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September 18, 2017

**VIA ELECTRONIC TRANSMISSION**

The Honorable Seema Verma  
Administrator  
Centers for Medicare & Medicaid Services  
200 Independence Ave, S.W.  
Washington D.C. 20201

Dear Administrator Verma:

On several occasions I have written to the Joint Commission, which is a CMS accrediting agency, to better understand the role that it plays in ensuring that hospitals are treating patients properly. As you may well know, oversight of accrediting agencies and CMS' role in ensuring adequate care in medical facilities is an important issue.

In response to my requests for information from the Joint Commission, it produced some information requested but not all. For example, with respect to Universal Health Service's Shadow Mountain facility, the Joint Commission refused to provide the scope of each performance issue at the facility; details to indicate the actual problems identified; how many problems had been fixed; and how each was fixed. The Joint Commission also did not produce inspection reports.

Recent news reports have provided additional examples of the Joint Commission's apparent failure to adequately hold accountable facilities that have not properly cared for its patients. The Joint Commission appears to be unable to aggressively enforce the necessary standards on all facilities. For example, the Wall Street Journal reported that the Joint Commission made no change in Cooley Dickinson Hospital's status even after serious problems occurred, including patient deaths.<sup>1</sup> In addition, the Wall Street Journal reported:<sup>2</sup>

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<sup>1</sup> Stephanie Armour, *Hospital Watchdog Gives Seal of Approval, Even After Problems Emerge*, The Wall Street Journal (Sept. 8, 2017).

<sup>2</sup> *Id.*

[i]n more than 30 instances, hospitals retained their full accreditation although their violations were deemed by CMS so significant they caused, or were likely to cause, a risk of serious injury or death to patients.

On April 28, 2017, CMS proposed a regulation to require "...AO's with CMS-approved accreditation programs to post final accreditation survey reports and PoCs on public facing websites designated by the AO."<sup>3</sup> However, CMS recently withdrew the regulation, saying that federal law prohibited it.<sup>4</sup> After review of Section 1865 of the Social Security Act, it appears that the law would prohibit the regulation. I am writing today to better understand if other provisions of law would prevent the recently withdrawn regulation and what statutory changes would be necessary to require inspection reports to be made public.

Making facility inspections reports public may go a long way to providing the necessary additional information for patients and their families to make informed decisions about where to seek care.

Accordingly, please explain what, if any, other statutory provisions in addition to section 1865 would prevent inspection reports from being made public. In addition, for each provision of law, what changes would be needed to legally allow for the regulation to be promulgated? Please respond by October 2, 2017. Should you have questions, please contact Josh Flynn-Brown of my Judiciary Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary

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<sup>3</sup> 82 Fed. Reg. 20144 (2017).

<sup>4</sup> 82 Fed. Reg. 38499 (2017).