

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

July 6, 2004

The Honorable Tommy G. Thompson  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Mr. Secretary:

We are writing regarding a serious flaw in the Medicare drug card program. As you know, since its inception, the drug card program has been fraught with problems: providers have claimed that the prices posted on the Medicare.gov website were inaccurate;<sup>1</sup> seniors found the website and other HHS information confusing and unhelpful;<sup>2</sup> and the cards have failed to provide significant discounts.<sup>3</sup> As a result, few beneficiaries have signed up for the cards.<sup>4</sup>

Today, we are writing regarding yet another deficiency. It appears that numerous pharmacies are listed on the website as participating members of drug card networks when, in fact, they are not participants.

This fact was initially brought to the attention of our staffs by an individual pharmacist. Subsequent investigation and discussion with other pharmacy representatives indicate that it is a widespread problem.

The problem seems to stem in large part from the way in which drug card sponsors developed their list of participating pharmacies. Many drug card sponsors used “passive acceptance agreements” to identify participating pharmacies. Under these agreements, unless a pharmacy specifically told the sponsor that they would not be participating, the sponsor listed them as a participant. As a result, many pharmacies that do not participate — and have no intention of participating — with drug card sponsors are listed as participants on the Medicare web site.

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<sup>1</sup> *Government's Posted Drug Prices Disputed; Discounts Missing, Sponsors Say*, Washington Post (May 1, 2004).

<sup>2</sup> *73 Options for Medicare Plan Fuel Chaos, Not Prescriptions*, New York Times (May 12, 2004).

<sup>3</sup> *Committee on Government Reform, Minority Staff, Medicare Drug Card Prices Remain High* (June 2004).

<sup>4</sup> *Drug Discounts Beginning Today but Sign-ups Lag*, New York Times (June 1, 2004).

This appears to be a frequent problem. Our staffs have obtained a review of 20 of the drug card contracts used by drug card sponsors. This review was compiled by the Pharmacy Audit Assistance Service, a national organization that assists community pharmacists in dealings with third party payers, such as drug card sponsors.<sup>5</sup> According to this document, at least seven drug cards sponsors appear to have used these passive acceptance agreements. These include agreements for large drug card sponsors such as AdvancePCS, Anthem Prescription Management, Argus Health Systems, Pharmacare, and Medco Health Solutions.

To assess the magnitude of the problem, our staffs conducted two surveys of local, independently-owned pharmacies. These surveys indicate that the pharmacy information on the Medicare.gov web site is inaccurate and riddled with errors.

In Rep. Slaughter's district, the minority staff of the Government Reform Committee and the staff of Rep. Slaughter's office surveyed ten independent pharmacies. Information on the Medicare.gov web site was inaccurate for every single pharmacy. Four of the ten pharmacies reported that they only accepted selected cards. For these four pharmacies, there were 45 cases where the Medicare.gov website reported that cards were accepted by the pharmacies when this was not the case. For one pharmacy, the Medicare.gov website reported that 26 cards were accepted. But this pharmacy actually accepted only ten cards.

In six additional cases, pharmacies reported that they accepted all Medicare cards. But the information on the Medicare.gov web site indicated that there were numerous cards that were not accepted at these pharmacies.

In a second survey, the minority staff of the House Committee on Government Reform identified ten independent pharmacies within a two-mile radius of the HHS headquarters in Washington, D.C. Even though these pharmacies are virtually at the Department's doorstep, the information available on the Medicare.gov website was inaccurate for the majority of the pharmacies. In one case, a pharmacy that was listed as accepting 23 different cards accepted only eleven. In another case, a pharmacy that was listed as accepting 19 different cards accepted only nine.

And in a third case, a Capitol Hill pharmacy that was listed as accepting seven discount cards actually appears to be closed. We have enclosed a photo of this "pharmacy" for your review.

Another example illustrates the impact of the problem. The Rexall drug store in Langdon, North Dakota, is listed on the web site as participating with six Medicare drug cards.

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<sup>5</sup> PAAS National, *Medicare Discount Drug Card Programs, Assembled by PAAS National* (Apr. 1, 2004).

But this pharmacy has been closed for at least three years.<sup>6</sup> Again, we have enclosed a photo for your review. This site is listed as the only pharmacy in the community that accepts the myPharmacare card, and there are no other pharmacies listed as participating with this card within 25 miles of this rural community. According to the North Dakota Pharmacists Association, at least one senior in North Dakota relied on the misleading information on the Medicare.gov website to sign up for a drug card that is not even accepted in the community.<sup>7</sup>

The inaccuracies in the list of participating pharmacies are a serious matter. First, they mean that the information provided on the Medicare web site is not reliable. Seniors who go to the web site and choose a drug card because they believe that their local pharmacy is a participant may find that this is not the case. As a result, the card they choose could leave them without access to their local pharmacy.<sup>8</sup>

Moreover, it appears that the drug card sponsors using the passive acceptance agreements may have circumvented Medicare rules. In establishing requirements for participating providers, HHS required that Medicare-approved discount drug cards provide convenient access to retail pharmacies. The HHS rules include requirements that in urban areas, 90% of Medicare beneficiaries live within two miles of a participating pharmacy; in suburban areas, 90% of Medicare beneficiaries live within five miles of a participating pharmacy; and in rural areas, 70% of Medicare beneficiaries live within fifteen miles of a participating pharmacy.<sup>9</sup> The drug card sponsors who relied on the passive acceptance agreements may not meet these standards.

In its current form, the Medicare drug card program is not working. It is too complex; it is failing to reduce drug prices for seniors; and it contains misleading information about participating pharmacies. The numerous problems with the card program threaten to erode seniors' confidence in the Medicare program as a whole. These problems must be solved.

We are thus requesting that HHS take the following actions:

1. Review all pharmacy networks reported by drug card sponsors to insure that the Medicare.gov website provides accurate information on participating pharmacies;

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<sup>6</sup> E-mail from North Dakota Pharmacists Association to (June 26, 2004).

<sup>7</sup> *Id.*

<sup>8</sup> A number of pharmacists we have spoken to have indicated that if a long-time customer came in with a card they did not accept, they would feel obliged to provide the price listed on the web site. However, this is hardly the way this program should operate.

<sup>9</sup> HHS, *Medicare Prescription Drug Discount Card and Transitional Assistance Program* (Dec. 8, 2003).

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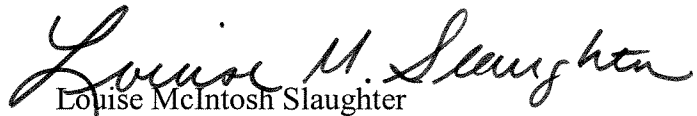
2. Ban the use of "passive acceptance agreements" that appear to be resulting in the misleading listings of participating pharmacies;
3. Take immediate enforcement action against sponsors that are not reporting accurate information on their pharmacy networks to CMS; and
4. In cases where seniors have signed up for a card that does not offer accurate listings of participating pharmacies, allow these seniors to sign up for a different card.

We ask that you respond to this request by July 20, 2004. If there are any questions, our staff contacts are Brian Cohen with Rep. Waxman at (202) 225-5051 and Cindy Pellegrini with Rep. Slaughter at (202) 225-3615

Sincerely,



Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform



Louise McIntosh Slaughter  
Member of Congress

Enclosure