

United States Senate

WASHINGTON, DC 20510

May 27, 2010

Via Electronic Transmission

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

Dear Secretary Sebelius:

We are concerned that taxpayer dollars were used to produce an inaccurate and misleading brochure entitled "Medicare and the New Health Care Law—What It Means for You," recently issued by the Centers for Medicare and Medicaid Services (CMS). We believe by selectively providing information, you are misleading seniors about the full impact of the new federal health care law.

For example, in the first paragraph, the brochure claims that the new health care law will result in "increased quality health care." Yet Medicare's Chief Actuary noted that, absent legislation to intervene and correct the payment cuts in the new law, some providers would "end their participation in the program" with the effect of "possibly jeopardizing access for beneficiaries." The Chief Actuary further concluded that 15 percent of Part A providers – hospitals, skilled nursing facilities, hospices and home health agencies – may be unable to sustain their operations in the next ten years as a result of the drastic Medicare cuts in the new law. Unfortunately, none of these important conclusions are disclosed to beneficiaries in the brochure.

Changes that jeopardize access to health care services will not increase the quality of care. It is not possible to simultaneously increase the quality of care and reduce access to services. Seniors will lose health services due to specific Medicare cuts in the health care law. Any materials you produce to inform seniors about the impact of the new law should be forthcoming with that information.

In the second paragraph, the brochure states that the health care law will "keep Medicare strong and solvent." However, the Chief Medicare Actuary concluded in an April 22, 2010, memorandum that cuts in Medicare "may be unrealistic." In addition, cuts to Medicare are being used to pay for a trillion dollar health care bill, and therefore cannot also be used to improve the solvency of the program. The Chief Actuary's memorandum plainly states that the reduced spending resulting from the significant Medicare cuts in the new health care law, "cannot be simultaneously used to finance other Federal outlays (such as coverage expansions) and to extend the trust fund." The CBO Director asserted the same in a letter to Senator Sessions on December 23, 2009.

Both the CBO Director and CMS Actuary are in agreement that you cannot double count savings from Medicare. Under the new health care law, the Medicare program will be cut by a total of \$529 billion dollars. We believe any reductions in Medicare should be used to reduce the deficit and strengthen Medicare's solvency – not fund a new entitlement program.

Further, the brochure states that "your guaranteed benefits won't change" despite the very clear conclusion by the Chief Actuary in his memorandum that the cuts to Medicare Advantage under the new law will "result in less generous benefit packages." The statement in the brochure is misleading to millions of seniors, as the benefits they currently receive *will* change, and not only will they change, but they will be cut.

Given your recent actions to prohibit private companies from communicating with their clients about the potential ramifications of health reform, you can understand our concern about this double standard. Last fall CMS issued a gag order prohibiting private insurance companies, which offer Medicare Advantage plans, from using their own private dollars to inform their customers about possible changes to their benefits. We are deeply concerned about the apparent inequities evident in this situation. The representations made in this brochure are objectively inaccurate and incomplete. They contradict a report by your own actuary as well as analysis by the Congressional Budget Office. This creates a situation where private companies are prohibited from communicating with their customers, while at the same time taxpayer dollars are being used to communicate a misleading message to millions of seniors.

As Secretary of Health and Human Services, you have a duty to ensure that Medicare beneficiaries have accurate information on how their benefits will change as a result of the new law. More importantly, this duty requires you to fully inform beneficiaries about the effects of the laws, rather than providing misleading information.

At best, this brochure is an inappropriate and wasteful use of taxpayer funds; at worst, it is a gross misuse of taxpayer funds to provide biased information for political purposes.

Accordingly we ask you to provide us with the following information:

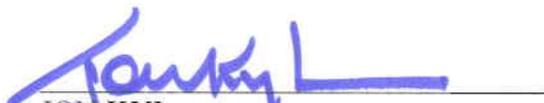
1. Please identify when the development of the brochure was initiated and by whom it was initiated. Please also indicate if you personally approved the final version of this brochure.
2. Please indicate if White House staff were involved in the approval of the brochure, and if so, provide the name and office of each member of the White House staff that was involved. Please provide all communications, including but not limited to memos, emails and other relevant documents which relate, either directly or indirectly, to the development, drafting, review, clearance, printing and distribution of the brochure including any with White House officials.

3. Please indicate whether the Chief Actuary was consulted regarding the claims made in the brochure and, if so, whether he approved of the text as an accurate overview of the effect of the health reform law on Medicare beneficiaries and the program in general.
4. Please identify the name of each employee or contractor of HHS who was involved directly or indirectly in the creation, the development, drafting, review and clearance of the brochure. Please provide a copy of each draft version of the brochure from the first draft through the final version.
5. Indicate whether seniors are required to "opt-in" to receiving brochures of this type and, if so, when that opportunity is given and under what circumstances. If seniors are not given the opportunity to "opt-in" or "opt-out" of receiving information from HHS concerning the effects of legislation on their benefits, please indicate the rationale for this policy.
6. Please provide complete details on where and how the brochure is being distributed. Regarding the costs and funding for the development, drafting, review, clearance, printing and distribution of the brochure:
 - a. Provide information, including all supporting documentation on the breakdown of costs of the development, drafting, review and clearance of the brochure.
 - b. Indicate whether Congressionally-appropriated HHS funds were used for the development, drafting, review and clearance of the brochure and if so, what was the total amount spent to date, and what is the total budget for the initiative? Provide supporting documents.
 - c. If no HHS funds were used, indicate the exact source of the funds used for the development, drafting, review and clearance of the brochure and provide supporting documentation.

Thank you for your attention to this important matter. We request that your agency provide a response by no later than June 11th, 2010. Should you have any questions regarding this letter, please contact any of our staff. All formal correspondence should be sent electronically in PDF format to kevin_courtois@finance-rep.senate.gov or via facsimile to 202-228-0578.

Sincerely,


MITCH MCCONNELL
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