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Washington, D.C. 20201

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The Honorable Joe Barton
Ranking Member, Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Mr. Barton:

I am writing in response to your letter dated October 1, 2009, in which you joined 20 of your colleagues in requesting that the Office of Inspector General for the Department of Health and Human Services (HHS/OIG) investigate the circumstances surrounding this Department's issuance of a cease and desist letter first to Humana, and then to other Medicare Advantage (MA) organizations and prescription drug plan (PDP) sponsors.

We have contacted Committee staff in followup to your letter. As explained to Committee staff, OIG does not believe that the facts made available to us would constitute a colorable violation of Federal criminal or civil law that could justify initiating an investigation to answer the specific questions in your letter.

That said, your inquiry raises questions about CMS's monitoring and enforcement of MA plans' compliance with marketing requirements, including whether CMS's actions with respect to the Humana letter are consistent with its policies and past practices. OIG has conducted previous evaluations of CMS's oversight of MA organizations' and Medicare PDP sponsors' marketing materials and those materials' compliance with CMS requirements (including "Medicare Advantage Marketing Materials for Calendar Year 2005," issued in August 2006, and "Marketing Materials for Medicare's Prescription Drug Plans," issued in September 2008). We would be happy to discuss with your staff further OIG work evaluating, at a systemic level, CMS's oversight and enforcement of MA organizations' compliance with marketing requirements.

We look forward to working with you to ensure the integrity of the Medicare program. If you and your staff wish to discuss this further, my staff and I would be pleased to do so. I will also provide this response to your colleagues who joined you in this request.

Sincerely,

A handwritten signature in cursive script that reads "Daniel R. Levinson".

Daniel R. Levinson
Inspector General