

# United States Senate

August 12, 2019

The Honorable Alex M. Azar II  
Secretary, U.S. Department of Health &  
Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

The Honorable William Barr  
United States Attorney General, Department  
of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Secretary Azar, Attorney General Barr,

We are writing today to express our concern with recent reports of genetic testing fraud targeting the senior citizen Medicare population. According to a story published by USA Today on July 31, 2019 scammers are deceiving Medicare beneficiaries and inducing them to receive genetic test screenings covered by Medicare Part B. This results in potentially compromised personal health information and the American taxpayer paying for unnecessary tests ranging in average price from \$6,000 to \$9,000, and up to \$25,000 according to the Office of Inspector General at the Department of Health and Human Services (HHS OIG).

We understand that the Administration for Community Living (ACL) is actively warning seniors about genetic test scams and is in communication with Centers for Medicare and Medicaid Services (CMS) Center for Program Integrity (CPI). Additionally, we understand HHS OIG issued a fraud alert on June 3, 2019<sup>1</sup> and the Federal Trade Commission published a blog post on July 19, 2019 warning of the government imposter scam.<sup>2</sup> While these are positive steps towards rectifying the problem we have questions we would like your departments to provide us with additional information.

We would appreciate your response to the following questions:

1. Is the Department of Health and Human Services (HHS) aware of ongoing fraudulent schemes targeting Medicare seniors and defrauding taxpayers?
2. Understanding that under the Medicare statute and regulations a genetic test would not be covered by Medicare unless ordered by the beneficiary's treating or attending physician and deemed medically reasonable and necessary, how are fraudsters soliciting seniors and circumventing this requirement?

<sup>1</sup> U.S. Department of Health and Human Services Office of Inspector General – Fraud Alert: Genetic Testing Scam, June 3, 2019. <https://oig.hhs.gov/fraud/consumer-alerts/alerts/geneticcam.asp>

<sup>2</sup> Federal Trade Commission Consumer Information – Medicare does not give out DNA kits, June 19, 2019. [https://www.consumer.ftc.gov/blog/2019/07/medicare-does-not-give-out-dna-kits?utm\\_source=govdelivery](https://www.consumer.ftc.gov/blog/2019/07/medicare-does-not-give-out-dna-kits?utm_source=govdelivery)

3. What is the process CMS utilizes to confirm that a genetic test was ordered by the appropriate physician for a medically reasonable and necessary purpose?
4. If the fraudulent ordering and billing is not usually detected until the post-claims audit process, does the Department believe it should consider specific coverage or payment policies such as pre-claim review or other tools? If such a policy is deemed too broad, would the Department consider a genetic testing ordering utilization management demonstration in states where fraudulent billing rates are the highest for genetic tests, such as what was initially authorized for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) in the home health industry?
5. Laboratories and genetic test manufacturers have a clear financial incentive to increase testing uptake and volumes among the Medicare population. Is HHS OIG investigating the potential for laboratories and manufacturers to create collaborative arrangements to target attending physicians with high Medicare patient volumes to order tests that are not medically necessary, and if OIG or other information reveals the need for comprehensive policies will the Department make policy recommendations to Congress?
6. The Department of Justice and HHS OIG serve the role of providing criminal enforcement of the Anti-Kickback Statute (AKS) and program integrity oversight through tools such as Health Care Fraud Prevention Partnership and the Medicare Fraud Strike Force. What types of coordination and strategies are DOJ and HHS deploying to leverage interagency fraud detection, prevention, and enforcement capabilities?
7. What action is the Administration for Community Living considering or taking in using social media to combat spurious claims for genetic testing on social media?
8. What safeguards are HHS and relevant departments and agencies developing to address this type of predatory fraudulent behavior in the future?

As U.S. Senators it is our duty and obligation to serve the people of our states and the federal taxpayer. This duty includes protecting seniors from predatory fraud, protecting the integrity of the Medicare program, and ensuring that taxpayer funds are spent appropriately. The alleged reports of fraudulent activity place the program in a compromised state and we are confident your departments will take the appropriate steps to correct the issue.

Respectfully,



Bill Cassidy, M.D.  
United States Senator



Sheldon Whitehouse  
United States Senator

*Maggie Hassan*

Margaret Wood Hassan

United States Senator