

# United States Senate

WASHINGTON, DC 20510

December 23, 2009

Mr. Gene L. Dodaro  
Acting Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Acting Comptroller General Dodaro:

We are writing to respectfully request that the Government Accountability Office (GAO) undertake a review of laws and regulations related to relationships between health care providers and other entities involved in the financing and delivery of health care.

As you know, the Senate is currently considering the *Patient Protection and Affordable Care Act of 2009* -- health reform legislation designed to expand access to insurance coverage, improve the quality of health care, and lower costs for patients and families. This legislation includes a robust set of delivery system reforms aimed at incentivizing physicians, hospitals, and other providers to modernize the delivery of health care by pursuing collaborative care models and different cooperative arrangements to promote high quality, patient-centered care.

In consulting with our constituents and various experts on these issues, we have heard concerns that current laws and regulations may inadvertently create barriers to efforts to reform the health care system. In particular, it has been suggested that legal obstacles which may be unnecessary for fostering a competitive marketplace or providing essential patient protections could hamper our country's efforts to maximize the effectiveness of health care reform designed to improve quality and lower costs. While we are interested in your review of these issues, we are equally eager to ensure that all necessary protections for patients and consumers are maintained.

Therefore, in conducting your review, we ask that you focus on federal and state laws and regulations that may impede or discourage physicians, hospitals, health plans, and other entities from entering into collaborative, financial, commercial, or health care delivery arrangements designed to promote quality improvement while fostering a competitive marketplace. We would also like you to include a review of protections currently in laws or regulations and identify potential vulnerabilities that may arise as a result of health reform, or changes made to such protections to effectuate or implement elements of health reform.

Several areas have come to our attention due to their potential for discouraging essential reform efforts. We request that the GAO look at, but not limit its review to, these areas:

- (1) Laws and regulations that limit financial relationships and referrals between providers, such as provisions relating to physician self-referral (section 1877 of the Social Security Act) and the anti-kickback provision of section 1128B of the Social Security Act;

- (2) State laws and regulations that affect the scope and manner of practice by health care professionals (including corporate practice of medicine laws);
- (3) Laws and regulations restricting the establishment of “gainsharing” or “shared risk” arrangements between and among providers, such as the civil monetary penalty provisions of section 1128A(b)(1) of the Social Security Act.
- (4) Laws and regulations that may limit valuable, timely, and secure exchange of information electronically.
- (5) Laws that inhibit or prohibit providers from offering services on a prepaid or bundled basis.
- (6) Laws and regulations at the state, local, and federal level, along with related oversight and processes, regarding health care entity licensing, credentialing, or similar activities that may result in duplicative or inefficient use of public or private resources, and the extent to which required reporting could be shared or efforts could be consolidated in order to reduce such inefficiencies and related burden on providers while still ensuring integrity and transparency standards.
- (7) Federal and state antitrust laws to the extent they impede or discourage providers, health plans, or other relevant entities related to care delivery from collaborating to improve health care quality through efforts including service payment arrangements or payment incentives designed to promote care coordination and quality, except where such laws are necessary for maintaining healthy competition, lowering prices, or promoting innovation.

Because this matter is particularly relevant to the rising costs of health care and potential implementation of health reform legislation in the immediate future, we believe that a 12 month time-frame for completion of this review is appropriate and important.

If we can answer any questions or clarify this request further, please feel free to contact David Schwartz for Senator Baucus at 202-224-4515, Jake Swanton for Senator Mark Udall at 202-224-3653, or any one of our offices for assistance.

Thank you for your cooperation and assistance on this matter. We look forward to your response.

Sincerely,



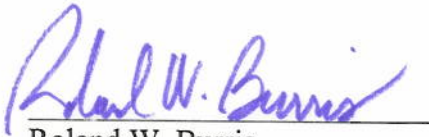
Max Baucus  
United States Senate



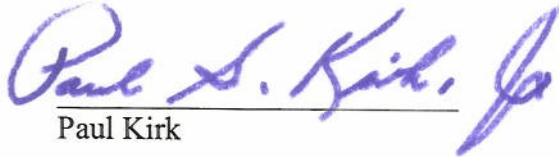
Mark Udall  
United States Senate



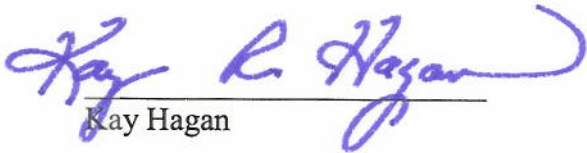
Michael F. Bennet



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Tom Udall

