

**Congress of the United States**  
**Washington, DC 20515**

*May 3, 2006*

The Honorable Mark McClellan, M.D., Ph.D.  
Administrator  
Centers for Medicare and Medicaid Services  
U. S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, D.C. 20201

Dear Administrator McClellan:

We appreciate and commend the considerable efforts your Agency has undertaken to implement the new Medicare prescription drug benefit. As that process continues, we urge you to act promptly to allow beneficiaries residing in long-term care facilities to have full access to the advice and assistance of their health care professionals in identifying, analyzing and selecting the prescription drug plans designed to best meet their needs.

As you know, beneficiaries who are dually eligible for Medicaid and Medicare were randomly auto-enrolled in plans providing Medicare prescription drug coverage, effective January 1, 2006. Nearly one in four of these individuals is a nursing home resident, and they are among the sickest and most vulnerable beneficiaries served by Medicare. Unfortunately, random assignment of these individuals across multiple prescription drug plans significantly increased the initial confusion experienced during the transition to Medicare Part D, and resulted in many beneficiaries being assigned to plans that were not the best fit for their needs.

Many of these problems could have been avoided if knowledgeable health care professionals had been allowed to assist these individuals in choosing plans with appropriate coverage to meet their specialized medication needs. In its Marketing Guidelines for Prescription Drug Plan (PDP) sponsors, however, CMS effectively prohibited health care professionals in the long-term care setting from making informed recommendations to beneficiaries. The Agency cited concerns about the prospect of "steering" individuals into plans based on financial interests.

Instead of denying assistance to beneficiaries in greatest need, we believe that appropriate safeguards should be developed that prevent inappropriate referrals based on variables other than the residents' best interests. In doing so, CMS must revise its Marketing Guidelines to provide clear authorization for health care professionals to recommend specific prescription drug plans best suited to meet the needs of long-term care beneficiaries and to facilitate enrollment in those plans.

The success of the Medicare prescription drug program depends on the ability of all beneficiaries to make informed choices about the plans best suited for them. In nursing facilities, it is simply impractical to suggest that beneficiaries log on the Internet or call 1-800-MEDICARE to receive assistance. It is also impractical for many of these beneficiaries to evaluate plans' drug utilization tools on their own. Instead, they should be able to seek and receive the assistance of the health care professionals charged with ensuring their well being on a daily basis.

Nationwide, health care professionals are actively working to ensure the availability of specialized pharmacy services under Medicare Part D to beneficiaries residing in long-term care facilities. However, their efforts are being impeded by the current CMS Marketing Guidelines. We therefore urge CMS to clarify that recommendations based on the beneficiary's interests in the formulary, prior authorization, step therapy and quantity limit policies of prescription drug plans are fully appropriate and lawful, and will not be deemed prohibited due to "financial interests."

We must act swiftly to ensure that the most vulnerable beneficiaries are enrolled in plans that adequately meet their specialized medication needs. We understand that CMS is currently reviewing the guidelines and strongly urge the Agency to clarify its rules to state that health care professionals are allowed to provide informed recommendations to beneficiaries residing in long-term care facilities.

Thank you for your consideration, and we look forward to your prompt reply.

Sincerely,



Phil English  
Member of Congress



Henry Waxman  
Member of Congress



Jim Ramstad  
Member of Congress



Michael Bilirakis  
Member of Congress



Ted Strickland  
Member of Congress