminals seeking to make
1294 money from the most vulnerable. Do you believe that the

1295 Medicare strike forces have the staffing resources they need
1296 to be effective? Yes or no.

1297 Mr. {Roy.} Yes, I do.

1298 Mr. {Dingell.} You believe they do now?

1299 Mr. {Roy.} Sir, right now in the cities we are
1300 operating, yes. If we want to expand, I will need additional
1301 funding.

1302 Mr. {Dingell.} So your answer is that they don't have
1303 the resources and you are hoping to get them. Is that right?

1304 Mr. {Roy.} Absolutely.

1305 Mr. {Dingell.} Now, do you agree on that, Ms. King?

1306 Ms. {King.} I don't have the basis of evidence to
1307 answer that question.

1308 Mr. {Dingell.} Any other witness like to make a comment
1309 on that? Very well.

1310 This goes to you again, Inspector General Roy. If the
1311 requested discretionary funding for the health care fraud and
1312 abuse control program is not provided, will the health care
1313 fraud prevention and enforcement action team be able to
1314 expand the Medicare strike force? Yes or no.

1315 Mr. {Roy.} No, sir.

1316 Mr. {Dingell.} All right. Now, I guess that completes
1317 my time and I thank you for your kindness and generosity, Mr.
1318 Chairman.

1319 Mr. {Stearns.} I thank the gentleman.

1320 Mr. Burgess, the gentleman from Texas, is recognized for
1321 5 minutes.

1322 Dr. {Burgess.} Thank you, Mr. Chairman.

1323 Mr. Spiegel, so I don't get lost in all the numbers that
1324 we are hearing this morning, let me walk through some things
1325 and you tell me if the thinking is generally correct. Now,
1326 if I understand correctly, the Congressional Budget Office
1327 score for the entirety of the Patient Protection and
1328 Affordable Care Act that the provisions in that act would
1329 save about \$8 billion over the 10-year budgetary cycle. Is
1330 that correct?

1331 Mr. {Spiegel.} That is my understanding.

1332 Dr. {Burgess.} And the HHS estimate of the error rate
1333 in the payments, the payment error rate, is just under 10
1334 percent at 9.4 percent a year. Is that correct?

1335 Mr. {Spiegel.} Yes.

1336 Dr. {Burgess.} Now, Medicaid expenditures are going to
1337 increase of necessity under the Patient Protection and
1338 Affordable Care Act. The number I calculate for that is
1339 about \$430 billion over 10 years. Does that sound about
1340 right?

1341 Mr. {Spiegel.} I am not an expert on that Medicaid
1342 budget.

1343 Dr. {Burgess.} Does GAO have an opinion on the amount
1344 that we are going to spend additionally in Medicaid over the
1345 life cycle of the 10-year budgetary window?

1346 Ms. {King.} I actually don't have that number off the
1347 top, either.

1348 Dr. {Burgess.} Well, it is--

1349 Ms. {King.} But it certainly--

1350 Dr. {Burgess.} --a part of the GAO report that we have
1351 that the cost of Medicaid expansion is estimated to exceed
1352 \$430 billion over the next 10 years. So I am going to assume
1353 the answer from GAO is yes.

1354 So just in Medicaid, just in the expansion of the
1355 Medicaid system that we are doing, we have an error rate that
1356 will lose \$43 billion over the 10-year budgetary cycle but we
1357 have safeguards in the act that are going to save us \$8
1358 billion, so we are not netting out very much in that
1359 exchange, are we? And that is your division of CMS, right?
1360 I mean, that is what you are going to fix, right?

1361 Mr. {Spiegel.} I am in the Medicare Program Integrity
1362 Group, and yes, we are focused keenly on preventing fraud,
1363 waste and abuse in our program.

1364 Dr. {Burgess.} But in fact, the numbers just don't add
1365 up. I mean, this is going to cost us a tremendous--I am all
1366 for the antifraud provisions that are in the Patient

1367 Protection and Affordable Care Act but there is no way in the
1368 world they are going to pay for the expansion that is
1369 occurring even just in the Medicaid part of this, let alone
1370 other areas.

1371 In my area in Dallas-Fort Worth, we have got a very
1372 aggressive--Mr. Roy and Mr. Perez, I am basically directing
1373 this question to you. We have got a very aggressive
1374 investigative reporter. She is very, very good. Becky
1375 Oliver is her name, and you just never know when she is going
1376 to walk up behind you and put a microphone 2 centimeters away
1377 from your face and ask a very, very tough question, and most
1378 of those tough questions have to do with Medicare and
1379 Medicaid fraud, and I referenced some of that in my opening
1380 statement. It almost seems as if organized crime and
1381 organizations from outside the continental United States,
1382 offshore organizations, are getting involved. This business
1383 is so lucrative and so easy and the risks are so slight that
1384 they are really going after this money aggressively. And she
1385 was the one that pointed out to me that there was a Nigerian
1386 national who had several home health agencies opened under
1387 various provider numbers and a single post office box. I
1388 guess she wants to be cost-effective so she wasn't spending
1389 much on overhead, a single post office box, and yet after one
1390 of our provider numbers was busted, CMS keeps sending

1391 payments to the same post office box. I mean, you say you
1392 are doing stuff with the electronics and getting better at
1393 this, but oh, my God, that is the sort of stuff, the American
1394 people look at and they just don't understand. Is there a
1395 way to get at that?

1396 Mr. {Roy.} Well, first and foremost, that is the
1397 scheme, to have multiple provider numbers and set those up.

1398 Dr. {Burgess.} So you know that, right?

1399 Mr. {Roy.} Yes, sir. We are addressing it. In your
1400 city of Dallas, that is our brand-new strike force city and
1401 we are bringing the resources to there to adopt that model to
1402 address this issue.

1403 Dr. {Burgess.} I am going to run out of time. I
1404 referenced in my opening statement about the prosecutorial
1405 force. You guys are doing the job we asked you to do and we
1406 are grateful for that, but when you bring these folks to
1407 light, are we able to actually get justice on these criminals
1408 or do they end up back out on the street to sin again?

1409 Mr. {Roy.} Now more than ever, I am seeing sentences
1410 and people go to jail that is more than I have seen before in
1411 the past. People are being prosecuted. They are going to
1412 federal prison for stealing from Medicare.

1413 Dr. {Burgess.} How comfortable are you with the
1414 prosecutorial manpower, the strength of the prosecutorial

1415 force that is available to prosecute this?

1416 Mr. {Roy.} Getting better all of the time. In your
1417 particular city, the resources coming from the Department of
1418 Justice are some of the best health care fraud prosecutors in
1419 our country.

1420 Dr. {Burgess.} Well, I appreciate that, and of course,
1421 I have had several meetings with HHS and the Department of
1422 Justice on this issue after being asked the tough questions
1423 by Becky Oliver, so I credit her with having put some
1424 pressure on that, but I have to tell you, we have got to do a
1425 lot more in this. It is going to overwhelm the system.

1426 Thank you, Mr. Chairman. I will yield back.

1427 Mr. {Stearns.} I thank the gentleman.

1428 Ms. Schakowsky from Illinois is recognized for 5
1429 minutes.

1430 Ms. {Schakowsky.} Thank you.

1431 Do you have a strike force in Chicago, Mr. Roy?

1432 Mr. {Roy.} Yes, ma'am, we do.

1433 Ms. {Schakowsky.} Can I go on a ride-along?

1434 Mr. {Roy.} Yes, ma'am, you can.

1435 Ms. {Schakowsky.} Thank you. The Affordable Care Act
1436 increased mandatory funding for the health care fraud and
1437 abuse control fund by about \$350 million, and indexed funding
1438 for the health care fraud and abuse control fund and the

1439 Medicare and Medicaid integrity programs to make sure that
1440 funds keep up with inflammation. Overall funding to fight
1441 fraud will increase by about \$500 million over the next 5
1442 years. The House Republicans voted to repeal the health care
1443 reform bill, and that would cut off the funds the law
1444 provided for antifraud activities, so I do want to ask you,
1445 Mr. Roy, could you describe the impact of cutting off this
1446 funding and what it would do to antifraud initiatives that
1447 the Administration is implementing under the Affordable Care
1448 Act?

1449 Mr. {Roy.} Well, right now, as I stated, from the
1450 perspective of strike force, we were in nine cities. I would
1451 ultimately like to expand that using data to justify and find
1452 our hotspots. I will say without additional funding at this
1453 point in time, I don't think I am going to be in a position
1454 to open up additional strike force locations. I need the
1455 resources. I need the additional bodies to put in fraud
1456 hotspots across the country.

1457 Ms. {Schakowsky.} Thank you.

1458 Mr. Spiegel, would you want to answer that?

1459 Mr. {Spiegel.} Sure. I mean, we had planned to expand
1460 the strike force locations from where they were to a total of
1461 20 because they are so effective in what they do, and we are
1462 obviously not going to be able to go there with the adequate

1463 resources to do that.

1464 Ms. {Schakowsky.} Thank you.

1465 Ms. King, the Affordable Care Act includes provisions to
1466 provide more transparency in nursing home ownership and
1467 operating structures and to require training, compliance and
1468 ethics. Ensuring that we have complete and accurate
1469 information on ownership allows not just more transparency
1470 but provides tools to allow regulators to hold any wrongdoers
1471 accountable. How important is it to have this data, in your
1472 view, or in GAO's view?

1473 Ms. {King.} I think that we believe it is always
1474 important to have good data about the people who are
1475 participating in the program so that you can track what is
1476 going on.

1477 Ms. {Schakowsky.} Mr. Roy, you had mentioned the
1478 importance in your written testimony, I didn't hear it orally
1479 necessarily but of whistleblowers in identifying possible
1480 wrongdoing. Last month, a Florida long-term-care ombudsman
1481 asked for information on nursing home structure, the same
1482 information that will be required in the Affordable Care Act,
1483 and was subsequently fired by Governor Scott. Without
1484 getting into the specifics of the case, do we need to provide
1485 whistleblower protections for long-term-care ombudsmen and
1486 others who seek information about fraud and abuse? And in

1487 the nursing home area, do we need to look at special
1488 protections for long-term-care ombudsmen?

1489 Mr. {Roy.} I am certainly in favor of some type of
1490 protection for all our whistleblowers. I am not familiar too
1491 in-depth with the matter you are speaking about.

1492 Ms. {Schakowsky.} Mr. Perez, are you, being in Florida
1493 now?

1494 Mr. {Perez.} No, ma'am.

1495 Ms. {Schakowsky.} And so the protection for
1496 whistleblowers, is that an important source for you?

1497 Mr. {Roy.} It is, specifically with corporate fraud.
1498 Whistleblowers often file what we refer to as qui tam
1499 lawsuits, which are lawsuits on behalf of the Federal
1500 Government. They are usually corporate insiders with in-
1501 depth knowledge of corporate fraud. From a corporate
1502 standpoint, they are essential to our work.

1503 Ms. {Schakowsky.} And do we have those protections in
1504 the new act? Are we going to do better to make sure we
1505 protect those people?

1506 Mr. {Roy.} In the new act, I do not--I am not familiar
1507 with anything that would point toward whistleblower
1508 protection but I am certainly not an expert on everything in
1509 that Affordable Care Act.

1510 Ms. {Schakowsky.} Okay. Thank you very much. I yield

1511 back.

1512 Mr. {Stearns.} The gentleman from Nebraska, Mr. Terry,
1513 is recognized for 5 minutes.

1514 Mr. {Terry.} Thank you, Mr. Chairman.

1515 I like the strike force, or HEAT. It seems to be a
1516 common theme on both sides of the aisle probably because it
1517 is positive news of success. I am trying to get my arms
1518 around what resources CMS has right now to fight fraud and
1519 abuse. Under the PPACA, I understand there will be an
1520 additional \$35 million per year, as Dr. Burgess said, that
1521 won't even come close to what will fraud and abuse from the
1522 expansion of Medicare, but that is the CBO number. I don't
1523 know what the base is right now. What does CMS set aside per
1524 year for investigating and prosecuting fraud and abuse? Do
1525 you know that number?

1526 Mr. {Spiegel.} I don't know right offhand but the
1527 investigating and the prosecuting takes place to my right.

1528 Mr. {Terry.} All right.

1529 Mr. {Spiegel.} But the identification and the looking
1530 for in dealing with the improper payments and fraud at the
1531 front end would be us, and it is--

1532 Mr. {Terry.} Will you please provide that number to the
1533 committee, please?

1534 Mr. {Spiegel.} Yes.

1535 Mr. {Terry.} And why I wanted that is so I can get a
1536 picture of what percentage of your budget is being used for
1537 policing purposes, and then I would like the opportunity to
1538 compare that to private sector health insurance who seems to
1539 be able to do a lot better job in weeding out and finding
1540 insurance fraud and abuse and what they spend in policing. I
1541 think that is a good opportunity to figure out if you have
1542 enough resources or not. Obviously I would say you don't
1543 have enough resources.

1544 Mr. {Spiegel.} Well, one of the things about the way
1545 the private sector does things versus the way we do it is,
1546 they have different--

1547 Mr. {Terry.} I didn't ask that, and I only have 2
1548 minutes.

1549 Mr. {Spiegel.} Sorry.

1550 Mr. {Terry.} But I am curious about it.

1551 Let me talk to Mr. Roy. With your strike forces and the
1552 work with Justice in being able to prosecute these, if you
1553 had the perfect world and Congress came to you and CMS came
1554 to you and said what do you need to get \$50 billion a year
1555 recovered, what would you need?

1556 Mr. {Roy.} It would have to be a joint effort between
1557 us and Department of Justice. I can hire as many agents as
1558 possible to address the fraud but I also need prosecutors to

1559 prosecute that case. The perfect world is that we utilize
1560 the models we are using now, looking at data to find these
1561 hotspots and then have the ability to put agents in those
1562 particular hotspots and the prosecutors to prosecute the
1563 cases as well.

1564 Mr. {Terry.} Would you be able to provide us
1565 information if we set a goal of \$50 billion per year? And by
1566 the way, I think it was the testimony, I don't know if it was
1567 you or Mr. Perez said you already have 300 agents working in
1568 HEAT and these strike forces.

1569 Mr. {Roy.} That was just the agents--I do not have 300
1570 agents assigned to strike force locations. When we did that
1571 operation 2 weeks ago, I took 300 out of my 420-plus agents
1572 and detailed them if they weren't already on the ground to
1573 the cities where we had strike force operations take place.

1574 Mr. {Terry.} Can I assume that not all 420 of your
1575 agents are dedicated to fighting CMS fraud and abuse?

1576 Mr. {Roy.} That is correct, sir. Eighty percent of our
1577 time is spent in the realm of health care fraud but we over
1578 see the 300-plus programs of the department, and I am
1579 certainly engaged in oversight activities, criminal
1580 activities in those other departments as well.

1581 Mr. {Terry.} Mr. Perez, being on the streets and
1582 getting information, it sounds like fighting drug

1583 distribution on the streets. What do we need in communities
1584 and on the streets to be able to obtain this? The gentlelady
1585 from Illinois mentioned whistleblowers. I think that is
1586 probably an important part of this. How much of it, and how
1587 much of it comes from just hearing on the street?

1588 Mr. {Perez.} I unable to quantify exactly how much we
1589 get from the street but I think one of the things, to
1590 underline your question or at least answer it, is one of the
1591 things that I think we would like to see in the field, at
1592 least as agents, are two things, one, an ability to access
1593 the claims data directly, in other words, be able to have--
1594 sit outside of a business who we believe fits all the mold of
1595 a fraudulently run company and actually open up a laptop, log
1596 on and actually to be able to see whether or not a claim is
1597 being submitted by that company now, whether or not there are
1598 any payments that are on the payment floor, if they have
1599 already submitted claims, and we can make phone calls and
1600 actually start doing the investigation from right outside of
1601 the parking lot. That would be helpful.

1602 Mr. {Terry.} And that is not available to you today?

1603 Mr. {Perez.} Not today.

1604 Mr. {Terry.} Thank you.

1605 Mr. {Stearns.} The gentleman from Texas, Mr. Gonzalez,
1606 is recognized for 5 minutes.

1607 Mr. {Gonzalez.} Thank you very much, Mr. Chairman.

1608 My question will be to Mr. Spiegel and Mr. Roy. I am
1609 trying to get at percentages of fraud. I know GAO did a
1610 study on Medicare and CMS estimated that it could be as much
1611 as \$48 billion in improper payments. What I don't follow
1612 here is equating fraud, waste and abuse with improper
1613 payment.

1614 Mr. {Stearns.} Does the gentleman have your speaker on?

1615 Mr. {Gonzalez.} Thank you very much, Mr. Chairman.

1616 I do not want to equate fraud, waste and abuse to
1617 improper payment, which may be a billing error or a good-
1618 faith mistake. So can you, taking that into consideration,
1619 and I think that Dr. Burgess asked if it was an accurate--I
1620 think he quoted a percentage of 10 percent of payments on
1621 Medicaid can be attributed to fraud, but that wouldn't be
1622 accurate. Is that correct? I think it was Mr. Roy or Mr.
1623 Spiegel may have responded to Dr. Burgess's question.

1624 Mr. {Spiegel.} That is--what you said is accurate. It
1625 is not fraud, it is improper payments, and it is important to
1626 make that distinction as we try and calculate what the
1627 elusive number is that everybody is going after. Some of the
1628 numbers tend to have a lot of improper payments or just
1629 billing errors or things that aren't anything more than a
1630 mistake included in them. They are not fraudulent. And so

1631 we are reluctant to say things like that but the Medicaid
1632 number is improper payments.

1633 Mr. {Gonzalez.} Mr. Roy, obviously you are not going to
1634 go and prosecute and seek some sort of legal action against
1635 someone that it is a good-faith mistake yet that number is
1636 going to be taken into consideration when we are trying to
1637 look at payments, overpayments and so on. What I am saying
1638 is, it is not all criminal activity so that when you take Jan
1639 out there in your car and you are making all the big busts,
1640 you are not going to be going to providers that have simply
1641 made a good-faith mistake on a billing statement?

1642 Mr. {Roy.} That is correct, sir. In the strike force
1643 model for the most part, these providers that we are going
1644 after are involved in almost 100 if not 100 percent fraud.

1645 Mr. {Gonzalez.} But you have limited resources, and I
1646 understand that, and you are going after the truth wrongdoers
1647 and such, because I think there are some participants out
1648 there that make good-faith mistakes. I don't want to make
1649 excuses for anybody out there that is billing the government
1650 again fraudulently and so on and no one is for that, and my
1651 colleague from Texas, Mr. Barton, pointed that out.

1652 What about the private sector? Let me ask Mr. Roy and
1653 even Ms. King, has there ever been a comparison--or Mr.
1654 Spiegel--as far as what is happening when it comes to fraud,

1655 waste and abuse with the private sector? What is the
1656 percentage there that is being suffered as a result of the
1657 same actors or similar actions by individuals that are
1658 defrauding obviously the private sector? Do we have numbers
1659 there. Is there a percentage that we can estimate,
1660 guesstimate as to how much is the private sector suffering as
1661 a result of fraud or criminal activity?

1662 Ms. {King.} To my knowledge, there is not a number out
1663 there about that and one of the difficulties I think on fraud
1664 is that you don't know what you don't know, and part of the
1665 reason I think that Medicare doesn't know the number about
1666 fraud or we don't know about that, if someone does something
1667 fraudulently, for example, they submit a claim on behalf of a
1668 beneficiary who is deceased or they buy a beneficiary's
1669 number and they submit a clean claim, that claim is paid and
1670 that is not going to show up as fraud or improper payments
1671 because it slipped through the system, so that is part of the
1672 difficulty about estimating a number on fraud.

1673 Mr. {Gonzalez.} And I appreciate that. Whether it is
1674 in the private sector or public sector, you are still faced
1675 with the same dilemma, and I think that is important to point
1676 out rather than saying that this is something distinct and
1677 unique to Medicaid or to Medicare.

1678 Mr. Roy, I am just curious, and I have got about 32

1679 seconds but quickly, what is the State's obligation when it
1680 comes to Medicaid fraud? Because we had an incident in
1681 Texas, I don't know if you are familiar, that the governor
1682 did relieve the doctor that basically was managing or the
1683 head of looking at the Medicaid contracts with providers as
1684 well as the attorney that was charged with prosecuting. Are
1685 you familiar with that case?

1686 Mr. {Roy.} No, sir. I believe this might be a question
1687 that is probably better posed to Mr. Spiegel than myself.

1688 Mr. {Gonzalez.} Mr. Spiegel, what is the role of the
1689 State governments?

1690 Mr. {Spiegel.} Well, the State government has a
1691 responsibility to have fraud control, a Medicaid fraud
1692 control unit, and they do and they look at instances where
1693 they can take action to both identify and prevent fraud.
1694 There is data systems in place in most--and again, I am not
1695 an expert on this but there are data systems in place in most
1696 all State Medicaid programs that allow a fairly robust
1697 analysis of things that appear to be aberrant or improper.
1698 They have--

1699 Mr. {Gonzalez.} You can complete your answer, Mr.
1700 Spiegel.

1701 Mr. {Spiegel.} Sorry. That are similar to the way we
1702 do things in Medicare where they make sure that they are

1703 paying for people who are properly enrolled in Medicaid in a
1704 proper amount for a provider that is eligible to provide the
1705 service.

1706 Mr. {Gonzalez.} Thank you, Mr. Spiegel. So that is a
1707 shared responsibility then?

1708 Mr. {Spiegel.} Yes.

1709 Mr. {Gonzalez.} Thank you.

1710 Mr. Chairman, thank you for your indulgence.

1711 Mr. {Stearns.} Thank you.

1712 Mr. Gingrey from Georgia is recognized for 5 minutes.

1713 Dr. {Gingrey.} Mr. Chairman, thank you.

1714 I want to go back to Ms. King in a follow-up on the
1715 question that Mr. Gonzalez from Texas just asked you, because
1716 I think it is a real important, pertinent question. Ms.
1717 King, you are director of the Health Care Division of GAO and
1718 if you don't have this information here today, you ought to
1719 be able to get it for the committee, and the question that he
1720 asked in regard to comparing the amount of waste, fraud and
1721 abuse in the private sector versus the government sector, and
1722 primarily we are discussing Medicare and Medicaid, I think is
1723 of paramount importance and I want, Mr. Chairman, to ask Ms.
1724 King, maybe she can answer that right now and I will gladly
1725 give you the opportunity to do so.

1726 Ms. {King.} You know, we would be happy to look into it

1727 and see if we could get an answer to it, but as a practical
1728 matter, we don't have a right of information from the private
1729 sector so we would have to ask them to provide that
1730 information to us as opposed to on the government side where
1731 we have a right to information.

1732 Dr. {Gingrey.} Well, yes, and I appreciate that and
1733 certainly I think that you ought to use every tool that you
1734 do have available to get that information because quite
1735 honestly, a lot of us feel that the big government and the
1736 bigger it gets, the more expansive it gets, and 15 million
1737 additional people on the Medicaid program and we have got 47
1738 million now on the Medicare program of aged and disabled, and
1739 that number is just going to grow as all the Baby Boomers are
1740 maturing, and, you know, you expand this Obamacare program,
1741 another entitlement program, in fact.

1742 Let me ask you a specific question about that. On July
1743 30, 2009, President Obama stated that his health plan--that
1744 is why I refer to it as Obamacare--was funded by eliminating
1745 the waste that is being paid out of the Medicare trust fund,
1746 and then on September 10, 2009, Speaker Pelosi said that
1747 Congress will pay for half of Obamacare, \$500 billion, by
1748 squeezing Medicare and Medicaid to wring out the waste, fraud
1749 and abuse, and I will ask you, Mr. Spiegel, as well, was
1750 cutting \$137 billion out of the Medicare Advantage program in

1751 any way, shape or form cutting out waste, fraud or abuse?

1752 Ms. {King.} I don't have the exact numbers off the top
1753 of my head but we in MedPAC have done work that has shown
1754 that payments to Medicare Advantage plans are higher than
1755 those that are made in fee for service.

1756 Dr. {Gingrey.} Well, Ms. King we know that. We
1757 understand that. It is 112 percent. That is not an
1758 arguable--the point is, you overpaid them. That is not
1759 waste, fraud and abuse. It may be waste but it is certainly
1760 not fraud and abuse.

1761 Ms. {King.} It is not fraud and abuse but it could be
1762 considered waste by some.

1763 Dr. {Gingrey.} Mr. Spiegel, any comment on that?

1764 Mr. {Spiegel.} I am just trying to identify and prevent
1765 fraud in my job. You know, to respond to the questions
1766 about--

1767 Dr. {Gingrey.} You are going too slow for me. I am
1768 going to give you a pass.

1769 Let me go to Mr. Perez and Mr. Roy. Can you tell us
1770 what you are seeing in terms of organized crime involvement
1771 in Medicare and Medicaid fraud? That poster over there, I
1772 keep looking at it. It looks like Murderers Row. But you
1773 know, what is going on in Miami and is organized crime
1774 involved heavily in Medicare and Medicaid fraud and abuse,

1775 and why?

1776 Mr. {Roy.} I will answer the first portion of that
1777 question about the overall scope of organized crime because
1778 it is geographical in nature. For instance, in the Los
1779 Angeles area you are seeing very organized criminal
1780 structures, in essence Eurasian organized crime entities
1781 heavily involved in Medicare fraud. They are involved in
1782 many street-level crimes as well. They are also involved in
1783 things such as credit card fraud and identity theft but what
1784 we are seeing is that in order to get to the upper echelons
1785 of these organized criminal elements, you have to go through
1786 health care fraud. That is where they make their money and
1787 that is different from what we would in Texas and in Miami,
1788 and with respect to what we see in Miami, I will turn that
1789 over to ASAC Perez and he will give you an idea of what is
1790 going on there.

1791 Dr. {Gingrey.} Mr. Perez, thank you.

1792 Mr. {Perez.} Thank you for the question. A lot of the
1793 things that we are seeing are a group or groups of individual
1794 that have tiers underneath them and for all intents and
1795 purposes there is even another subset of cells that work
1796 underneath that second tier and one cell won't necessarily
1797 know what the other cell is doing but they all kind of report
1798 to the same few folks in the top.

1799 Dr. {Gingrey.} I see my time has expired, Mr. Chairman,
1800 and thank you, panelists, for your response, and I yield
1801 back.

1802 Mr. {Stearns.} I thank the gentleman.

1803 Mr. Scalise, the gentleman is recognized for 5 minutes.

1804 Mr. {Scalise.} Thank you, Mr. Chairman. I appreciate
1805 the panelists for coming.

1806 We are talking about waste, fraud and abuse. I want to
1807 first go back to something I saw in our State and ask you to
1808 comment on some of the things that we saw and how it is being
1809 dealt with at the federal level. In 1996 when I started in
1810 our State legislature, our governor appointed a 24-year-old
1811 to run our health department. At the time it was the largest
1812 department in State government, and there was a lot of waste,
1813 fraud and abuse and the governor made it a priority. And we
1814 talk about zero tolerance against waste, fraud and abuse, it
1815 is an attitude. It can't just be rhetoric. It has got to be
1816 followed by real action. And so the governor set out on a
1817 mission to root out that waste, fraud and abuse. He
1818 appointed, as I said, back in 1996 a 24-year-old to run that
1819 department and to go and seek it out, and in fact, that new
1820 head of our department was very aggressive. People went to
1821 jail. They shut down programs. There were Medicare mills, a
1822 lot of things that were going on that got rooted out. We cut

1823 out almost a billion dollars in waste, fraud and abuse in our
1824 department. I say that to make a point, that person that 24
1825 years old at the time is now called the Governor Bobby
1826 Jindal. He is now the governor of our State, but he was very
1827 aggressive then as the head of our Department of Health and
1828 Hospitals in rooting out that waste, fraud and abuse and he
1829 is still aggressive today.

1830 I want to know, what coordination do you all have with
1831 our governors who are aggressive in rooting out whether you
1832 find Medicare fraud or Medicaid fraud, if you are finding
1833 Medicare care by a provider that is maybe doing business in
1834 other States and Medicaid, how do you coordinate those things
1835 with the States who are specifically dealing with Medicaid
1836 because they do have real jurisdiction there? I will you all
1837 kind of down the list. Ms. King.

1838 Ms. {King.} There is one provision in the Affordable
1839 Care Act that gives CMS the authority to revoke Medicare
1840 enrollment if Medicaid enrollment has been revoked in a
1841 State, so if someone is a bad actor in Medicaid and they are
1842 excluded from Medicaid, Medicare can follow the lead on that,
1843 and that is a new authority.

1844 Mr. {Spiegel.} And that is addressed in our most
1845 recently published final rule with the new screening
1846 authorities.

1847 Mr. {Scalise.} Do you coordinate with the governors
1848 when you do find--let's say you find Medicare fraud or even,
1849 you are working on Medicaid fraud, are you all coordinating
1850 with those governors in those States who maybe have some
1851 enforcement that they are trying to do as well?

1852 Mr. {Roy.} Sir, from a law enforcement perspective, we
1853 are working very closely with our Medicaid fraud control
1854 units, which obviously the governor, that would be their
1855 representative from a fraud level. We are doing great work
1856 there. Over the last 3 years we have probably increased our
1857 joint cases with the Medicaid fraud control units by upwards
1858 of 25 percent.

1859 Mr. {Scalise.} Thanks. And I need to move because we
1860 are limited on time. I apologize.

1861 One of the components we really haven't talked about a
1862 lot is the waste component of waste, fraud and abuse, and you
1863 know, when you talk to doctors, and I have talked to a lot of
1864 doctors, especially over the last few years since I have been
1865 in Congress and we have been working on ways to actually
1866 reform health care as opposed to what I think President Obama
1867 did, doctors will tell you the biggest area of, you can call
1868 it waste--I would--the biggest area of work that they do that
1869 doesn't really relate to improving patients' health but it is
1870 defensive medicine. They run tests that everybody knows they

1871 don't have to run but they do it because they are afraid of
1872 frivolous lawsuits. In many cases they have had to fight
1873 frivolous lawsuits but it costs them a lot of money so it is
1874 just something that every doctor will tell you they do. Do
1875 you all consider--first of all, do you all consider defensive
1876 medicine to be part of waste in the definition that we are
1877 discussing today, Ms. King? Yes or no.

1878 Ms. {King.} I don't know. I don't honestly know the
1879 answer.

1880 Mr. {Scalise.} Have you done any kind of research to
1881 know how much this does cost?

1882 Ms. {King.} Defensive medicine? We have not done any
1883 direct work on that.

1884 Mr. {Scalise.} Mr. Roy or Mr. Perez?

1885 Mr. {Roy.} I don't have a direct comment to that but I
1886 want to say that we are putting people in jail that are
1887 committing fraud, not necessarily involved in--

1888 Mr. {Scalise.} Mr. Spiegel?

1889 Mr. {Spiegel.} I don't know the answer to that.

1890 Mr. {Scalise.} I can't believe that, you know,
1891 especially Mr. Spiegel and Ms. King, would say that you don't
1892 know the answer to what doctors will tell you is the biggest
1893 area of unnecessary spending but something they have to do
1894 because they will get sued if they don't run the test but

1895 they will tell you probably a third of those tests are done
1896 not because they think it is in the best decision for care of
1897 the patient but because they are afraid of getting frivolous
1898 lawsuits, and in fact, the President's bill does absolutely
1899 nothing to address that problem, and doctors will tell you
1900 that people in the medical profession across the board will
1901 tell you that topic was completely ignored, the topic that
1902 doctors will tell you is probably the biggest cause of waste
1903 in health care. And so when we talk about adding another 20
1904 million onto the Medicaid rolls, at least, I would hope you
1905 all would go back and look at just how much more we are going
1906 to waste in making these doctors run these tests, because in
1907 our bill, in our real reform bill after we have done repeal,
1908 we are including medical liability reform where you get
1909 dramatic savings in waste in health care. But I would ask if
1910 both Ms. King and Mr. Spiegel would go back and include
1911 defensive medicine and come back to us with some real costs.
1912 Will you get the committee that information on what you
1913 estimate are the costs that it adds to the system to have
1914 these defensive medicine practices that weren't addressed in
1915 the President's bill?

1916 Ms. {King.} We can certainly look into it. I think it
1917 is a difficult question because what someone considers
1918 defensive medicine may be, you know, an unnecessary test on

1919 someone's part--

1920 Mr. {Scalise.} But you can estimate the cost of that?

1921 Ms. {King.} Well, there is a lot of variability in how
1922 physicians practice medicine.

1923 Mr. {Scalise.} As there is with anything that you give
1924 estimates on.

1925 Mr. Spiegel?

1926 Mr. {Spiegel.} I mean, I would say the same thing Ms.
1927 King said. We could look into it but the definitions of what
1928 falls into the category that you are trying to get a handle
1929 on vary, depending upon to whom you are speaking.

1930 Mr. {Scalise.} Thank you. I yield back.

1931 Mr. {Stearns.} The gentleman's time has expired.

1932 Mr. Griffith from Virginia is recognized for 5 minutes.

1933 Mr. {Griffith.} Mr. Spiegel, how many claims does CMS
1934 get a day? Do you know?

1935 Mr. {Spiegel.} I don't.

1936 Mr. {Griffith.} But it would be millions, would it not?

1937 Mr. {Spiegel.} It would.

1938 Mr. {Griffith.} And do you have any idea what
1939 percentage of them you are able to review before payment is
1940 made?

1941 Mr. {Spiegel.} Well, we do a substantial amount of
1942 review on virtually all of them before they get paid.

1943 Mr. {Griffith.} And I saw somewhere, I know that there
1944 was some testimony earlier that there was some indication
1945 that we didn't really know what the private sector's rate was
1946 but I had seen somewhere or have information that their rate
1947 is about 1-1/2 percent lost to fraud, and I am just wondering
1948 if you have seen that, A, and B, if you have studied what the
1949 private sector is doing to eliminate fraud so you could see
1950 maybe if there are better ways for eliminating or preventing
1951 Medicare fraud.

1952 Mr. {Spiegel.} Sure. I have seen some numbers for the
1953 private sector, and we did look into what it is about them
1954 that makes them different from us in the way they approach
1955 this. So in the private sector, they have a different
1956 approach to how they deal with approval of services that we
1957 don't do in Medicare because we are designed as a program to
1958 get beneficiaries needed services and not to impose
1959 restrictions at the point of service. But private insurance
1960 can have prior authorization for a whole range of things that
1961 we don't, and so they can eliminate things that may have an
1962 impact on someone's need for services or at least impose a
1963 barrier there that we don't operate that way.

1964 Mr. {Griffith.} Since there appears to be some intent
1965 to pay for all of this new health care by getting rid of this
1966 fraud, have you all considered going to a preapproval

1967 process?

1968 Mr. {Spiegel.} Well, we have had discussions about that
1969 among ourselves but right now it is not consistent with I
1970 guess our statutory authorities to be doing that.

1971 Mr. {Griffith.} And let me switch--

1972 Ms. {King.} Sir?

1973 Mr. {Griffith.} I am sorry.

1974 Ms. {King.} If I might point out something else that is
1975 a key difference between the private sector and Medicare is
1976 that Medicare is an ``any willing provider'' program so the
1977 private sector has much more ability to restrict the
1978 providers who are coming into the program than Medicare does.
1979 Now, with some of the new authorities in the ACA, CMS is
1980 going to have more authority to take a closer look at
1981 providers and keep out providers who are not good actors.

1982 Mr. {Griffith.} Let me claim back my time. Let me ask,
1983 switching, something that is kind of interesting, it is my
1984 understanding that the Medicare number, and I don't care
1985 whether it is Ms. King or Mr. Spiegel, but the Medicare
1986 number is the same as your Social Security number. Is that
1987 correct?

1988 Ms. {King.} That is correct.

1989 Mr. {Griffith.} And then if somebody steals your
1990 identity, you can't just go out and change your Social

1991 Security number. Wouldn't it be a better policy to have each
1992 patient have a separate Medicare number and then when
1993 somebody steals that number the patient can get a new number
1994 just like you do with your credit card if you lose it or it
1995 is stolen by somebody?

1996 Ms. {King.} Certainly there have been proposals made to
1997 that effect.

1998 Mr. {Spiegel.} And we are doing a substantial amount of
1999 work right now to eliminate all the compromised numbers that
2000 we have identified through both providers and suppliers as
2001 well as beneficiaries.

2002 Mr. {Griffith.} Doesn't that have the impact on the one
2003 hand of making it very difficult for the patient and then I
2004 guess I would ask, what is your opinion of that? You said it
2005 had been talked about but what do you think? Don't you think
2006 that would be a better policy, Ms. King?

2007 Ms. {King.} I think it probably would be. There would
2008 be a question, I think, in our minds about what it would cost
2009 to effect that transition and how long that would take and
2010 what would be involved with that because you have every
2011 living beneficiary and then new beneficiaries as they come on
2012 the rolls.

2013 Mr. {Spiegel.} And we agree with that.

2014 Mr. {Griffith.} New ones would be a lot easier. That

2015 wouldn't probably very much at all.

2016 Ms. {King.} Yes, they would.

2017 Mr. {Griffith.} But anyway. All right. I yield back
2018 my time, Mr. Chairman.

2019 Mr. {Stearns.} The gentleman yields back his time. The
2020 gentlelady, Ms. Myrick, is recognized for 5 minutes.

2021 Mrs. {Myrick.} Thank you, Mr. Chairman. Thanks to all
2022 of you for being here and thank you, you two who do the
2023 investigative work for what you are doing and the way you are
2024 going about it.

2025 My question I guess is to Mr. Spiegel. I am not real
2026 sure. On States, is there a requirement that States report
2027 fraud to you, to CMS? Because I understand that maybe half
2028 the States don't even report data.

2029 Mr. {Spiegel.} I don't know what the requirement is
2030 for--

2031 Mrs. {Myrick.} Would you mind finding out and getting
2032 back? Because I would like to know.

2033 Mr. {Spiegel.} Sure.

2034 Mrs. {Myrick.} And then the next question is relative
2035 to States, do they have their counties, does it individually
2036 vary by State to State but like in North Carolina counties
2037 are responsible for reporting the fraud to the State. Is
2038 that something that happens across the country? You know,

2039 when you get right down to the local level where they have a
2040 better control on it maybe than the whole State does. It is
2041 more efficient?

2042 Mr. {Spiegel.} I don't know about the efficiencies, and
2043 it would really depend on how each State is set up its
2044 operational structure.

2045 Mrs. {Myrick.} So each State is in control of how they
2046 report that?

2047 Mr. {Spiegel.} I would think so.

2048 Mrs. {Myrick.} But why do some States not report? Do
2049 you know?

2050 Mr. {Spiegel.} I don't know the extent to which they
2051 don't. I mean, I know we have fraud investigation databases
2052 and we collect information from States, and I think we--what
2053 I was trying to say before is, I didn't know what the
2054 requirement was. I know we get reporting from States about
2055 the fraud cases that they uncover and I am sure they
2056 coordinate closely with--

2057 Mrs. {Myrick.} I would be curious to know.

2058 And then the second part of that, are there any minimum
2059 standards that States have to meet relative to, you know, the
2060 waste, fraud and abuse, whatever you want to call it, to
2061 receive their FMAP?

2062 Mr. {Spiegel.} Well, again, I am not a Medicaid expert

2063 but there are requirements that States have to meet, you
2064 know, to have a proper State plan in place, they have certain
2065 administrative requirements they have to meet. They have to
2066 have a single State agency with authority. They have to have
2067 Medicaid fraud control units and things.

2068 Mrs. {Myrick.} And is there a follow-up on that to make
2069 sure that gets done? And I guess that goes back to my first
2070 question, do the States all report. Anyway, if you don't
2071 know--

2072 Mr. {Spiegel.} Well, I know there is follow-up on how
2073 the States organize themselves and there is constant
2074 interaction between the folks in CMS who oversee Medicaid
2075 around that.

2076 Mrs. {Myrick.} But all of you pretty much agree that
2077 there needs to be more of an effort on this relative to
2078 dollars that come from what you said before to the different
2079 people and you have all responded that if there were more
2080 dollars into the program for what you are doing, you would
2081 have a better ability to do it, particularly with the two in
2082 the middle and what you do with the inspection work.

2083 Mr. {Spiegel.} We have found that for every dollar we
2084 are spending, we are getting a substantial return on
2085 investment, 6.8 percent, I believe.

2086 Mrs. {Myrick.} But yet in the new health care bill,

2087 there is only, my understanding, \$350 million in there for
2088 any fraud activities which, if that is divided up across all
2089 the agencies, you know, it is less than one-tenth of 1
2090 percent of what we are spending on the health care bill. So
2091 it seems like it is a very small amount that is being
2092 dedicated to what really is getting at the crux of so much of
2093 the waste that everybody talks about is going to pay for all
2094 this. It just doesn't seem to make sense. It seems like
2095 there should be more effort put into what you are doing from
2096 the standpoint of you are actually seeing results and you are
2097 getting to the bottom of the issue.

2098 Mr. {Spiegel.} I mean, I guess we would welcome the
2099 opportunity to have more resources to do more of the things
2100 that we have embarked on.

2101 Mrs. {Myrick.} But I know Mr. Terry asked a question
2102 about actually if we could do this what would it take type
2103 thing, so you all are going to get back to him with that?

2104 Mr. {Spiegel.} Yes, ma'am.

2105 Mrs. {Myrick.} I appreciate it. No more questions.

2106 Mr. {Stearns.} The gentleman, Mr. Murphy from
2107 Pennsylvania, is recognized for 5 minutes.

2108 Mr. {Murphy.} Thank you.

2109 I want to go over this list here and I wonder if you can
2110 tell me if you have any idea where these fugitives are.

2111 Carlos Benitez, do you know where he might be? Do we know
2112 what country he is in?

2113 Mr. {Roy.} Sir, I may indeed know the general
2114 whereabouts of some of these individuals but--

2115 Mr. {Murphy.} Cuba?

2116 Mr. {Roy.} Probably not, sir.

2117 Mr. {Murphy.} Are any of these folks in Cuba?

2118 Mr. {Roy.} Probably not.

2119 Mr. {Murphy.} I understand that some of them actually
2120 may be.

2121 Mr. {Roy.} Sir, I correct myself. There may be several
2122 of those that are in Cuba, yes.

2123 Mr. {Murphy.} Because my understanding is there may be
2124 as many as six, and the question is what the Cuban government
2125 is involved in here. According to some reports, ``In a
2126 discussion with a high-level former intelligence official
2127 with the Cuban government who asked to remain unnamed,'' and
2128 this is from University of Miami report. He states, ``There
2129 are indeed strong indications that the Cuban government is
2130 directing some of these Medicare frauds as part of a
2131 desperate attempt to obtain hard currency.'' The source
2132 notes that the Cuban government is also assisting and
2133 directing other instances of Medicare fraud providing
2134 perpetrators with information with which to commit fraud.

2135 They go on to say in the instance where the Cuban government
2136 is not directing or facilitating the fraud--

2137 Ms. {DeGette.} Mr. Chairman?

2138 Mr. {Murphy.} --it does provide Cuba as a place for
2139 fugitives to flee. This gives the Castro regime a convenient
2140 and carefree way to raise hard currency. Are we doing
2141 anything about that?

2142 Mr. {Roy.} I have actually inquired before about what
2143 are the ties to Cuba, and nothing has been brought to my
2144 attention that would substantiate what you are saying. I am
2145 more than happy to take a name and a number or if you can get
2146 me in touch with that individual to follow up on that.

2147 Mr. {Murphy.} This was a report--

2148 Ms. {DeGette.} Mr. Chairman, will the gentleman just
2149 yield briefly?

2150 Mr. {Murphy.} Not on my time.

2151 Ms. {DeGette.} I would like to make--

2152 Mr. {Murphy.} I didn't yield yet, because I really only
2153 have a couple of minutes--

2154 Mr. {Stearns.} Does the gentlelady request a personal
2155 privilege or a point of order?

2156 Ms. {DeGette.} I just want to make sure--

2157 Mr. {Stearns.} Is this a request for a point of order?

2158 Ms. {DeGette.} It is a request for a point of order.

2159 Mr. {Stearns.} Okay. The gentlelady is recognized.

2160 Ms. {DeGette.} I just want to make sure, and I know
2161 that you are not intending to ask Mr. Roy any information
2162 that would in any way undermine an ongoing investigation.

2163 Mr. {Murphy.} Absolutely.

2164 Ms. {DeGette.} I just wanted to clarify that. Thank
2165 you.

2166 Mr. {Murphy.} Absolutely.

2167 Ms. {DeGette.} He looked a little uncomfortable when
2168 you asked that question.

2169 Mr. {Murphy.} I am just asking if--

2170 Ms. {DeGette.} Thank you very much.

2171 Mr. {Murphy.} Thank you. I appreciate that.

2172 This is a report from the University of Miami. I would
2173 be glad to let you read that. It is just something I wanted
2174 to bring attention because it does bring to light there has
2175 also been concerns about how things happen by other countries
2176 where they may be doing this as part of an organized-crime
2177 issue, recognizing the ability to have false claims with
2178 Medicare actually may be easier, less risk and lower
2179 penalties than it would be, for example, with cocaine
2180 trafficking where you have long mandatory sentences. And so
2181 I am wondering along these lines if you are also looking to
2182 see-I mean, I appreciate the work you are doing. This is

2183 great. I am glad you are pursuing this. The American people
2184 appreciate that. As Mr. Barton talked before, we are all in
2185 favor of this. I just want to make sure we are also looking
2186 at this as a mechanism to see if you think we need more
2187 enforcement, do you need more funding, do you need more
2188 personnel, or do we need stiffer penalties, or all of the
2189 above?

2190 Mr. {Roy.} We need all of the above, sir.

2191 Mr. {Murphy.} Do you think the level of penalties is a
2192 factor in terms of people are willing to risk the risk and
2193 consider jail time as the price of doing business?

2194 Mr. {Roy.} Well, I certainly felt that way probably 5
2195 to 10 years ago but in the recent years I have seen across
2196 the board sentencing guidelines go up and I have seen
2197 perpetrators of health care fraud go to federal prison for
2198 longer periods of time. If I had my way, they would go there
2199 longer but that is not the perfect world but I see a movement
2200 toward the punishment fitting the crime, sir.

2201 Mr. {Murphy.} Thank you. Anybody else want to comment
2202 on that, Mr. Perez or Mr. Spiegel?

2203 What additional tools then do you think that Congress
2204 can give all of you with regard to helping investigate
2205 Medicare and Medicaid fraud and abuse cases? Are there any
2206 other tools you want from us?

2207 Mr. {Roy.} First and foremost, the funding aspect of
2208 it. The funding has to be continuous. It has to be long
2209 term to ensure that I can keep bodies on the ground. It
2210 can't be a one shot in the arm type of a situation. Our
2211 organization is human resource driven, and the more agents I
2212 have in the field and the more support staff I have, the
2213 better job I am going to be able to do.

2214 Mr. {Murphy.} I appreciate that. Anyone want to
2215 comment? Yes, Mr. Perez.

2216 Mr. {Perez.} Just from an investigative standpoint, and
2217 I mentioned this earlier. I apologize if I am repeating
2218 myself at least to you. But we certainly would like to have
2219 real-time data access so that we can see the claims as they
2220 are hitting them. We currently don't have that. And there
2221 is another system that is out there that we would also like
2222 access to that actually gives us the profile of the providers
2223 that are in so that we know once they are in, all of the
2224 makeup of that particular provider and then we can initiate
2225 investigations.

2226 Mr. {Murphy.} Do you have that profile access now or
2227 that is something you are asking for in addition?

2228 Mr. {Perez.} We do not have it now.

2229 Mr. {Murphy.} So to be able to get that profile
2230 information on the providers and the real-time data so you

2231 could I guess more or less profile as people are submitting
2232 claims that there are things that appear to not match
2233 standard billing procedures with durable medical equipment or
2234 services, that would show up and you could hit on that right
2235 away, would that help you?

2236 Mr. {Perez.} I think that certainly would help us, yes.

2237 Mr. {Murphy.} Mr. Spiegel, do you have a comment on
2238 that?

2239 Mr. {Spiegel.} Sure. And what I would say is, the
2240 President's budget has laid out a number of things that we
2241 would want to do in 2012, and for now, we need to have a
2242 little bit of time to gauge the impact of all the things that
2243 we started doing in the last year to refocus our efforts on
2244 the front end and to take prompt action on the folks who need
2245 to have action taken against them.

2246 Mr. {Murphy.} Thank you. I think if any of you had any
2247 other details of how that work would out to let the committee
2248 know. Thank you so much.

2249 Mr. {Stearns.} The gentleman's time has expired. The
2250 gentleman, Mr. Gardner, from Colorado is recognized for 5
2251 minutes.

2252 Mr. {Gardner.} Thank you, Mr. Chairman, and thank you
2253 to the witnesses for being here today. I appreciate your
2254 work on something that obviously everybody is concerned

2255 about.

2256 In Colorado, we were able to do a couple of things to
2257 detect fraud, to fight back against those who would abuse the
2258 system. We passed legislation that would freeze--you know,
2259 pair up benefits, the public pension fund. If it was a
2260 public employee that was involved, it allowed the board to
2261 freeze those assets. We also tried to pass legislation that
2262 said if you were a contractor, a provider that had been
2263 convicted of fraud elsewhere, that after a certain point you
2264 were barred from dealing with the State of Colorado and so I
2265 want to get into that a little bit for a couple of questions.

2266 Mr. Spiegel, I wanted to follow up on one of your
2267 responses to Mr. Griffith. I believe Medicare receives about
2268 4.5 million claims a day, and you substantially review every
2269 single one of those claims?

2270 Mr. {Spiegel.} In some way. We verify that the person
2271 who sends in the bill, for example, is enrolled in Medicare
2272 and that the person who received the services is an eligible
2273 beneficiary. I mean, there are automated claims edits that
2274 are in place that look at that.

2275 Mr. {Gardner.} How many would you say you substantially
2276 review that you are actually able to really look at? Because
2277 that is all automated. I mean, what percentage are you able
2278 to actually look at to detect--

2279 Mr. {Spiegel.} If what you are talking about is do we
2280 take an opportunity to collect medical records and make a
2281 judgment about the clinical conditions that were present and
2282 things like that, I don't know the exact percent. I could
2283 get back to you with that.

2284 Mr. {Gardner.} That would be great if you would get
2285 back to me on that. Thank you.

2286 And then Mr. Spiegel, we have heard that in terms of
2287 both durable medical equipment and home health, both are
2288 highly susceptible to fraud. What other areas lose a
2289 substantial amount to fraud?

2290 Mr. {Spiegel.} Well, in our recent screening rule, the
2291 ones that we put in the high-level-risk category were newly
2292 enrolling suppliers and newly enrolling home health agencies
2293 and those individuals or entities that hit some of the
2294 triggers that we put in the rule. There are examples of
2295 other provider and supplier types that we have uncovered and
2296 that the Inspector General's work has identified that maybe
2297 not as a class but as individuals have had some problems.

2298 Mr. {Gardner.} And I see in your testimony where you
2299 talk about delivery system reform, you talk about inflated
2300 prices that could lead to increased fraud but you have only
2301 made reforms in, I believe it was nine areas. Why did you
2302 just add those reforms in nine areas? If you are overpaying

2303 somebody, shouldn't we reform them all?

2304 Mr. {Spiegel.} The nine areas were in statute.

2305 Mr. {Gardner.} So if they are being overpaid and it is
2306 causing fraud, do you have an ability to add to those nine
2307 areas?

2308 Mr. {Spiegel.} I don't know the answer to that. Over
2309 time we have an opportunity to add to that based on what we
2310 learn from our work.

2311 Mr. {Gardner.} And the President's budget 2012 said we
2312 are going to recover about \$32 billion in fraud. Is that how
2313 much fraud there is? What percentage of fraud total are we
2314 recovering?

2315 Mr. {Spiegel.} Well, as I mentioned before, we don't
2316 know the exact number because the estimates that we have all
2317 seen contain things that are in addition to fraud. They
2318 contain improper payments, they contain administrative
2319 errors, they contain both public and private sector
2320 estimates. Until we can get to one number that identifies
2321 fraud, which is in a sense a legal determination, we are not
2322 going to be able to--

2323 Mr. {Gardner.} At what point is a provider barred from
2324 doing business with a Medicare and Medicaid provider?

2325 Mr. {Spiegel.} Well, it would depend on the
2326 circumstances.

2327 Mr. {Gardner.} After one time they have been found
2328 fraudulent?

2329 Mr. {Spiegel.} Well, it would depend on, you know--we
2330 don't determine fraud at CMS. That is a law enforcement
2331 decision. And if somebody has been convicted of fraud, the
2332 Inspector General has the opportunity to exclude them from
2333 the program for a period of time.

2334 Mr. {Gardner.} So if somebody is convicted of fraud,
2335 are they automatically barred?

2336 Mr. {Spiegel.} Sir, yes, they are.

2337 Mr. {Gardner.} And then are States using that then to
2338 bar them from their Medicaid programs?

2339 Mr. {Spiegel.} We are working on that issue right now.
2340 I am not sure how in depth the State goes with respect to who
2341 they exclude from their programs.

2342 Mr. {Roy.} We have provisions in our recently published
2343 rule to implement that so that when someone is excluded from
2344 Medicare, States will be doing the same thing as well as
2345 States excluding from Medicaid entities or individuals that
2346 have been excluded by other State Medicaid programs.

2347 Mr. {Gardner.} What happens to the money that you are
2348 recovering from fraud? Does that go back into fraud-fighting
2349 efforts?

2350 Mr. {Roy.} By law, the money that we recover goes right

2351 back in the Medicare trust fund.

2352 Mr. {Gardner.} So it does not go into additional fraud
2353 prevention?

2354 Mr. {Roy.} No, sir.

2355 Mr. {Gardner.} I yield back my time.

2356 Mr. {Stearns.} I thank the gentleman, and I thank the
2357 first panel for their indulgence and forbearance here.

2358 Ms. {DeGette.} Mr. Chairman?

2359 Mr. {Stearns.} Just let me finish and I will be glad to
2360 recognize you.

2361 There was a question, Mr. Spiegel, that was asked of you
2362 and you did not know the answer concerning the claims per
2363 day. I thought I would put in the record that Health and
2364 Human Services' Bill Corr testified in front of the Senate
2365 Finance Committee in October 2009 that CMS gets 4.4 million
2366 claims a day and with a requirement to pay within 14 to 30
2367 days and they are only able to review 3 percent of the
2368 prepayment.

2369 The gentlelady from--

2370 Ms. {DeGette.} I would just ask unanimous consent to
2371 follow up on one question.

2372 Mr. {Stearns.} Sure. Go ahead.

2373 Ms. {DeGette.} Mr. Perez, someone asked you if you
2374 needed more powers and you said you would like to be able to

2375 access claims data directly when you are on these
2376 investigations. Do you need--is this a matter of more
2377 authority to be given to you by Congress or is it just the
2378 procedures that your office is using?

2379 Mr. {Perez.} I believe it may be an internal issue with
2380 the department working with CMS and allowing OIG then to have
2381 direct access to that.

2382 Ms. {DeGette.} If you need more powers, let us know
2383 because it would seem to us to be good information for you to
2384 be able to access. Thank you.

2385 Mr. {Stearns.} I thank the gentlelady. We have another
2386 member who has joined us. The gentleman from California, Mr.
2387 Bilbray, is recognized for 5 minutes.

2388 Mr. {Bilbray.} Thank you.

2389 Mr. Perez, we were talking about the ability to impound.
2390 IRS has been given that power to impound so why wouldn't we--
2391 if we are as serious about making sure that taxpayer funds
2392 are going out inappropriately, wouldn't we at least give you
2393 the authority that we give to the people who make sure that
2394 revenue comes in to the Federal Government appropriately?

2395 Mr. {Roy.} If I could, sir?

2396 Mr. {Bilbray.} Go ahead.

2397 Mr. {Roy.} I am more than willing and happy to look at
2398 that particular issue in terms of the ability to impound. We

2399 do seize bank accounts. It is more in the matter of physical
2400 assets but I am more than willing to take any additional
2401 resources that come my way.

2402 Mr. {Bilbray.} I am just concerned, because you see the
2403 disconnect that we take income of the revenue very seriously
2404 but traditionally we haven't put as much weight on reviewing
2405 and oversight and recapturing of assets coming back.

2406 Ms. King, I appreciate your kind words about the
2407 wrongful payment bill. I was one of the authors of that
2408 bill, one of the few bipartisan bills that got passed last
2409 year, but I don't think that weight has been traditionally
2410 applied and I would like to make sure that we do it.

2411 Speaking of the IRS, the fact is, a lot of these people
2412 are engaged in fraud and abuse. I have to believe as a
2413 former tax consultant that once they get in the habit of
2414 filling out applications for revenue from Medicare and
2415 Medicaid inappropriately, I have to believe there has got to
2416 be more opportunity in there to engage the IRS to be able to
2417 be involved with this. Remember, it wasn't the FBI that got
2418 Al Capone, right?

2419 Mr. {Roy.} Sir, you are correct. We work joint cases
2420 with IRS/CID all the time just for that purpose.

2421 Mr. {Bilbray.} Mr. Spiegel, I have a concern with
2422 something you said. I know that this is waste, fraud and

2423 abuse in here but you appear to take wrongful payments as
2424 being sort of separate and apart from waste, fraud and abuse.

2425 Mr. {Spiegel.} Well, from fraud.

2426 Mr. {Bilbray.} From fraud? Okay. And that is why I
2427 want to clarify because you will admit the impact to the
2428 taxpayer and to the federal family is financially the same
2429 between wrongful payment and fraud.

2430 Mr. {Spiegel.} We are against all of us. We are
2431 against improper payments and fraud and waste and abuse.

2432 Mr. {Bilbray.} Okay. So the fact is, is that we need
2433 to fast-track those items and get it there.

2434 One of the items that has been brought up is the fact of
2435 the use of false documentation, identify theft. Now, we
2436 usually talk about identify theft in different fields, and we
2437 have gone around with individual the use of identify fraud to
2438 falsify employment opportunities, illegal presence in the
2439 country and everything else. But the identity fraud issue
2440 that we have seen here with your enforcement of the ability
2441 of somebody to get a driver's license, get a document and use
2442 it fraudulently, that has been documented in your enforcement
2443 as a vehicle that organized crime or these bad guys are using
2444 in implementing their fraud to the health care system.

2445 Mr. {Perez.} Certainly, and in Miami I know that in
2446 those instances where we are able to prove that beyond

2447 reasonable doubt, we certainly are including those in--

2448 Mr. {Bilbray.} Has Florida implemented the REAL ID bill
2449 yet? Do you know?

2450 Mr. {Perez.} That I do not know, sir.

2451 Mr. {Bilbray.} Mr. Chairman, I just think we need to
2452 point out that that is one bill that we passed how long ago
2453 which was basically the number one request of the 9/11
2454 Commission, but we still have States that are looking at
2455 dragging their feet about using biometrics, and biometrics is
2456 one way we could catch these guys. You have biometrics
2457 through a driver's license under one name, you do the other.
2458 Anybody who watches NCIS knows that, you know, we have got
2459 that computer technology. We have had it in California since
2460 1978. That they will get busted coming in, one guy coming in
2461 as Smith, another guy coming in as Martinez, and we cross-
2462 reference those biometrics. So I just want to point out that
2463 I think that the federal bureaucracy needs to be sensitive
2464 that the States are the people that provide the IDs in lieu
2465 of a federal ID, that REAL ID is a way we can secure the
2466 system without having to have a federal ID and make sure--you
2467 know, there is one reason why we have got to be serious as
2468 federal agents to push that the States have to do their part
2469 down the line.

2470 And maybe, Mr. Chairman, our committee can recommend to

2471 Homeland Security that before we send money to States for
2472 homeland security projects that we require that the first
2473 priority that if States haven't implemented REAL ID and
2474 secured this identification issue that should be the first
2475 project used with federal funds on Homeland Security, and
2476 with that, I yield back, unless anybody has a comment on
2477 that.

2478 Mr. {Stearns.} All right. I thank the gentleman. That
2479 could be your piece of legislation.

2480 So I want to thank the first panel again. We will move
2481 to our second panel and ask the Hon. Alex Acosta to come up
2482 and Mr. Craig H. Smith and Ms. Sara Rosenbaum, and I invite
2483 all my members to stay for the second panel.

2484 The Hon. R. Alex Acosta is a native of Miami and the
2485 current Dean of the College of Law at Florida International
2486 University. He received his law degree from Harvard. He
2487 served as a law clerk to Justice Samuel Alito, then a judge
2488 on the U.S. Court of Appeals for the 3rd Circuit. He has
2489 been the longest serving U.S. attorney in south Florida since
2490 1970, sitting as a Senate-confirmed United States Attorney
2491 for the Southern District of Florida.

2492 Our second panelist is Craig Smith. He is a partner of
2493 Hogan and Lovells. He rejoined the firm in 2008 after
2494 serving as a General Counsel for the Florida Agency for

2495 Health Care Administration. While serving as a Chief Legal
2496 Office of one of the Nation's largest Medicaid programs, he
2497 coordinated frequently with the federal officials at the
2498 Centers for Medicare and Medicaid Services and the Department
2499 of Justice.

2500 Our third panelist is Sara Rosenbaum, who received her
2501 J.D. from Boston University Law School. She has played a
2502 major role in design of national health policy in areas such
2503 as Medicare and Medicaid, private health insurance and
2504 employee health benefits, access to health care from
2505 medically underserved persons, maternal and child health,
2506 civil rights in health care and public health. She also
2507 worked for the White House Domestic Policy Council.

2508 So I thank all three of you, and we welcome the Hon. Mr.
2509 Acosta for your opening statement of 5 minutes. Thank you
2510 for staying with us.

|
2511 ^TESTIMONY OF HON. R. ALEX ACOSTA, DEAN, FLORIDA
2512 INTERNATIONAL UNIVERSITY COLLEGE OF LAW; CRAIG H. SMITH,
2513 PARTNER, HOGAN LOVELLS, LLP; AND SARA ROSENBAUM, HIRSH
2514 PROFESSOR AND CHAIR, DEPARTMENT OF HEALTH POLICY, SCHOOL OF
2515 PUBLIC HEALTH AND HEALTH SERVICES, THE GEORGE WASHINGTON
2516 UNIVERSITY MEDICAL CENTER

|
2517 ^TESTIMONY OF R. ALEX ACOSTA

2518 } Mr. {Acosta.} Thank you, Mr. Chairman, Ranking Member
2519 DeGette and distinguished members of the committee. I
2520 appreciate the opportunity to appear before you to discuss
2521 waste, fraud and abuse in Medicare and Medicaid. As the
2522 chairman mentioned--

2523 Mr. {Stearns.} Let me just swear you in. If you don't
2524 mind, please stand and raise your right hand.

2525 [Witnesses sworn]

2526 Mr. {Stearns.} Sorry. Go ahead.

2527 Mr. {Acosta.} As the chairman mentioned, I served as
2528 the United States Attorney for the Southern District of
2529 Florida from 2005 to 2009.

2530 Early in my term, I made the prosecution of health care
2531 fraud a top priority in my district. I organized in 2006 the

2532 South Florida Health Care Fraud Initiative. As a result, we
2533 became home to the first Medicare fraud strike force in the
2534 Nation. The results were spectacular but they were also very
2535 sad. By 2008, we accounted for 32 percent of the Nation's
2536 health care fraud prosecutions.

2537 From fiscal year 2006 through May 2009, we charged more
2538 than 700 individuals responsible for more than \$2 billion in
2539 fraud. That is actual fraud charged in criminal indictments.
2540 I have heard this morning that figure now stands at 3.5
2541 billion. Put differently, those \$2 billion, which is
2542 sometimes hard to imagine so I put it in per-beneficiary
2543 terms. That is \$1,900-plus per beneficiary in south Florida.

2544 Numbers alone, though, don't tell the story. I was very
2545 happy to hear that some Members are going to do ride-alongs.
2546 I wish more Members could visit the strike forces. If I was
2547 U.S. Attorney and if you visited south Florida, I would take
2548 you to our facility. There we have a wheelchair that we have
2549 shown to other interested individuals. That wheelchair was
2550 billed again and again and again, the same wheelchair not
2551 used by patients. We call it the million-dollar wheelchair
2552 because it was billed that many times. We have boxes after
2553 boxes of evidence. We have pictures of a pharmacy, and that
2554 pharmacy is billing thousands, perhaps millions of dollars in
2555 expensive brand-name inhalation products. In fact, the

2556 pharmacy was a broom closet and there was nothing there.

2557 That level of fraud should absolutely disgust each and
2558 every one of us. We enjoy one of the Nation's, one of the
2559 world's best health care systems but we often hear of the
2560 skyrocketing costs of health care and we worry that one day
2561 we will not be able to afford quality care. Reducing fraud,
2562 as you have already mentioned, is, in public parlance, a no-
2563 brainer. It should be a bipartisan effort.

2564 Now, let me say I am proud of the work we did in south
2565 Florida prosecuting fraud but fraud is not the solution. We
2566 need to prevent fraud from happening in the first place.
2567 Prosecutions have limited deterrence. The sentences, while
2568 increasing, are not sufficient. Prosecutions are resource-
2569 intensive. Prosecutions rarely recover taxpayer dollars
2570 wrongfully paid out in fraudsters. The fraudsters for the
2571 most part spend the money or send the money overseas.
2572 Prevention is the preferred approach.

2573 Think of this as perhaps, analogize fraud to a busy
2574 intersection. How do you prevent accidents at a busy
2575 intersection? Do you post a police officer at that
2576 intersection and ticket cars after they commit accidents or
2577 do you put a red light at that intersection and prevent
2578 accidents in the first place? In the same way, we need to
2579 prevent fraud in the first place. Prosecutions are not the

2580 solution.

2581 Now, effective prevention requires a lot more than
2582 front-end screening. Effective prevention requires
2583 continuous and proactive efforts to identify and stop fraud
2584 as it happens. The gentleman from Virginia, Mr. Griffith,
2585 mentioned the issue of unique IDs. Well, Mr. Chairman,
2586 Ranking Member DeGette, I assume both of you have credit
2587 cards. Imagine if you call--you use that credit card and you
2588 call American Express and you say I just lost my card and
2589 they say thank you very much, we can't issue a new card with
2590 a new number; when you get fraudulent charges, let us know
2591 and continue to let us know in the future because we cannot
2592 cancel your card. How long would American Express stay in
2593 business? But that is the system that Medicare uses. Your
2594 Medicare number is your Social Security number, a number that
2595 is easily found and a number that can then be used to bill in
2596 your name and that number cannot be changed.

2597 Effective predictive modeling is another tool that can
2598 assist with fraud prevention. An example of how effective
2599 this can be comes out of south Florida. South Florida in one
2600 year was responsible for \$92 million in Budesonide billings.
2601 This is an expensive inhalation drug, and inhalation drugs
2602 are a large problem in south Florida. Well, the Office of
2603 Inspector General did a study to look at these billings.

2604 Seventy-four percent of the beneficiaries for this drug
2605 submitted claims that exceeded the 90-day coverage maximum.
2606 Any private insurance company would say if you exceed a
2607 coverage maximum, we are not going to pay. Sixty-two percent
2608 of those that allegedly submitted claims for these drugs in
2609 fact hadn't seen a prescribing physician in 3 years. Ten
2610 doctors in south Florida were responsible for more
2611 prescriptions for this drug than all the doctors in Chicago
2612 combined. Chicago is the next highest billing city.

2613 These are the kinds of issues that predictive modeling
2614 can catch. These are the kinds of issues that should be
2615 caught. Experience shows that prepayment prevention computer
2616 models that identify billing patterns that stop payments when
2617 you see spikes like this are the preferable approach. Post-
2618 payment pay and chase does not work.

2619 Now, I have heard this morning that CMS is moving away
2620 from pay and chase, and I think that is a wonderful idea. It
2621 is an important issue because we need to catch this before it
2622 happens. After the fact my former colleagues and good
2623 friends at OIG can prosecute with DOJ but that is not going
2624 to solve the problem. Thank you.

2625 [The prepared statement of Mr. Acosta follows:]

2626 ***** INSERT 6 *****

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2627 Mr. {Stearns.} I thank the gentleman.

2628 Mr. Smith, you are recognized for 5 minutes.

|
2629 ^TESTIMONY OF CRAIG H. SMITH

2630 } Mr. {Smith.} Thank you, Chairman Stearns, Ranking
2631 Member DeGette and distinguished members of the committee.
2632 Thank you for inviting me to testify today.

2633 I do want to say at the outset that I am here in my
2634 personal capacity and that my views are not necessarily the
2635 views of my law firm, Hogan Lovells, or any of the firm's
2636 clients.

2637 I was asked to appear today to share with you my views
2638 of ways we can detect and prevent Medicare and Medicaid fraud
2639 and abuse based principally on my time serving as General
2640 Counsel of Florida's Medicaid program which as you have heard
2641 operates one of the Nation's largest Medicaid programs in
2642 this country.

2643 Now, we have certainly heard this morning about the
2644 serious problems that have plagued the Medicare and Medicaid
2645 programs in terms of fraud, waste and abuse. The real
2646 concern is that the expenditures under both programs as shown
2647 by the chart that is on the screen before us today are set to
2648 significantly increase over the next 10 years, and this means
2649 that there is an even greater number of bad actors who will
2650 look for ways to defraud these programs.

2651 In the past 10 to 12 years, Florida officials realized
2652 that the rapidly rising costs of the Medicaid program were
2653 threatening the State's long-term financial health, and they
2654 began focusing on prepayment fraud and abuse prevention.
2655 That is going to be a recurrent theme you are going to hear
2656 with me as you heard from Mr. Acosta and others today.

2657 Florida officials also began administering the Medicaid
2658 program more like a private health insurer would do. The
2659 Medicare, in contrast, has for the most part continued along
2660 the ``pay and chase'' approach, as we have heard, and that
2661 made Medicare and especially easier target for fraudsters,
2662 especially in south Florida, as compared to Medicaid.

2663 The recent sting operation involving 700 federal and
2664 state law enforcement officials across the country to
2665 apprehend 111 suspected health care fraud criminals was
2666 impressive but it shows that at a rate of about seven law
2667 enforcement officials to every one person arrested, the
2668 postpayment is inefficient and highly expensive.

2669 In the written remarks I submitted to the subcommittee,
2670 I offered several recommendations for preventing fraud and
2671 abuse in these programs. For purposes of my testimony today,
2672 I would like to highlight three of those that have been very
2673 effective in Florida's Medicaid program. Number one, the
2674 first recommendation is that the programs need to better

2675 control the provider enrollment process and provider network
2676 process. You heard Ms. King testify this morning from the
2677 GAO that the Medicare program is an ``any willing provider''
2678 program. This is a problem because bad actors should not be
2679 able to gain access to the program. One of the most
2680 egregious stories involves a Miami man who served 14 years in
2681 prison for murder and then recently purchased a medical
2682 supply business for \$18,000 and proceeded to bill the
2683 Medicare program for over \$500,000 in false claims. Now, he
2684 was eventually arrested but that was only after he was
2685 charged with murdering another person and dismembering that
2686 person. This is the type of person we should not have in any
2687 of these programs and a better provider screening and
2688 enrollment process would catch that.

2689 The other thing I want to highlight about the provider
2690 network process, going back to this ``any willing provider''
2691 approach in Medicare is despite some misconceptions, there is
2692 no constitutional right for anyone to be a Medicare or
2693 Medicaid provider. There are entitlements for the
2694 beneficiaries but there is a constitutional right to be a
2695 provider in these programs. Florida understands that in its
2696 Medicaid program and has added ``without cause'' termination
2697 provisions in its Medicaid provider agreements. These allow
2698 the program to very quickly get bad actors out of the program

2699 or people we don't need in the program whereas the Medicare
2700 program has really struggled expelling bad actors.

2701 The second recommendation I have for the subcommittee is
2702 that the programs should consider shifting away from fee-for-
2703 service reimbursement methodologies that are ripe and very
2704 susceptible for fraud and abuse and move toward other payment
2705 systems including managed care. Risk-based managed care
2706 companies have a financial incentive to detect and prevent
2707 provider fraud and abuse in these programs. They could be a
2708 helpful partner to the government in stopping provider fraud
2709 and abuse and saving taxpayer dollars.

2710 My third recommendation is that the programs, as Mr.
2711 Acosta said, should use predictive modeling and other
2712 analytical technologies. Prepayment predictive modeling has
2713 been used to analyze health care claims for many years but in
2714 the past its effectiveness has been hampered by the inability
2715 to limit false positives and produce focused, actionable
2716 results. Well, those technologies have significantly
2717 improved and so today, just as the credit card industry is
2718 able to send its cardholders an instant text message or alert
2719 if there is a suspected fraud transaction, the Medicare and
2720 Medicaid program ought to be able to do that up front, and as
2721 Agent Perez testified this morning, it would be great if they
2722 could do that in real time as the claims are coming in. In

2723 2008, Medicare paid home health agencies in south Florida
2724 over \$550 million just to treat patients with diabetes, and
2725 that is more than was paid to every other locale in the
2726 entire country combined. Predictive modeling can stop that.

2727 So we have heard that the fraud, waste and abuse program
2728 is very real and I applaud the committee for having this
2729 hearing today. If we focus on prepayment for prevention,
2730 that is the way to best protect taxpayer dollars, and I
2731 welcome any questions you might have. Thank you.

2732 [The prepared statement of Mr. Smith follows:]

2733 ***** INSERT 7 *****

|

2734 Mr. {Stearns.} Thank you.

2735 Ms. Rosenbaum, you are welcome for 5 minutes your

2736 opening statement.

|
2737 ^TESTIMONY OF SARA ROSENBAUM

2738 } Ms. {Rosenbaum.} Thank you, Mr. Chairman, Ranking
2739 Member DeGette, committee members.

2740 You have heard so much information this morning that
2741 what I would like to focus my comments on has to do with a
2742 question that arose during the question-and-answer period
2743 that I think merits a closer look, which is the extent to
2744 which fraud and abuse are issues in private insurance, not
2745 only in private insurance but actually fraudulent and abusive
2746 activities by private insurers.

2747 One of the great things, in my view, about the Medicare
2748 and Medicaid programs is that they are public programs and so
2749 we are able to know a lot as evidenced by the testimony this
2750 morning about the extent to which fraud, waste and abuse may
2751 be happening in the programs. They are extensively studied.
2752 There are many, many reports. You have made many incredibly
2753 important investments in curbing fraud, waste and abuse in
2754 Medicare and Medicaid and those investments have begun to
2755 yield real benefits. We know very little actually about
2756 fraud, waste and abuse in private insurance. We do know that
2757 since 1995, according to at least some studies, 90 percent of
2758 health insurers have begun to institute more significant

2759 antifraud efforts. Clearly, they have concluded that they
2760 are experiencing some of the very same problems in their
2761 payment systems that Medicare and Medicaid are experiencing
2762 in their payment systems.

2763 I would note that one factor about the Medicare and
2764 Medicaid programs that may make them slightly more
2765 susceptible to fraud and waste and something that I think
2766 would be very hard to remedy, even were the entire Medicare
2767 and Medicaid system changed, is the nature of the
2768 beneficiaries. A lot of studies show that fraud generally is
2769 more concentrated in communities and among populations who
2770 are extremely poor, extremely disadvantaged and much more
2771 vulnerable to fraud. Whether they were given public
2772 insurance or a voucher to buy private insurance, in
2773 communities with high concentrations of poor and vulnerable
2774 populations, this is an issue and the investment of federal
2775 resources and State resources in protecting them against
2776 fraud is enormous.

2777 I think there is something else that is worth
2778 mentioning, and that is when we see fraudulent behavior by
2779 the insurance industry itself, and there are actually three
2780 kinds of fraud behaviors that I think are worth thinking
2781 about as you contemplate further efforts to try and reduce
2782 and prevent fraud. The first of course is Medicare Advantage

2783 marketing abuses. They are extensively documented. A simple
2784 Google search of Medicare Advantage marketing abuses shows
2785 thousands of reports. One of the most interesting is a study
2786 in rural Georgia. A group of public health students, near
2787 and dear to my heart, since I am a professor of public
2788 health, took on as a summer project in an effort to try and
2789 uncover marketing abuses in rural Georgia by Medicare
2790 Advantage salesmen going door to door. I would note that one
2791 of the best websites on the problem and what can be done
2792 about it is found in the Texas Department of Insurance, so
2793 this is something the State insurance departments are aware
2794 of.

2795 A second kind of abuse is an abuse in which a health
2796 insurer negotiates deep, deep, deep provider discounts, fails
2797 to disclose those discounts among its network providers to
2798 enrollees who then instead of paying what they think is a 20
2799 percent coinsurance rate are paying coinsurance rates that
2800 are in some cases actually even more than the fee that was
2801 paid to the provider. And a third type of abuse, one that
2802 was disclosed by Attorney General Cuomo, is the abuse that we
2803 saw in the Engenics cases in which out-of-network-provider
2804 payment standards are manipulated, reduced and enrollees who
2805 thought they had out-of-network coverage are in fact gouged
2806 and made to pay very high balance bills.

2807 Now, these issues, I think, are important to focus on as
2808 we move into a time when tax subsidies are flowing into the
2809 purchase of private insurance products and health insurance
2810 exchanges and other locations, and so my strongest
2811 recommendation to the committee would be to consider further
2812 steps to empower investigation of insurer fraudulent and
2813 abusive behavior. Thank you.

2814 [The prepared statement of Ms. Rosenbaum follows:]

2815 ***** INSERT 8 *****

|
2816 Mr. {Stearns.} Thank you.

2817 Now I will start with questions. I just note, Mrs.
2818 Rosenbaum, that you had indicated your strong support of the
2819 public sector but the public sector, Mr. Spiegel could not
2820 tell us at all how much fraud is in the Medicare system but I
2821 can assure you that in the private sector they would go out
2822 of business if they couldn't answer that question on a
2823 continual basis. They would go out of business.

2824 Mr. Smith has outlined three ways he thinks he can
2825 prevent waste, fraud and abuse, and of course, the predictive
2826 modeling using computers was one that you mentioned, Mr.
2827 Acosta, too. Do you agree or would you add to the three that
2828 Mr. Smith mentioned I thought were pretty incisive? Are
2829 there any other ones you would suggest?

2830 Mr. {Acosta.} I would agree with that and I also would
2831 like to support a prior comment made about the importance of
2832 data access. One of the ways that we were able to bring as
2833 many cases as we did in south Florida is, we employed a nurse
2834 practitioner that had access to not real-time data because we
2835 couldn't obtain that but fairly recent data to look for
2836 billing spikes, and we did that ourselves rather than have
2837 through the HHS OIG agents rather than defer to CMS. That
2838 kind of integrated data is very important and I would like to

2839 support Mr. Perez's request.

2840 Mr. {Stearns.} Mr. Acosta, Mr. Smith, do you think we
2841 should have Medicare issue something besides a Social
2842 Security number so that they could actually, when a person
2843 calls and said listen, there is fraud in my billing here,
2844 instead of saying well, just keep alerting us, do you think
2845 we should change that? Because that was not one that either
2846 one of you suggested and that has been mentioned.

2847 Mr. {Acosta.} Well, let me--you know, let me apologize
2848 because I thought I had referenced that. I think it is
2849 absolutely critical. As U.S. Attorney, we would calls on a
2850 weekly basis from individuals saying we have two legs yet
2851 Medicare is paying for a prosthetic leg. Medicare says they
2852 can do nothing about it.

2853 Mr. {Stearns.} In the 60 Minutes exposé, there is a
2854 woman there who said for 6 years she called for artificial
2855 limbs, artificial legs, 6 years and Medicare did nothing.

2856 Mr. {Acosta.} Mr. Chairman, how long would American
2857 Express be in business if--

2858 Mr. {Stearns.} That is what I mean.

2859 Mr. {Acosta.} --when you would call and say I lost my
2860 card, they say we can't help you.

2861 Mr. {Stearns.} Are either one of you concerned that
2862 here we are expanding the Medicaid people by 20 million

2863 people under Obamacare and federal spending on Medicare and
2864 Medicaid will rise from \$900 billion in 2010 to almost \$2
2865 trillion in 2019? Are you concerned that, you know, unless
2866 we implement these things that obviously we are going to have
2867 more fraud?

2868 Mr. {Acosta.} From my perspective, I think, you know,
2869 it is critical that Medicare and Medicaid spend money to
2870 modernize their system. That involves unique IDs, not the
2871 Social Security number. That involves predictive modeling.
2872 Again, credit cards, if your spending patterns deviate at
2873 all, they call you up. Why can Medicare not do the same
2874 thing?

2875 Mr. {Stearns.} Are you familiar with what the Medicare
2876 prevention fraud in the bill does? Are either one of you,
2877 Mr. Smith or Mr. Acosta? Do you think they would help pay
2878 for the cost of this Medicare expansion and Medicaid
2879 expansion just based upon what you see in the bill, or do you
2880 know what is in the bill?

2881 Mr. {Smith.} I certainly am aware of some of the
2882 provisions in the bill. I think one of the big concerns is
2883 we heard testimony today from the OIG saying that the current
2884 problem, current Medicaid and Medicaid fraud problem with the
2885 current population of beneficiaries we have exceeds, in his
2886 estimate, \$7 billion. So even if you took the CBO's

2887 suggestions that the additional funding in the federal health
2888 reform legislation could help save \$6 billion or \$7 billion,
2889 that is barely enough to get close to the estimates of what
2890 the OIG says is the problem today.

2891 Mr. {Stearns.} Excellent point.

2892 Mr. Acosta, anything you would like to add?

2893 Mr. {Acosta.} Yes. I would add to that that most of
2894 the--I assume you are referring to the ACA, most of the ACA
2895 focuses on screening measures, licensure checks, background
2896 checks, site visits, which are important. But, you know, it
2897 is not enough. You need to actually review claims as they
2898 come in using predictive modeling. You need to have
2899 prepayment screening of claims.

2900 Mr. {Smith.} And Chairman, I would echo that and say
2901 that that is why I really think it is important as part of
2902 the Small Business Jobs Act, that is where the predictive
2903 modeling legislation was added. It is not part of the
2904 original federal health reform legislation and so I think
2905 that predictive modeling and analytical technology--

2906 Mr. {Stearns.} It is hard to believe. So the
2907 predictive modeling using computers is not part of the
2908 prevention program in Obamacare right now. Is that the way
2909 you understand it?

2910 Mr. {Smith.} Well, I think that the federal health

2911 reform legislation does ask and does provide for additional
2912 technologies to be used but the predictive modeling piece and
2913 the key piece for prepayment--

2914 Mr. {Stearns.} Is not there. I am just going to close
2915 by asking you quickly, in your opinion, do you think
2916 organized-crime involvement in Medicare and Medicaid has
2917 been, you know, pretty prevalent in south Florida? Have you
2918 seen a lot of organized-crime figures engage in Medicare
2919 fraud?

2920 Mr. {Acosta.} I certainly have. If I could just
2921 clarify a small point. The Small Business Jobs Act of 2010
2922 did have authorization for predictive modeling. HHS is
2923 looking at this. But the authorization was put in a separate
2924 provision.

2925 With respect to organized crime, I think it is a clear
2926 method by which organized crime makes money. It is highly
2927 profitable. We are talking not millions but billions of
2928 dollars, \$2 billion in actual charged criminal indictments.
2929 That is not all of it that is on the street. That is simply
2930 what we proved in court in south Florida alone. One of the
2931 frustrations is when you take down an operation, when you do
2932 these national stings, you get the nominee owners, the
2933 individuals that are being paid a little bit of money so
2934 their name can be used but they are not really the brains

2935 behind the operation and so you need to go up the chain just
2936 like you do in organized crime.

2937 Mr. {Stearns.} All right. My time is expired. The
2938 gentlelady from Colorado.

2939 Ms. {DeGette.} Thank you so much, Mr. Chairman.

2940 So Mr. Acosta, what you are saying is, in fact Congress
2941 did pass the predictive modeling, the prepayment information,
2942 it was just not in the same bill as Affordable Care Act,
2943 correct?

2944 Mr. {Acosta.} Correct. If memory serves, I believe
2945 Senator--I don't know in the House but the Senate side--

2946 Ms. {DeGette.} So it is in the law now, we can do that,
2947 right?

2948 Mr. {Acosta.} HHS has the authorization if they choose
2949 to use it.

2950 Ms. {DeGette.} The authorization. Now, both of you, I
2951 really--well, actually I want to thank all three of you for
2952 your testimony because I thought it all gave good, different
2953 perspectives on how we can target waste, fraud and abuse, and
2954 as we said with the last panel, we are all interested in
2955 rooting out waste, fraud and abuse in every part of the
2956 system. One of the new tools that we talked about that is in
2957 the Affordable Care Act and that CMS and HHS are using is
2958 this preventative approach so that we are moving away from

2959 the ``pay and chase'' model to the model that emphasizes
2960 keeping criminals out of the system to begin with, and I
2961 would assume, Mr. Acosta, you would agree with that approach,
2962 correct?

2963 Mr. {Acosta.} I entirely agree that the ``pay and
2964 chase'' is a bad approach and that we need to move--

2965 Ms. {DeGette.} Thank you.

2966 Mr. Smith, would you agree with that?

2967 Mr. {Smith.} Absolutely agree that is not a good
2968 approach.

2969 Ms. {DeGette.} You don't think that the preventative
2970 approach is a good approach, or you don't think that ``pay
2971 and chase'' is a good approach?

2972 Mr. {Smith.} ``Pay and chase'' is a terrible--

2973 Ms. {DeGette.} Is a bad approach?

2974 Mr. {Smith.} Yes.

2975 Ms. {DeGette.} And what about you, Ms. Rosenbaum?

2976 Ms. {Rosenbaum.} I agree that prevention is the best
2977 approach.

2978 Ms. {DeGette.} Okay. Now, Mr. Smith, you testified,
2979 this was really quite shocking to me. You said that there is
2980 ``any willing provider'' rule which would allow even people
2981 with murder convictions to become a provider. Here is my
2982 question. Is that under statute or is that just under

2983 practice?

2984 Mr. {Smith.} Well, Ms. King testified this morning
2985 referring to the ``any willing provider'' rule.

2986 Ms. {DeGette.} Yes.

2987 Mr. {Smith.} Basically, CMS's approach historically has
2988 been to let providers in unless they clearly had an issue in
2989 the screening process that CMS caught, and they weren't very
2990 good historically at catching those problems.

2991 Ms. {DeGette.} Okay. So do you think that there are
2992 some criteria that we could pass that would be absolute
2993 barriers, like, for example, a felony conviction where you
2994 would say, you know, you are just--because I know they use
2995 their discretion so they could reject somebody for having a
2996 felony conviction. Are you saying that it would be a good
2997 idea for us to pass a bright line of certain criteria that
2998 they just couldn't consider somebody if they met those
2999 criteria?

3000 Mr. {Smith.} Certainly, and there are certain criteria
3001 in statute that are bright lines but I would say that it goes
3002 beyond just felony convictions. It also goes to operating
3003 your provider network like an insurance company would, which
3004 is, if we have too many home health agencies in Miami-Dade,
3005 regardless of whether we think a particular provider is
3006 fraudulent, we shouldn't let more agencies in the program.

3007 Ms. {DeGette.} Yes, I agree with that, but that is not
3008 a bright line, that is sort of a discretionary criterion, and
3009 that is what I am asking you. So if any of you actually
3010 think that there are additional bright-line criteria we
3011 should put in statute, we would appreciate it if you would
3012 supplement your answers and provide that to us because I
3013 agree too, those kind of outrageous things should not
3014 happening and sometimes I do think they slip through the
3015 cracks.

3016 Now, Mr. Acosta, you testified that one thing that would
3017 be really helpful would be using these unique IDs, not using
3018 Social Security numbers, correct?

3019 Mr. {Acosta.} Correct.

3020 Ms. {DeGette.} Mr. Smith, do you agree with that, that
3021 that would be a good way to improve the system and to
3022 decrease fraud?

3023 Mr. {Smith.} Yes.

3024 Ms. {DeGette.} And Ms. Rosenbaum, do you agree with
3025 that too?

3026 Ms. {Rosenbaum.} I do.

3027 Ms. {DeGette.} I think that is a really great idea, and
3028 I appreciate you bringing that up. I guess that is all the
3029 questions I have. I yield back.

3030 Mr. {Stearns.} I thank the gentlelady.

3031 Mr. Murphy from Pennsylvania is recognized for 5
3032 minutes.

3033 Mr. {Murphy.} Thank you, and thank you to the panel.
3034 This is very enlightening.

3035 Mr. Acosta, you were talking about--a couple of you, you
3036 and Mr. Smith were talking about issues involved with
3037 prevention versus chasing. Do we have any estimate of the
3038 costs involved with bringing a Medicare or Medicaid fraud
3039 case to justice, from bringing charges to jail time?

3040 Ms. {Acosta.} The costs, well, I can tell you that in
3041 my office, I received a line item of about \$1 million that I
3042 supplemented with about \$2.5 million of my own discretionary
3043 spending and so I spent about \$3.5 million per year to
3044 prosecute cases. Now, that does not include the costs of the
3045 agents from HHS, OIG and FBI.

3046 Mr. {Murphy.} Do you have any kind of ratio and to make
3047 decisions with regard to whether or not to prosecute a case,
3048 if it is less than \$1 million or so and it is going to cost
3049 you \$3.5 million?

3050 Mr. {Acosta.} We have cutoffs all the time. We don't
3051 like to discuss them publicly but obviously you have more
3052 cases than you can imaginably prosecute and so you go after
3053 the larger cases, and that is a problem and every now and
3054 then we prosecuted some smaller fraudsters because you don't

3055 want to send the message that if you stay below a certain
3056 number you get away with it.

3057 Mr. {Murphy.} What would the cost of prevention be?

3058 Mr. {Acosta.} The costs of prevention at the end of the
3059 day I think are much lower and much more effective. Computer
3060 programs that screen, for example, inhalation drugs in south
3061 Florida. Budesonide that I mentioned is just one but there
3062 are a number of other inhalation drugs. In one year, Miami-
3063 Dade County received \$93 million in billings. The next
3064 highest billing city was Cook County with \$2.7 million. That
3065 is a red flag if I have ever heard one. That is the kind of
3066 issue that should be caught by a computer program, and if you
3067 can prevent those \$93 million and reduce it to the size of
3068 Chicago of \$2.7 million, that is \$90 million that you are
3069 preventing right there.

3070 Mr. {Murphy.} Thank you.

3071 And Mr. Smith, on the ``any willing provider'' issue,
3072 how do you recommend we define providers? Obviously we don't
3073 want to stop people who want to start a business who are
3074 legitimate about it but should it involve such things as the
3075 ranking member was talking about something along the lines of
3076 a criminal background check requirement or would these be
3077 people who would be at a higher level of screening for their
3078 first year or two? Would they be specifically licensed on

3079 some other level to begin with, probationary? Do you have
3080 any recommendations for that?

3081 Mr. {Smith.} There already exists in law provider
3082 screening requirements that would look at convictions,
3083 different things in the person's past, and CMS did just
3084 recently come out with a final rule regarding provider
3085 screening enrollment and what they have done is try to tier
3086 the risk areas so a provider seeking or a person seeking to
3087 open up a new Medicare-certified durable medical equipment
3088 company, a home health agency or perhaps an infusion clinic
3089 would be tiered in a higher risk category and perhaps be
3090 screened closer than someone hoping to open up a new
3091 hospital, and I think that is a wise idea.

3092 Mr. {Murphy.} Do you think with regard to these issues,
3093 and you are familiar with Florida. I don't know if you heard
3094 my questions before regarding the questions of the Cuban
3095 government's role in this. Would we have picked up on this?
3096 Is there any thought that we might pick up when another
3097 country is involved perhaps in organized crime?

3098 Mr. {Smith.} I think from a Medicaid perspective, part
3099 of it goes to not only to making sure you screen for certain
3100 bad actions in their past but also making sure you collect
3101 enough data to get the people on the applications so that you
3102 know what the links are, and one of the things that is

3103 beneficial about the predictive modeling is not just the
3104 claims analysis but also it has the capability of doing what
3105 I call social network analytics so you can basically see
3106 which people who have had an experience with a fraudulent
3107 enterprise have links to other people that you might not be
3108 aware of, might not have their names in any applications but
3109 they are operating in clusters and they sort of swarm around
3110 like bees with patients and defraud the program. That type
3111 of technology has great opportunities for us to save money.

3112 Mr. {Murphy.} Mr. Acosta?

3113 Mr. {Acosta.} Congressman Murphy, thank you. If I
3114 could, you asked earlier, you referenced the list of OIGs
3115 most wanted, and based on public information, my
3116 understanding is that a majority of these individuals are in
3117 fact in Cuba. One of the issues that we had early on was
3118 that defendants were being granted bond by federal judges on
3119 the theory that because they were Cuban nationals, they could
3120 not return to the island of Cuba, and in fact, they were then
3121 jumping bond and we had a law enforcement problem. Since
3122 then federal judges have actually stopped using the fact that
3123 someone may not flee to Cuba as a reason to grant bond
3124 because of reduced risk of flight because in fact the risk of
3125 flight to Cuba is high because Cuba welcomes the hard
3126 currency that they receive from these individuals.

3127 Mr. {Murphy.} Thank you very much.

3128 Thank you, Mr. Chairman.

3129 Mr. {Stearns.} The gentleman from Virginia is
3130 recognized, Mr. Griffith, for 5 minutes.

3131 Mr. {Griffith.} Thank you, Mr. Chairman. I do think
3132 that is very interesting. So even if the Cuban government is
3133 not involved, they still welcome these folks in because they
3134 are bringing cash with them?

3135 Mr. {Acosta.} They certainly welcome them in. There is
3136 some evidence that shows that there is governmental
3137 involvement as well but that is based on University of Miami
3138 reports.

3139 Mr. {Griffith.} Interesting.

3140 Professor Rosenbaum, I am just trying to do some things
3141 on background, and I would just ask you some questions, if I
3142 might. I see that you have listed some government contracts
3143 on your Truth in Testimony form, and I am just wondering if
3144 you could tell me what those contracts involve.

3145 Ms. {Rosenbaum.} Sure. I am a law professor at George
3146 Washington University and I am the chair of the department of
3147 health policy in the medical center, and I am the principal
3148 investigator on a contract that provides analytical support
3149 to what it now I guess the center as opposed to OSIO, it's
3150 CSIO, to review and summarize the comments for the requests

3151 for comments and the notices of proposed rulemaking related
3152 to health insurance exchanges.

3153 Mr. {Griffith.} Okay. And so they don't have somebody
3154 in-house that is doing that?

3155 Ms. {Rosenbaum.} Oh, I am sure they must review as well
3156 but we do policy support work for the department and have
3157 under federal contracts for administrations since 1991.

3158 Mr. {Griffith.} Yes, ma'am. And is there anything else
3159 you are working on with HHS or CMS in regard to the
3160 Affordable Care Act and the regulations?

3161 Ms. {Rosenbaum.} I have no other contracts in which I
3162 am the investigator, no.

3163 Mr. {Griffith.} All right. I appreciate that. Thank
3164 you, ma'am.

3165 Mr. Chairman, I yield back my time.

3166 Mr. {Stearns.} The gentleman yields back his time. I
3167 think we are all through. I am getting ready to close. I
3168 did have one follow-up with Mr. Smith. I think you talked
3169 about, or maybe it was Mr. Acosta, about using a data access
3170 process to cut fraud. I wasn't quite sure, because Inspector
3171 General and GAO can go in and look at these statistics to
3172 get--who were you talking about when you talked about data
3173 access?

3174 Mr. {Acosta.} One of the issues that we had early on in

3175 south Florida for the health care fraud initiative that later
3176 became the strike force, we set up a separate location where
3177 we collocated the agents and the prosecutors to focus on
3178 this. At the time I had requested that everyone have access
3179 to the billing data so they could look for aberrant billing
3180 patterns. We were finally able to obtain access to some data
3181 and that was restricted in appropriate ways at the time.

3182 Mr. {Stearns.} So you want law enforcement agents--

3183 Mr. {Acosta.} Absolutely.

3184 Mr. {Stearns.} --and the prosecutors to have access to
3185 this data prior to--while they are investigating a crime?

3186 Mr. {Acosta.} As the data comes in, give law
3187 enforcement access to the CMS systems, protect privacy but
3188 give us access to the billing patterns so we can catch the
3189 fraudsters in the act.

3190 Mr. {Stearns.} Would you need to go to a judge to get
3191 access? Or you just want to be able to have access to it?

3192 Mr. {Acosta.} Correct. Yes.

3193 Mr. {Stearns.} So you could call up the Health and
3194 Human Services and say we have this particular case, this
3195 particular modeling, we want you to give us access so we can
3196 look at the data?

3197 Mr. {Acosta.} Not call up HHS but actually put your
3198 investigators, have the--we have a facility in south Florida.

3199 We would like a computer terminal there where we can go and
3200 see billings for X drugs spiked by 300 percent in the past
3201 month for these five providers. Well, maybe that is a reason
3202 we should investigate those five providers.

3203 Ms. {DeGette.} Will the gentleman yield?

3204 Mr. {Stearns.} Sure. I would be glad to yield.

3205 Ms. {DeGette.} Is that a legal barrier that you
3206 couldn't get the data or is that an agency policy that
3207 prevented you from getting the data?

3208 Mr. {Acosta.} In all candor, I am uncertain whether it
3209 is legal or bureaucratic. I just know it is a barrier.

3210 Ms. {DeGette.} As I said to the previous panel, I think
3211 that is some data that would be really helpful in these
3212 investigations, so if you can try to figure that out and
3213 supplement your answer, then we can know what we need to do
3214 to help expedite that.

3215 Thank you, Mr. Chairman.

3216 Mr. {Stearns.} Thank you. Let me conclude by--oh,
3217 good. We have another member came back. The gentleman from
3218 Texas, Mr. Burgess, is recognized.

3219 Dr. {Burgess.} Thank you, Mr. Chairman. Actually, I
3220 have been watching off the Floor. I have a couple of
3221 constituents that are here. They are both serving their
3222 country, so I am making some time for them while this hearing

3223 is going on.

3224 Let me just ask a question, Ms. Rosenbaum--well,
3225 actually I want to ask it of Mr. Smith, but Ms. Rosenbaum
3226 made an observation that we should empower more investigation
3227 of fraudulent insurance behavior but Mr. Smith, some of your
3228 testimony to me indicated that you didn't feel that it was
3229 necessary to have the same focus. Would you care to expound
3230 upon that?

3231 Mr. {Smith.} I think what I said came at maybe a
3232 slightly different angle. I said one of my recommendations
3233 was that the Medicare and Medicaid programs continue to move
3234 away from a fee-for-service-based system and more toward
3235 other payment systems such as managed care and also to
3236 operate the programs more like a private insurer would. I
3237 guess it might be interesting historically to hear what
3238 percentage private insurers have suffered in fraud and abuse
3239 but that goes to their bottom line, it doesn't go to taxpayer
3240 dollars. What the Medicare and Medicaid programs need to do
3241 is focus on protecting taxpayer dollars, and if you engage an
3242 outside managed care company and you pay them risk-adjusted
3243 rates, they have the financial incentive to stop provider
3244 fraud and abuse. If they don't, it goes to their bottom
3245 line. It doesn't hurt taxpayer dollars any further.

3246 Dr. {Burgess.} Yes, and that is interesting that you

3247 say that. When was this? June of 2009, you may be familiar
3248 with an article published in the New Yorker by Atul Gawande,
3249 and it was important to me because he was talking about
3250 Texas. I should point out that Texas today is 175 years old.
3251 It was 175 years ago this morning that Texas declared its
3252 independence and became an independent country. But that is
3253 another story.

3254 Part of Dr. Gawande's investigation in south Texas led
3255 him--I don't know that he came right out and said it but he
3256 certainly implied that overutilization and overbilling of
3257 Medicare was rampant within the medical community in McAllen.
3258 So it bothered me. I know a lot of doctors, or I know some
3259 of the doctors who work there. We work together on border
3260 issues. So I took a trip down to McAllen to see for myself
3261 on the ground if I could what was going on, and just the
3262 point you make, Mr. Smith, was you don't see the headlines in
3263 the paper that Aetna Life and Casualty has been defrauded of
3264 15 wheelchairs. It just doesn't happen. It is always
3265 Medicare, Medicaid and SCHIP. It is always the public side.

3266 Now, Ms. Rosenbaum has some issues with private
3267 insurers, and I get that, but here we are talking about the
3268 actual delivery of care, and appropriately, it never seems to
3269 happen on the private sector, or if it does, perhaps they
3270 just don't talk about it the same way we do on the public

3271 side. But is that your observation as well?

3272 Mr. {Smith.} It has certainly been a prevalent problem
3273 in both programs. There was a report recently that in 2009
3274 the Medicare program paid for over 420 million claims for
3275 mental health in Florida alone, which was four times higher
3276 than the amount paid in Texas and 635 times higher than the
3277 amount paid in Michigan, and to paraphrase Carl Hiaasen, who
3278 is a funny novelist out of Florida, he said no matter what
3279 you think of Floridians, there is no way that we are four
3280 times crazier than Texans, respectfully, Congressman.

3281 Dr. {Burgess.} Well, exception taken. Yes, I was going
3282 to suggest perhaps they need to move to Texas and that would
3283 solve our problem.

3284 Well, it is just--you know, it raises an important
3285 issue. What is happening on the private side that prevents
3286 the same problems that are happening on the public side.
3287 Now, we talked a little bit about the payment error rate, and
3288 Ms. Rosenbaum, some of that is truly just a coding error.
3289 Someone makes a mistake when someone comes in and they write
3290 the code down and that goes into the payment error rate,
3291 correct?

3292 Ms. {Rosenbaum.} Absolutely.

3293 Dr. {Burgess.} But that error rate of 9.4 percent or
3294 whatever was quoted to us, that is not predominantly made up

3295 of honest mistakes made in tallying up the office visit. Is
3296 that correct?

3297 Ms. {Rosenbaum.} I am not sure I understand the
3298 question.

3299 Dr. {Burgess.} Well--

3300 Ms. {Rosenbaum.} You mean of the total amount?

3301 Dr. {Burgess.} Yes. How much is just simple coding
3302 errors that--

3303 Ms. {Rosenbaum.} I couldn't begin to answer the
3304 question.

3305 Dr. {Burgess.} It wouldn't these two guys that were on
3306 the panel earlier with their handcuffs and nightsticks? Just
3307 wouldn't be involved, right? The amount of the error rate
3308 that is just attributable to simple coding errors is likely
3309 pretty small out of that 9.4 percent?

3310 Ms. {Rosenbaum.} I truly don't know. I have only seen
3311 the numbers aggregated.

3312 Dr. {Burgess.} Well, let us even say this. Let us say
3313 it is that high for just simple coding errors. Doesn't that
3314 tell us something about how we should be approaching this
3315 problem, that if nothing else, perhaps some education of
3316 doctors and nurses and clinics about how to code properly
3317 would be part of what should be happening at the level of
3318 CMS?

3319 Ms. {Rosenbaum.} Yes. I think anything and everything
3320 that can be done to clarify how to bill, how to file
3321 appropriate claims--

3322 Dr. {Burgess.} I don't have any data on it but I would
3323 suspect that number is very low, because as you recall in the
3324 late 1990s, there were all of these compliance audits, and I
3325 know because I was in practice at the time, and they were
3326 very, very severe, and yes, you could be put in jail, so I am
3327 just telling you I think that number of actual coding errors
3328 of that 9.4 percent is in fact very small because most
3329 physicians and nurses and nurse practitioners do not want to
3330 undergo that type of scrutiny because we all had to go
3331 through those compliance audits, we all had to put forward
3332 what we were doing in our offices to prevent that from
3333 happening.

3334 Mr. Chairman, I see I have gone over my time. Thank you
3335 for the indulgence.

3336 Mr. {Stearns.} All right. I thank the gentleman.

3337 By unanimous consent, we would like to put the document
3338 binder into the record, and I will conclude by saying the
3339 purpose of the oversight and investigation is to ferret out
3340 details. You have done an excellent job, the second panel
3341 here. We are going to recommend to the Health Subcommittee
3342 on Energy and Committee a lot of the recommendations that

3343 have come out of this hearing and that is the purpose, and
3344 hopefully they will have a hearing and follow up with
3345 legislation. I know the Democrats think a lot of these
3346 suggestions you have made are part of Obamacare but I am not
3347 sure they all are, and obviously changing the Social Security
3348 number so a person can have a Medicare ID number that you
3349 seem to all agree upon is something that we should look at
3350 quickly.

3351 So with that, the--

3352 Dr. {Burgess.} Mr. Chairman, just a point of personal
3353 privilege, can I recognize two of my constituents?

3354 Mr. {Stearns.} Sure.

3355 Dr. {Burgess.} Captain Dambravo and Captain Dambravo
3356 were visiting me today during the hearing, and I want to
3357 thank them for their service to their country. If I can
3358 further relate my relationship with Captain Dambravo goes
3359 back some time. Without violating HIPAA, I delivered him 27
3360 years ago. Thank you both for being here with us today.

3361 Mr. {Stearns.} Thank you for being here.

3362 And with that, the subcommittee is adjourned.

3363 [Whereupon, at 1:02 p.m., the Subcommittee was
3364 adjourned.]