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U.S. House of Representatives

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May 26, 2010

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Gene Dodaro
Acting Comptroller General
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Dodaro,

On May 24, 2010, the Centers for Medicare and Medicaid Services (CMS) informed Ways and Means Committee Republican staff that CMS is disseminating a mailer to Medicare enrollees allegedly to inform seniors about changes in Medicare resulting from the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act (hereinafter referred to jointly as PPACA). CMS also provided a copy of the mailer to Committee staff. Upon review of the mailing, we are deeply concerned that the content violates the prohibition on federal agencies using appropriated funds for disseminating propaganda.¹ We understand that the Government Accountability Office (GAO) regularly conducts legal analyses on the issue of whether disseminations of information by federal agencies are lawful. We hereby request that GAO review this mailer and issue an official opinion as to whether the mailer violates the prohibition on federal agencies using appropriated funds for disseminating propaganda.

By way of background, the mailer includes many factual inaccuracies and misleading statements. The most blatant error is the assertion that PPACA has made "Improvements to Medicare Advantage." PPACA reduced funding for Medicare Advantage (MA) health plans by \$206 billion over 10 years.² The Administration's own actuaries stated that once these severe cuts are "fully phased in, enrollment in MA plans will be lower by about 50 percent."³

¹ See, e.g., Consolidated Appropriations Act of 2010, Pub. L. No. 111-117, Div. D, Tit. V, §503(a), 123 Stat. 3279 (2010).

² See Letter from Douglas Elmendorf, Director, Congressional Budget Office, to the Honorable Nancy Pelosi, Speaker of the House of Representatives (Mar. 20, 2010).

³ See Memorandum from Richard S. Foster, Chief Actuary, Centers for Medicare and Medicaid Services, *Estimated Financial Effects of the Patient Protection and Affordable Care Act as Amended* (April 22, 2010).

Furthermore, the actuaries determined that MA cuts will result in “less generous benefit packages,” and, in particular, seniors enrolled in MA could expect to lose Medicare coinsurance protections, vision or dental care benefits, and reduced premiums for Medicare Part B or Part D.⁴ It is inconceivable that cuts of \$206 billion resulting in reducing MA benefits, increasing premiums and seniors’ out-of-pocket expenses, and denying many seniors access to a Medicare health plan could be characterized in any accurate way as “improvements.”

The mailing also omits pertinent information regarding the impact of PPACA on Medicare benefits. In a glaring omission, the piece never mentions that PPACA cut Medicare by over one-half trillion dollars.⁵ The mailer does not include information on increased Medicare prescription premiums resulting from the law. It also does not mention the fact that Medicare’s own actuaries warn that the cuts to the Medicare program are so drastic that seniors’ access to providers could be jeopardized. Finally, in a section discussing seniors’ access to physicians, the mailer omits the fact that Medicare physician payment reform, one of the most fundamental issues impacting seniors’ relationships with their doctors, was not included in PPACA.

Furthermore, we are concerned about CMS’ use of funds to inform seniors about programs in which they are largely ineligible to participate. The mailer includes information on a long-term care insurance program for working individuals, high-risk insurance pools for individuals without Medicare or other similar coverage, changes in non-Medicare insurance requirements, and health insurance coverage options for those under age 26, among other programs unrelated to seniors. Informing seniors about programs that they are ineligible for is unnecessary, misleading, and an inappropriate use of funds.

In 2004, in an effort to inform seniors about the improvements in the Medicare Modernization Act (MMA), CMS prepared a brochure about the new benefits of the law, including the new prescription drug benefit. CMS posted the brochure on its website prior to mailing it to seniors, allowing for input from Members of Congress and other interested parties. When Congress and GAO raised concerns about the inclusion of information on Health Savings Accounts (HSAs), for which Medicare enrollees are ineligible, HHS removed the information from the brochure before it was sent to seniors.⁶

Unfortunately, in this instance, HHS did not allow the appropriate Congressional Committees and GAO to review the content of the mailing before disseminating it. We have requested that HHS cease dissemination of the mailing and, at a minimum, remove from it all references to programs for which Medicare enrollees are largely ineligible until GAO has issued an opinion on the legality of the mailing. Because the PPACA provisions impacting seniors in large part do not take effect in the near term, there is no legitimate urgency to the mailing.

⁴ *See id.*

⁵ *See* Letter from Douglas Elmendorf, Director, Congressional Budget Office, to the Honorable Nancy Pelosi, Speaker of the House of Representatives (Mar. 20, 2010).

⁶ *See* U.S. GOV’T ACCOUNTABILITY OFFICE, MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003-USE OF APPROPRIATED FUNDS FOR FLIER, AND PRINT, AND TELEVISION ADVERTISEMENTS B-302504 (Mar. 10, 2004).

Thank you for your consideration of this request, and we look forward to reviewing your opinion on whether CMS' mailer violates the prohibition on federal agencies using appropriated funds for disseminating propaganda.

Sincerely,



DAVE CAMP
Ranking Member
Committee on Ways and Means



WALLY HERGER
Ranking Member
Ways and Means Subcommittee on Health