

# United States Senate

WASHINGTON, DC 20510

October 27, 2006

The Honorable Leslie Norwalk, Esq.  
Acting Administrator  
Centers for Medicare & Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Acting Administrator Norwalk:

We are writing to continue our dialogue initiated last July with then-Administrator McClellan on pharmacy-related issues under the Medicare prescription drug program. The September 27 response that we received from Dr. McClellan prior to his departure from the Centers for Medicare and Medicaid Services (CMS) suggests that some of our recommendations included in our July 17 letter to him may not have been clear. We also want to share additional thoughts on the Agency's responses.

- Disclosure of Maximum Allowable Cost (MAC) List and Prices: In its response, the Agency stated that it "does not generally involve itself in dictating plan pharmacy contracting terms." We are somewhat puzzled by that response because we did not suggest that CMS "dictate" contract terms. We simply recommended that CMS encourage plans to disclose MAC list and price information and any subsequent changes to ensure that pharmacists can fully assess the nature of the contract. Given the Agency's response to our recommendation, we would like to learn more about other approaches it may take toward this end, especially because as stated in its response, CMS "strongly agrees that reimbursement terms in network pharmacy contracts should be as specific and clear as possible."
- Updating of Average Wholesale Prices (AWPs): Although prescription drug plan (PDP) sponsors may update AWP pricing on a "regular" basis, it is unclear whether these regular updates coincide with their receipt of changes in AWP. We want to be clear in our view that there should be no lag between a PDP sponsor's receipt of an AWP change and updates to its price list. The day on which a PDP sponsor receives an AWP change is the day on which it should update its price list.
- Option for Electronic Funds Transfer (EFT): We appreciate that CMS requires PDP sponsors to offer an EFT option. We also appreciate the effort of America's Health Insurance Plans (AHIP) to promote EFT availability and utilization. In our view, though, promoting EFT availability and utilization is a responsibility that lies with the Agency, not with a trade association whose membership does not encompass all PDP sponsors.

- Access to Extended Supplies of Part D Drugs at Retail Pharmacies: We understand that the Medicare Modernization Act of 2003 does not require that all pharmacies provide extended supplies. Our concern is that the Agency's current policies may undermine the MMA requirements to ensure (1) beneficiaries' access to their medicines through retail pharmacies and (2) level playing field between mail-order and retail pharmacies. With respect to the latter requirement, the statutory language on this matter at §1860D-4.(b)(1)(D) is not ambiguous. The MMA clearly states that sponsors "shall permit enrollees to receive benefits (which may include a 90-day supply of drugs or biologicals) through a pharmacy (other than a mail order pharmacy), with any differentials in charge paid by such enrollees." Congressional intent behind this provision is obvious. The provision is intentionally designed as a requirement on plan sponsors to ensure that beneficiaries with prescriptions for longer term supplies can fill those prescriptions at either their local retail pharmacy or through mail order.
- Although we are pleased to know that CMS is monitoring complaints, we do not believe that this approach is sufficient to determine compliance and enforce contract requirements. In addition, this approach places the onus on the beneficiary to file a formal complaint, which is clearly not what Congress intended. We believe that the Agency should be more proactive in ensuring PDP sponsors' compliance with the law and beneficiaries' access to extended supplies in retail settings.
- Requirement Regarding Emergency Supplies Filled by Long-Term Care Pharmacies: We appreciate the Agency's vigilance in ensuring that beneficiaries in long-term care facilities have access to medically necessary prescription medicines. We want to reiterate that beneficiaries in long-term care facilities often require an emergency fill. We expect the Agency to ensure that in these circumstances, prior authorization requirements do not hinder beneficiaries' access to medications.

Thank you for your consideration of our comments.

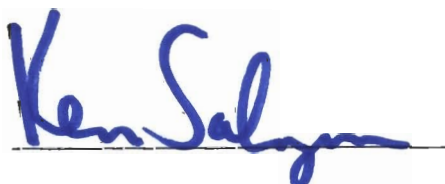
Sincerely,



Charles E. Grassley  
Chairman



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Ranking Member




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