Congress of the United States
Washington, DC 20515

March 13, 2006

The President
The White House Office
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

As you know, participation in the new prescription drug program is lagging well below projections. Millions of beneficiaries are overwhelmed with plan choices and understandably confused by the fluctuating prices and formularies. Speculation that an untold number of plans may not participate next year is likely adding to the uncertainty. Yet beneficiaries who do not sign up for Part D by May 15, 2006, will pay permanently higher premiums for coverage if they ultimately enroll later. Given our shared goal of ensuring that senior citizens and people with disabilities are appropriately enrolled in Part D, we request that you direct Secretary Leavitt to extend the enrollment deadline through the end of the year, and eliminate the financial penalty during this period.

A plain reading of the statute appears to enable the Secretary to extend the initial enrollment period, declare a special enrollment period or otherwise use his authority to delay the deadline and subsequent penalty. (See Attachment A.)

The penalty, which is based on the average national premium and set at one percent per month for each month that a beneficiary is not enrolled in Part D after the initial enrollment period, is applied in perpetuity. This surcharge is added to the regular premium for the specific plan in which the beneficiary enrolls. The program is structured such that those who miss the May 15 deadline, but enroll at the next possible opportunity for coverage starting in January 2007, will face a seven percent surcharge. Those who have not signed up by December 31, 2006, will be locked out for all of 2007 and will subsequently face a 19 percent surcharge should they enroll for 2008. Because the penalty is based on the national average, the actual premium increase could be substantially higher for beneficiaries who later enroll in less expensive plans. (See Attachment B.)

While the deadline was designed to force participation and minimize selection issues, we are concerned that it could have the opposite effect. If people whose needs are minimal forego coverage this year, they may never enroll and the risk pools will be permanently, negatively affected. CBO has estimated that an additional 1.1 million beneficiaries would sign up during this year if the penalty were eliminated. In addition, they calculate that eliminating the penalty for this year would ultimately lower premiums for 10 million beneficiaries. Already, there are predictions

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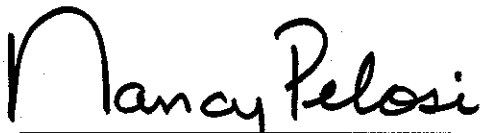
that premiums will rise substantially next year as the number of plans decreases. Premiums will rise even more if healthier beneficiaries stay on the sidelines.

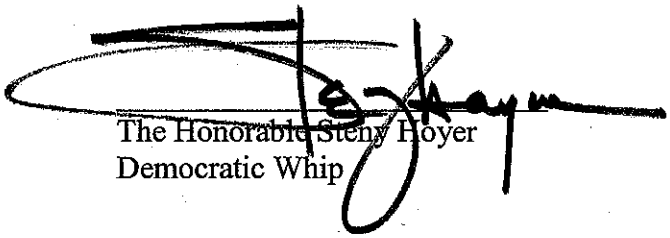
Both Democrats and Republicans have introduced legislation to delay the May 15 deadline and corresponding penalty. Such legislation is supported by a number of organizations, including the National Committee to Preserve Social Security and Medicare, TREA Senior Citizens League, Alliance for Retired Americans, American Nurses Association, Center for Medicare Advocacy, Consumers Union, Families USA, and Medicare Rights Center. Given that the Republican leadership has not scheduled any hearings, mark ups or other legislative activity on this matter, we urge you to take action.

Time is of the essence. Beneficiaries should not be permanently penalized should they be unable or unwilling to enter this confusing, complicated new program by May 15. We encourage you to announce your intention to delay both the enrollment deadline and corresponding penalty as soon as possible. However, if you believe that the Secretary does not have the authority to make these changes, we ask that you or he notify Congress immediately and work with us on a bipartisan basis to enact these important improvements in a timely manner.

Sincerely,

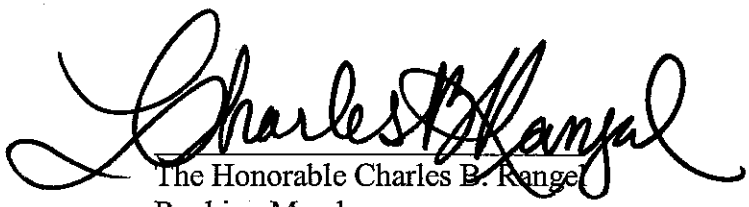


The Honorable Nancy Pelosi
Minority Leader



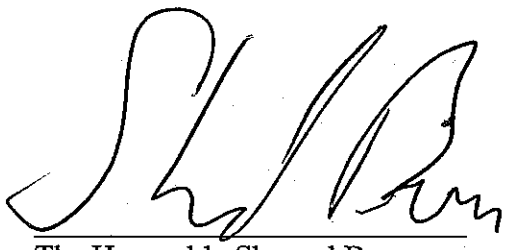
The Honorable Steny Hoyer
Democratic Whip

The Honorable John D. Dingell
Ranking Member
Committee on Energy and Commerce

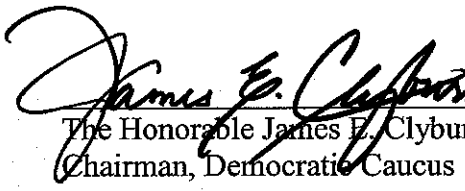


The Honorable Charles B. Rangel
Ranking Member
Committee on Ways and Means

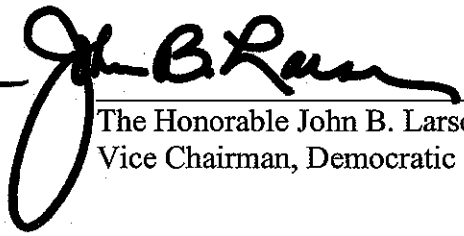
The Honorable Pete Stark
Ranking Member, Subcommittee on Health
Committee on Ways and Means



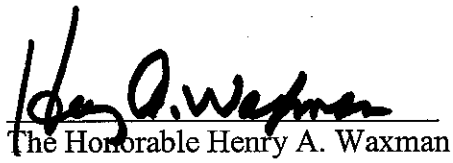
The Honorable Sherrod Brown
Ranking Member, Subcommittee on Health
Committee on Energy and Commerce



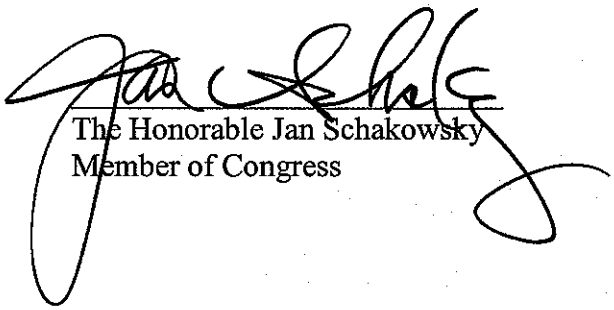
The Honorable James E. Clyburn
Chairman, Democratic Caucus



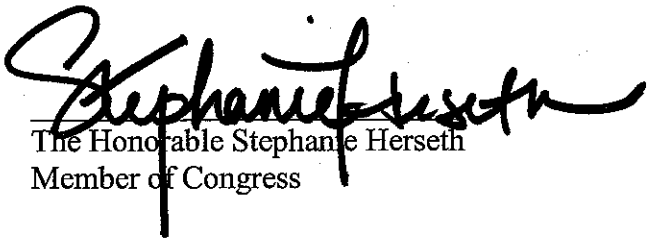
The Honorable John B. Larson
Vice Chairman, Democratic Caucus



The Honorable Henry A. Waxman
Ranking Member
Committee on Government Reform



The Honorable Jan Schakowsky
Member of Congress



The Honorable Stephanie Herseth
Member of Congress

cc: Secretary of Health and Human Services Mike Leavitt

**Attachment A**

**APPLICABLE LEGISLATIVE LANGUAGE**
**ON PART D ENROLLMENT DEADLINES**
**– emphasis and footnotes added --**

*Excerpt from the Social Security Act, Section 1860 D (1) –*

***"(b) ENROLLMENT PROCESS FOR PRESCRIPTION DRUG PLANS.—***
*"(1) ESTABLISHMENT OF PROCESS.—*
*"(A) IN GENERAL.—**The Secretary shall establish a process for the enrollment**, disenrollment, termination, and change of enrollment of part D eligible individuals in prescription drug plans consistent with this subsection.*
*"(B) APPLICATION OF MA RULES.—In establishing such process, the Secretary shall use rules **similar** to (and coordinated with) the rules for enrollment, disenrollment, termination, and change of enrollment with an MA–PD plan under the following provisions of section 1851:*
*"(i) RESIDENCE REQUIREMENTS.—Section1851(b)(1)(A), relating to residence requirements.*
*"(ii) EXERCISE OF CHOICE.—Section 1851(c) (other than paragraph (3)(A) of such section), relating to exercise of choice.*
*"(iii) COVERAGE ELECTION PERIODS.—Subject to paragraphs (2) and (3) of this subsection, section 1851(e) (other than subparagraphs (B) and (C) of paragraph (2) and the second sentence of paragraph (4) of such section), relating to coverage election periods, including initial periods, annual coordinated election periods ,special election periods, and election periods for exceptional circumstances.*
*"(iv) COVERAGE PERIODS.—Section 1851(f), relating to effectiveness of elections and changes of elections.*
*"(v) GUARANTEED ISSUE AND RENEWAL.—Section 1851(g) (other than paragraph (2) of such section and clause (i) and the second sentence of clause (ii) of paragraph (3)(C) of such section), relating to guaranteed issue and renewal.*
*"(vi) MARKETING MATERIAL AND APPLICATION FORMS.—Section 1851(h), relating to approval of marketing material and application forms. In applying clauses (ii), (iv), and (v) of this subparagraph, any reference to section 1851(e) shall be treated as a reference to such section as applied pursuant to clause (iii) of this subparagraph.*
*"(C) SPECIAL RULE.—The process established under subparagraph (A) shall include, in the case of a part D eligible individual who is a full-benefit dual eligible individual (as defined in section 1935(c)(6)) who has failed to enroll in a prescription drug plan or an MA–PD plan, for the enrollment in a prescription drug plan that has a monthly beneficiary premium that does not exceed the premium assistance available under section 1860D–*

*14(a)(1)(A)). If there is more than one such plan available, the Secretary shall enroll such an individual on a random basis among all such plans in the PDP region. Nothing in the previous sentence shall prevent such an individual from declining or changing such enrollment.*

***"(2) INITIAL ENROLLMENT PERIOD.—***

*"(A) PROGRAM INITIATION.—In the case of an individual who is a part D eligible individual as of November 15, 2005, there shall be an initial enrollment period that shall be the same as the annual, coordinated open election period described in section 1851(e)(3)(B)(iii), as applied under paragraph (1)(B)(iii).*

*"(B) CONTINUING PERIODS.—In the case of an individual who becomes a part D eligible individual after November 15, 2005, there shall be an initial enrollment period which is the period under section 1851(e)(1), as applied under paragraph (1)(B)(iii) of this section, as if 'entitled to benefits under part A or enrolled under part B' were substituted for 'entitled to benefits under part A and enrolled under part B', but in no case shall such period end before the period described in subparagraph (A).*

*"(3)* ***ADDITIONAL SPECIAL ENROLLMENT PERIODS.—The Secretary shall establish special enrollment periods, <u>including</u>*** *the following:*

*"(A) INVOLUNTARY LOSS OF CREDITABLE PRESCRIPTION DRUG COVERAGE.—*

*"(i) IN GENERAL.—In the case of a part D eligible individual who involuntarily loses creditable prescription drug coverage (as defined in section 1860D–13(b)(4)).*

*"(ii) NOTICE.—In establishing special enrollment periods under clause (i), the Secretary shall take into account when the part D eligible individuals are provided notice of the loss of creditable prescription drug coverage.*

*"(iii) FAILURE TO PAY PREMIUM.—For purposes of clause (i), a loss of coverage shall be treated as voluntary if the coverage is terminated because of failure to pay a required beneficiary premium.*

*"(iv) REDUCTION IN COVERAGE.—For purposes of clause (i), a reduction in coverage so that the coverage no longer meets the requirements under section 1860D–13(b)(5) (relating to actuarial equivalence) shall be treated as an involuntary loss of coverage.*

***"(B) ERRORS IN ENROLLMENT.—In the case described in section 1837(h) (relating to errors in enrollment),*** *in the same manner as such section applies to part B.*[1]

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[1] 1837(h). In any case where the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part or part A pursuant to section 1818 is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

***"(C) EXCEPTIONAL CIRCUMSTANCES.—In the case of part D eligible individuals who meet such exceptional conditions (in addition to those conditions applied under paragraph (1)(B)(iii)) as the Secretary may provide.***

*"(D) MEDICAID COVERAGE.—In the case of an individual (as determined by the Secretary) who is a full-benefit dual eligible individual (as defined in section 1935(c)(6)).*

*"(E) DISCONTINUANCE OF MA–PD ELECTION DURING FIRST YEAR OF ELIGIBILITY.—In the case of a part D eligible individual who discontinues enrollment in an MA–PD plan under the second sentence of section 1851(e)(4) at the time of the election of coverage under such sentence under the original medicare fee-for-service program.*

*"(4) INFORMATION TO FACILITATE ENROLLMENT.—*

*"(A) IN GENERAL.—Notwithstanding any other provision of law but subject to subparagraph (B), the Secretary may provide to each PDP sponsor and MA organization such identifying information about part D eligible individuals as the Secretary determines to be necessary to facilitate efficient marketing of prescription drug plans and MA–PD plans to such individuals and enrollment of such individuals in such plans.*

*"(B) LIMITATION.—*

*"(i) PROVISION OF INFORMATION.—The Secretary may provide the information under subparagraph (A) only to the extent necessary to carry out such subparagraph.*

*"(ii) USE OF INFORMATION.—Such information provided by the Secretary to a PDP sponsor or an MA organization may be used by such sponsor or organization only to facilitate marketing of, and enrollment of part D eligible individuals in, prescription drug plans and MA–PD plans.*

*"(5) REFERENCE TO ENROLLMENT PROCEDURES FOR MA–PD PLANS.—For rules applicable to enrollment, disenrollment, termination, and change of enrollment of part D eligible individuals in MA–PD plans, see section 1851.*

*"(6) REFERENCE TO PENALTIES FOR LATE ENROLLMENT.—Section 1860D–13(b) imposes a late enrollment penalty for part D eligible individuals who—*

*"(A) enroll in a prescription drug plan or an MA–PD plan after the initial enrollment period described in paragraph (2); and*

*"(B) fail to maintain continuous creditable prescription drug coverage during the period of non-enrollment.*

**Attachment B**

## PART D LATE ENROLLMENT PENALTY MUCH HIGHER THAN IT APPEARS FOR MANY BENEFICIARIES:
## *ILLUSTRATIVE COMPARISON OF PREMIUM INCREASES IN SELECTED CALIFORNIA PLANS*

| | Regular monthly premium | Penalty for 2006 ($2.25)* | | Penalty for 2007 ($6.12)** | |
|---|---|---|---|---|---|
| | | Base+Penalty | % Increase | Base+Penalty | % Increase |
| ***National average premium*** | $32.20 | $34.45 | 7% | $38.32 | 19% |
| ***Humana -- Enhanced*** | $11.25 | $13.50 | 20% | $17.37 | 54% |
| ***Blue Cross MedicareRx Value (Wellpoint)*** | $20.04 | $22.29 | 11% | $26.16 | 31% |
| ***United/AARP*** | $23.22 | $25.47 | 10% | $29.34 | 26% |

*$32.20*.07=$2.25 for 06 penalty (i.e., miss enrollment for 2006, but enroll for 2007)
**$32.20*.19=$6.12 for 07 penalty (i.e., miss enrollment for 2006 and 2007, but enroll for 2008)
*NOTE: These calculations likely understate the differences, as all premiums are for 2006 and not inflated.*

Prepared by Committee on Ways and Means, Democratic staff 3/13/2006