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May 28, 2010

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Sebelius:

We write to you today requesting information and details about the brochure, "Medicare and the New Health Law – What it Means for You," recently mailed to Medicare beneficiaries around the country. The brochure treats the recently enacted Patient Protection and Affordable Care Act (PPACA) as entirely positive to Medicare beneficiaries. Curiously absent is any mention of the reductions to Medicare, including significant cuts to Medicare Advantage (MA) that could jeopardize the existence of MA plans. Nor is any reference made to the PPACA's new taxes, regulations, and cost increases that realistically could impact beneficiaries. This brochure is inaccurate and misleading. We do not believe the American taxpayer should be required to pay for the creation and distribution of biased reports about the PPACA.

The brochure contains the following misleading statements:

- The brochure claims that the PPACA "keeps Medicare strong and solvent." This statement ignores the April 22, 2010, report by the Chief Actuary of the Centers for Medicare and Medicaid Services (CMS) that states that any impact on future health care cost growth rates will be "outweighed" in the next 10 years "by the increased costs associated with the expansions of health insurance coverage. Also, the longer-term viability of the Medicare update reductions is doubtful."
- The brochure ignores a January 22, 2010, Congressional Budget Office analysis that found that the Hospital Insurance trust fund savings "would be used to pay for other spending and therefore would not enhance the ability of the government to pay for future Medicare benefits."

- The brochure makes little reference to the PPACA's effect on hospitals. Is this because the CMS Chief Actuary found that the PPACA would cause Medicare payment rates for these providers to increase more slowly than rising costs, and "providers for whom Medicare constitutes a substantive portion of their business could find it difficult to remain profitable and...might end their participation in the program" (possibly jeopardizing access to care for beneficiaries)?
- The brochure ignores that the Office of the Actuary has determined that 15 percent of Medicare Part A providers could become unprofitable within 10 years, jeopardizing access to hospitals, skilled nursing facilities, and home health agencies.
- The brochure touts "improvements to Medicare Advantage", while completely ignoring the Chief Actuary's finding that new provisions in the PPACA "will generally reduce [Medicare Advantage] rebates to plans and thereby result in less generous benefit packages." The Chief Actuary estimates that the PPACA will lower Medicare Advantage enrollment by approximately 50 percent.

This brochure fails to adequately inform beneficiaries about the damage to Medicare that will be done by the PPACA.

Adding to our belief that this brochure is akin to political propaganda undertaken by the Department of Health and Human Services (HHS) to improve the political standing of Democrats amongst seniors is that the brochure discusses issues and parts of the PPACA unrelated to Medicare or Medicare beneficiaries. If HHS wishes to claim that this brochure is part of their official duties to administer Medicare and inform Medicare beneficiaries of the services they will receive, then it seems odd that they would devote nearly a page of a four page brochure to "improvements beyond Medicare". This section, discussing an early retiree program, pre-existing condition coverage for those not of Medicare age, and coverage for young people up to age 26, seems completely unjustified in a mailing to individuals whom by definition already qualify for Medicare. For example, why does HHS need to sell an early retiree program for those who retire before age 65 to a group of people already 65 and older?

Therefore, we request that by June 14, 2010, [or within two weeks of the date of this letter,] you provide answers, in writing, to the following questions and requests for information:

1. How did HHS determine who to mail the brochure to? Was it sent to all Medicare beneficiaries? Please describe the pool of recipients.
2. What were HHS's total expenses for producing this brochure? How much did mailing the brochure cost?
3. Was the brochure reviewed by the Office of General Counsel (OGC)? If so, who conducted the review and what issues were examined? If not, why was there no review by the OGC? Was there any other legal review?

4. Was the information in the brochure vetted in any way? Please describe the process used and what agencies were consulted.
5. Was anyone at CMS consulted during the creation of the brochure or before its mailing? If so, please provide a complete summary of these discussions.
6. Were any outside groups or organizations consulted in the creation of this document? If so, please provide the name of each group or organization, and the reason for their consultation.
7. Were any outside groups or organizations compensated for their aid, assistance, or employment in drafting, creating, or mailing this brochure? If so, please provide a detailed description of the services rendered and the cost breakdown.

We hope you will give this matter your complete and immediate attention. If you have any questions, please contact the Minority Committee Staff at (202) 225-3641.

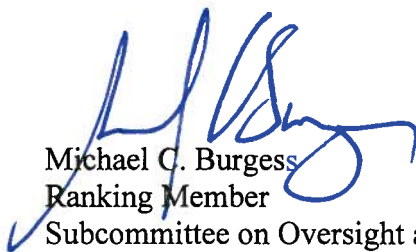
Sincerely,



Joe Barton
Ranking Member



John Shimkus
Ranking Member
Subcommittee on Health



Michael C. Burgess
Ranking Member
Subcommittee on Oversight and Investigations

cc: The Honorable Henry A. Waxman, Chairman

The Honorable Frank Pallone, Chairman
Subcommittee on Health

The Honorable Bart Stupak, Chairman
Subcommittee on Oversight and Investigation