Congress of the United States
House of Representatives
Washington, DC 20515

October 6, 2005

Mark McClellan, M.D., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Dr. McClellan:

We are writing to request immediate action to rectify a significant error in information that CMS recently provided to all beneficiaries about the new Medicare drug benefit.

The Medicare and You handbook — mailed this week to every Medicare beneficiary — contains inaccurate information. As a result of the error, the handbook misrepresents how much the Medicare prescription drug plans will cost beneficiaries who are supposed to be receiving assistance with the costs of the drug coverage. While the error affects only a subset of beneficiaries, those with the lowest incomes could unintentionally face significant out-of-pocket costs as a result of CMS' error.

Millions of beneficiaries rely on the handbook as their chief source of information about the program, yet we understand the CMS has no plans to affirmatively notify, in writing, beneficiaries of this error, even though it involves a critical variable in the already confusing decision-making process facing millions of beneficiaries.

The latest *Medicare and You* handbook indicates that low-income Medicare beneficiaries (who are eligible for some subsidized coverage of their premium) will pay no premium for <u>any</u> prescription drug plan in which they enroll.[1] To the contrary, low-income beneficiaries would in fact be forced to pay some monthly premiums for the majority of plans.

Under the Medicare law, only low-income beneficiaries who enroll in a plan with premiums at or below the average plan premium for all local plans will have these costs fully subsidized. Others must pay the difference between the average premium and the premium for their chosen plan themselves. According to CMS, low-income beneficiaries who enroll in these plans will be forced to pay additional premiums in 60 percent of available plans.[2]

---

[1] CMS, *Notice of Errata: "Medicare and You 2006" Handbook* (Oct. 4, 2005).
[2] *Id.*

We have several concerns about this error. First, we are increasingly distressed about CMS' overall ability to provide Medicare beneficiaries with accurate information about this complicated new program. Indeed, this is the second critical error in a mailing or advertisement from CMS designed to introduce beneficiaries to this new benefit.

On September 25, 2005, CMS placed lengthy inserts in every copy of *Parade* magazine, which is included in major newspapers around the country.[3] This was the first time that many Medicare beneficiaries received concrete information about the new benefit. But this information was inaccurate, too. It indicated that, after beneficiaries paid the $250 deductible, the Medicare program would pay for 75 percent of the next $8,000 worth of drugs used by the beneficiary.[4] In fact, for most beneficiaries, the program will substantially reduce or eliminate benefits altogether after the first $2,250 worth of drug use.

These errors are inexcusable. This is a complicated and expensive new benefit for seniors, with many seniors already expressing concerns about their ability to understand their options.[5] In this context, it is critical that CMS provide accurate information that seniors can trust. The fact that you have twice provided false information to Medicare beneficiaries indicates significant problems in the Administration's preparation for the new benefit.

Second, we are concerned about the implications of this latest error on low-income beneficiaries, and the fact that CMS has not taken appropriate action to correct the mistake.

Despite the important consequences, it appears that CMS is doing little to correct the misinformation given to all Medicare beneficiaries. The agency is only taking three actions: posting corrected information on its website, making that information available to State Area Agencies on Aging and to individuals calling 1-800-Medicare, and requiring that private plans provide accurate premium information to prospective enrollees.

In order to ensure that all beneficiaries receive accurate information on the new Medicare drug plans, and that these beneficiaries not be held responsible for false information provided by CMS, we ask that you:

1. Add an insert in the auto-assignment letter that goes to low-income beneficiaries informing them of the error and the plans at or below the benchmark in their area, and have SSA send the same information in each letter they send stating that someone has been approved for the subsidy.

2. Develop a comprehensive plan to provide all beneficiaries with information (including by mail and through other outlets as necessary) that corrects the factual errors in the *Medicare and You* handbook.

---

[3] CMS, *Starting January 1, 2006, Medicare Will Help Pay for Prescription Drugs*, Parade Magazine Insert (Sep. 25, 2005).

[4] *The ad indicated that the Medicare program would pay for 75 percent of the drugs costs until beneficiaries had spent $2,250 of their own money, which correlates to $8,000 worth of drugs after meeting the deductible.*

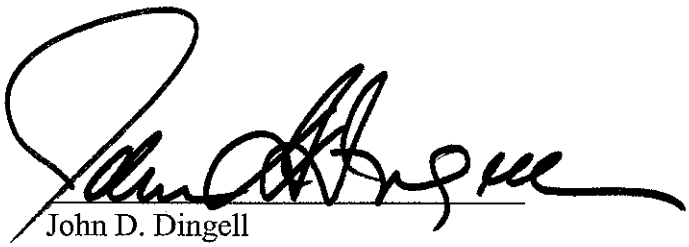
[5] *Medicare Prescription Drug Plan Stumps Seniors*, USA Today (Oct. 3, 2005)

3. Reimburse beneficiaries who sign up for unaffordable plans because of CMS misinformation. Regardless of further actions by CMS, it is possible that many beneficiaries will be faced with unexpected premium costs because they relied on the inaccurate *Medicare and You* handbook. In these cases, we ask that CMS allow these beneficiaries a six-month grace period to re-enroll in a less costly plan, and that CMS reimburse these beneficiaries for the higher premiums paid prior to their re-enrollment. In addition, beneficiaries receiving the low-income subsidy should not be penalized for enrolling in a high cost plan that they subsequently cannot afford because of CMS error.

Medicare beneficiaries trust the program to provide them with accurate information about their benefits. It is unfortunate and unfair to beneficiaries that CMS has been unable to do so. We hope that you will make additional efforts in the future to avoid inaccuracies when providing Medicare beneficiaries with information about this program. Thank you for your attention to this request.

Sincerely,

Charles B. Rangel
Ranking Member
Committee on Ways and Means



John D. Dingell
Ranking Member
Committee on Energy and Commerce

Henry A. Waxman
Ranking Member
Committee on Government Reform

Pete Stark
Ranking Member, Subcommittee on Health
Committee on Ways and Means

Sherrod Brown
Ranking Member, Health Subcommittee
Committee on Energy and Commerce