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October 8, 2009

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

Dear Secretary Sebelius,

Thank you for your recent response regarding the Centers for Medicare and Medicaid Services' (CMS) apparent selective investigation of Medicare Advantage (MA) plans and the subsequent gag order prohibiting any MA plan from communicating with its enrollees about pending health care legislation. Hopefully the fact you responded, rather than the Acting Administrator to whom the letter was addressed, indicates you recognize the gravity of CMS' actions.

You stated that, "HHS believes that contracted organizations that sponsor MA and prescription drug plans may communicate their views on pending legislation with no interference from CMS or others in the Department, assuming compliance with the provisions" you laid out in your letter. We wholeheartedly agree with this statement and finding critical of CMS' blanket gag order. Your position is consistent with long-standing policy dating back to the Clinton Administration governing plan communications to enrollees.¹

In suppressing all communications from Medicare plans regardless of content, CMS' gag order fails to meet any of the criteria for action laid out in your letter.² While CMS may have the right to investigate Humana, particularly disturbing is CMS' determination that all Medicare plans were guilty by association. There are hundreds of Medicare plan sponsors that represent millions of seniors which have committed no violation and yet have had revoked their lawful and constitutional ability to communicate facts with senior enrollees. The gag order was an overreaction by CMS and violation of HHS policy and the First Amendment.

¹ Bruce Merlin Fried of HCFA's Center for Health Plans and Providers, letter to Wendy Krasner of McDermott, Will & Emery, July 10, 1997.

² Center for Drug and Health Plan Choice Memorandum to All Medicare Advantage Organizations, Medicare Advantage-Prescription Drug Organizations, Cost Based Organizations and Demonstration Plans, Misleading and Confusing Plan Communications to Enrollees, September 21, 2009.

We also appreciate the fact that, unlike CMS, you are not making the absurd claim that Humana's statement that "millions of seniors and disabled individuals could lose many of the important benefits and services that make Medicare Advantage health plans so valuable" is "inaccurate" or "misleading." As you may know, the non-partisan Congressional Budget Office and independent Medicare Payment Advisory Committee have affirmed those facts.

You stated that "the timing and content of this messaging was particularly concerning to [CMS]." The timing is indeed concerning. With each passing day, CMS' indefensible gag order prevents millions of seniors from rightfully learning about how the \$500 billion in Medicare cuts being proposed by Congressional Democrats will impact their health benefits. As such, we respectfully urge you to abide by your finding and repeal CMS' gag order immediately.

Sincerely,



DAVE CAMP
Ranking Member



WALLY HERGER



SAM JOHNSON



KEVIN BRADY



PAUL RYAN



ERIC CANTOR



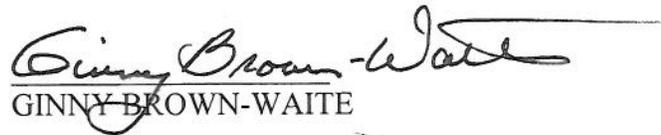
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