

May 22, 2013

To: Chair, House Ways and Means Health Committee:
From: Robert N. Young
Ref. Hearing on President's FY2014 Budget
CC: Congressman Eric Cantor
Subcommittee on Health Committee Members

Dear Chairman Brady,

Presidents come and go, as do those they place in high positions of power and responsibility, such as HHS Secretaries, and Attorney Generals; while Congress is elected from their states and districts. Our President is compared to Abraham Lincoln, but this must not include Health Care which 20 years ago Attorney General Reno said fraud in it was "the number two crime problem in America, second only to violent crime". A review of Department of Justice Fraud Statistics for over the past 27 years since the False Claims Act was amended, and Congressional testimony show Health Care Fraud to now be the number one crime problem. The Justice Department, HHS and CMS are doing little to stop it from driving our Nation into un-survivable deficits as our health care system has the highest cost in the World while producing poor results.

On February 25, 2010 at the White House Summit on Healthcare Reform, Senator Tom Coburn, referring to waste, fraud, and abuse said "And the facts we know is one out of every three dollars that gets spent doesn't help anybody get well and doesn't prevent anybody from getting sick." One out of every \$3 dollars amounts to 6% of our GDP while health care spending now is around 20% of GDP. The extent of the problem has been known since a late Carter Administration GAO study "**Fraud in Government Programs: How Extensive Is It? How Can It Be Controlled?**" <http://archive.gao.gov/f0102/115135.pdf> Increasing costs to recipients only fuels waste, fraud and abuse which provides no care to anyone! We spend over \$2.7 trillion of our GDP on health care, a third of which is \$900 billion, the amount Sen. Coburn in a Wall Street Journal video entitled: Cut from Medicare to Reduce Deficit on May 27, 2011 said a \$900 billion reduction every year for 10 years is needed to regain solvency. Is the amount the Presidents budget projects to increase Medicare recipient's costs around \$1 trillion a year?

Senator Coburn testified at the Summit: "And when you look at, when it's studied, if you look at what Malcolm Sparrow from Harvard says, he says 20 percent of the cost of federal government health care is fraud. That's his number." Senator Coburn, a practicing Family Physician went on to say "But I just went through last night, if you add up what Thomson Reuters, which looked at all the studies that have been done and combined them in, they say between \$625 billion and \$850 billion a year of health care dollars are wasted. When taxpayer funding for Medicare and Medicaid is wasted or stolen by criminals, it means the cost of the program goes up and so does the pressure to cut back on benefits for the rest of us." President Obama ended his discussion by saying "Well, Tom, I appreciate what you said. I just want to make this quick point: Every good idea that we've heard about reducing fraud and abuse in the Medicare and Medicaid system, we've adopted in our legislation. So that's an example of where we agree. We want to eliminate fraud and abuse within the government systems". When will fraud elimination start and what "good ideas" are in the ACA? Or is the budget plans just increasing costs to Medicare recipients' like me, to subsidize fraud in Medicaid programs, as millions are added in a few months and as Medicare recipients increase 11 million a day? Past experience shows health care fraud grows with entitlements, so where will this end? Or will it end only in bankruptcy?

While campaigning in 2008, Presidential candidate Obama promised he “Would empower the HHS Inspector General to fight fraud, implement anti-fraud measures in CMS contracting, expand the scope of Medicare and Medicaid audits, strengthen the federal False Claims Act, encourage states to go after fraud, and increase funding for Justice Department prosecutors and FBI agents to fight fraud”. At a September, 2007 rally he said “We should also stop spending \$15 billion a year in overpayments to insurance companies for Medicare, go after tens of billions of dollars in Medicare and Medicaid fraud.” Thousands of False Claim suits piled up over 10 years, not acted on when False Claims Act suits only require 60 days for Justice Department to intervene or decline. The history of Attorney General Holder in fraud matters under Clinton and Obama is strewn with broken promises. <http://www.cov.com/files/Publication/fe370a33-8950-48aa-a7eb-33acc82e27af/Presentation/PublicationAttachment/b127b566-5725-435e-821f-3b462ee48282/oid6386.pdf> He recently issued press releases on multi-city sweeps, which uses CMS, HHS and state employees while hundreds of False Claims Act cases projecting much larger amounts for recoveries are sealed in Federal Courts for up to 10 years, hidden away and ignored in the Justice system. The few billions recovered shown on the Justice.gov website http://www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_Statistics.pdf doesn't show the principle HHS spent, or show half are from Medicaid pharmaceutical fraud, the highest recovery segment, about a 2% recovery rate. Health care fraud is very well known for over 35 years to “cost” tens of billions of dollars every year, and the reason for not stopping fraud has always been “we don't have enough people and funding”. If Medicare recipient costs are increased how much will go to “fraud fighters” who can't find much fraud in this highly computerized World.

Candidate Obama pointed out “The pharmaceutical industry wrote into the prescription drug plan that Medicare could not negotiate with drug companies. And you know what; the chairman of the committee, [Billy Tauzin, a longtime Democratic member of Congress who switched party affiliations after Republicans gained control of Congress in 1994 to maintain his influence and rose to Chairman of the House Committee on Energy & Commerce.] went to work for the pharmaceutical industry making \$2 million a year.” He continued “Imagine that. That's an example of the same old game playing in Washington. You know, I don't want to learn how to play the game better, I want to put an end to the game playing.” I don't like his new game!

On March 5, 2010 President Obama hosted a Health Care discussion group at the White House where he announced several group attendees had promised to work for compromise with him. Among these were, the American Medical Association, the Health Insurance Industry and the Pharmaceutical Research Manufacturing Association representing only brand named drug manufacturers. At the time the “deal” with PhRMA's President Billy Tauzin was mentioned but not published until July 7, 2010, for \$80 billion, over 10 years.

Candidate Obama pledged to rescind the Re-Importation Act which makes American brand drug prices twice those of most socialized medicine countries and the Federal Supply System. Prices available to U.S. citizens are twice as much! Why did the President change his principles? In opposing rebates in Medicare Part D he appeased brand drug manufactures to support ACA knowing he could have reduced Medicare drug costs by more, \$80 billion for recipients and \$19 for Medicare over 10 years. The largest segment of the deal [42%] was to be a \$34 billion rebate increase in the Medicaid Drug rebates, from 15.1% to 23.1%. As this deal was being done, then Kaiser News reporter Christopher Weaver reported 2009 Medicaid rebate percentages averaged 38.5%, making the 23.1% deal a decrease of 15.4%, \$15 billion over 10 years of the ACA, But soon most brand drugs will be generic, replaced by extremely costly brand only Biologics that the deal shows are projected to save \$9 billion from Follow-on Biologics? The only positive

feature was a \$25 billion decrease in the Medicaid “donut hole” that currently doesn’t effect many: and since Biologics are now a third all prescription drug costs, projected to increase by 67% by the end of 2015 no commercial insurance plan or Medicare will be able to cover them, while these are also half the price in socialized health care countries and generic versions exist.

Medicare drug plans started in 2006, switched “poor” Medicaid Seniors whose drug use was 66% of Medicaid programs drug costs, from Medicaid to Medicare Part D. State Medicaid drug costs only dropped 31% from \$43 billion to \$28 billion Poor seniors, still poor and unable to pay, continued to received drugs free under Medicare which paid higher prices with no public rebates as our President agreed none would be imposed for 10 years. But Medicaid rebates as a percentage of funds spent didn’t decline; they rose from 27.1% in 2005 to 37.7% in 2006. In 2011 the last year reported, averaged 45.5%. Medicaid and Medicare brand drug costs never decreased while Medicaid rebates increasing is impossible to explain; especially when cheap generics have risen to be over 80% of the prescriptions with a small rebate of 11.1% rebate rate. This shows brand drugs are being over prescribed, over dispensed and are over priced!

The past 23 years Medicaid drug prices and rebates have been held secret while Medicare recipients know all socialized Medicine countries pay much less, most half as much. “Donut hole” rules are meant only to prevent Medicare recipients from becoming poor and eligible for Medicaid lower prices. HHS OIG [oei-03-10-00320](#) report of August 2011 showed taxpayers pay more for their drugs under Medicare than they do for Medicaid because Medicaid rebates are higher while Medicaid only has hidden PBM rebates. The only reports of rebates are in Medicaid Financial Managements reports which seem to have stopped now, making it impossible to find out how much was paid in rebate amounts, while government and the VA prices have 50% to over 60% discounts. So cash customers, privately insured ones and Medicare recipients are to pay more to subsidize Medicaid recipients, including Biologics costing twice more than other countries, and will double in price soon: so Medicaid can get higher kick backs on Biologics?

This summer will be hot in D.C. as leaders argue about how to reduce our deficits. Nobody has mentioned “the elephant fraud in the room”, or if or when they will “eliminate fraud in government”. The only discussions are how much to increase costs to seniors who elected officials must believe are the most gullible. Must we wait until 2014 when the results of the PPACA will be too well known, perhaps too late? Can Medicaid or Medicare or our economy continue without major reductions in waste, fraud and abuse caused by providers who Congress and the President want to increase payments to, by increasing Medicare recipient costs? The Justice Department Fraud records show no case details but information on settled cases are found at TAF.org [Taxpayers Against Fraud]. Laboratories, hospitals, nursing homes, physicians, and drug manufacturers account for 80% of all False Claims Act HHS recoveries. These only show Qui Tam cases which were intervened in, or settled most usually as no information is ever provided on the majority of Qui Tam cases. Can Medicare, Medicaid or our economy continue without major reductions in waste, fraud and abuse; caused by some providers; who Congress and the President want to increase payments, by increasing Medicare recipient costs? These Tin cans have been kicked down the road too long; and “lock Boxes”, even this empty one, can’t be much longer, without many Medicare recipients becoming poor and eligible for Medicaid too.

The Medicaid Drug Rebate chart below from the Medicaid Financial Management reports shows Medicaid drug spend and rebate percentages, from its’ start in 1991 through 2011 at a minimum brand rebate of 15.1% and “extra rebates that show were collected only as Medicare Part D was starting.

Year	Medicaid FMR Drug Spend	Medicaid FMR CMS rebates	Medicaid FMR State "sidebar Rebates	Total CMS and State "sidebar" rebates	Total Rebate %
1991	\$ 5,622,507,455	\$ 113,434,555	\$ -	\$ 113,434,555	2.0%
1992	\$ 7,120,988,280	\$ 900,252,297	\$ -	\$ 900,252,297	12.6%
1993	\$ 8,317,432,427	\$ 1,375,672,255	\$ 11,105,720	\$ 1,386,777,975	16.7%
1994	\$ 9,257,334,150	\$ 1,699,669,808	\$ 20,747,062	\$ 1,720,416,870	18.6%
1995	\$ 9,994,406,563	\$ 1,703,122,819	\$ 17,305,221	\$ 1,720,428,040	17.2%
1996	\$ 11,048,243,053	\$ 1,911,703,307	\$ 23,115,137	\$ 1,934,818,444	17.5%
1997	\$ 12,383,834,374	\$ 2,164,840,801	\$ 23,292,403	\$ 2,188,133,204	17.7%
1998	\$ 14,142,303,810	\$ 2,415,198,263	\$ 25,906,216	\$ 2,441,104,479	17.3%
1999	\$ 17,047,331,170	\$ 3,260,442,474	\$ 37,272,150	\$ 3,297,714,624	19.3%
2000	\$ 20,543,807,301	\$ 3,758,307,497	\$ 107,518,404	\$ 3,865,825,901	18.8%
2001	\$ 24,656,812,921	\$ 4,726,543,516	\$ 107,711,713	\$ 4,834,255,229	19.6%
2002	\$ 29,339,050,970	\$ 5,613,257,675	\$ 144,709,509	\$ 5,757,967,184	19.6%
2003	\$ 33,912,159,591	\$ 6,837,717,863	\$ 217,360,888	\$ 7,055,078,751	20.8%
2004	\$ 40,065,314,592	\$ 8,801,203,598	\$ 376,891,977	\$ 9,178,095,575	22.9%
2005	\$ 43,077,457,835	\$ 11,102,151,403	\$ 588,035,905	\$ 11,690,187,308	27.1%
2006	\$ 28,220,039,444	\$ 10,022,745,838	\$ 683,035,330	\$ 10,705,781,168	37.9%
2007	\$ 22,550,887,846	\$ 6,348,804,744	\$ 434,473,369	\$ 6,783,278,113	30.1%
2008	\$ 23,576,377,912	\$ 7,498,962,804	\$ 396,766,130	\$ 7,895,728,934	33.5%
2009	\$ 25,321,340,237	\$ 8,773,712,466	\$ 324,490,139	\$ 9,098,202,605	35.9%
2010	\$ 27,301,461,287	\$ 10,393,298,036	\$ 332,819,194	\$ 10,726,117,230	39.3%
2011	\$ 29,793,533,030	\$ 13,230,809,600	\$ 330,899,767	\$ 13,561,709,367	45.5%
TOTAL/AVG.	\$ 434,697,679,346	\$112,651,851,619	\$4,203,456,234	\$ 116,855,307,853	24.2%