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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-2204**  
September 22, 2009

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Ms. Charlene Frizzera  
Acting Administrator  
Centers for Medicare and Medicaid Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Acting Administrator Frizzera,

I am writing to express my deep suspicion that the Centers for Medicare and Medicaid Services (CMS) may be selectively and inappropriately using its regulatory powers to intimidate and silence those who under the First Amendment of the United States Constitution are expressing legitimate facts about the Medicare cuts proposed by President Obama and Congressional Democrats.

A disturbing report in the September 21st edition of the Wall St. Journal stated CMS has initiated an investigation into one Medicare health care plan provider, Humana, because it contacted some of its 1.5 million Medicare Advantage (MA) beneficiaries to inform them that these cuts could negatively impact seniors' benefits and out-of-pocket costs.<sup>1</sup>

Given the importance of health care to America's seniors, I am sure you will agree seniors currently enrolled in MA have a right to know about how pending policy changes could affect them. I am certainly aware that MA marketing regulations are supposed to be used to ensure that communications from plan sponsors or affiliated groups do not include inaccurate information that would inappropriately steer seniors to certain MA plans. I have read the letter from Humana to its members and it does neither.

Moreover, I am concerned that CMS has taken action for political purposes, which threatens the integrity of the agency and of our democracy. To my knowledge, Humana is the only such plan to be targeted for investigation for speaking out against the Administration and Congressional Democrat's plan. However, the Wall St. Journal editorial page reports today that CMS is banning all MA health plans from distributing similar information.<sup>2</sup>

I note that no such pressure has been applied to those supportive of the President's Medicare cuts. AARP, which has the largest MA plan in Medicare at 1.7 million enrollees, has been a vocal advocate in favor of the President Obama and Democrats' health care proposals. They have spent millions of dollars communicating to its members the group's support of President Obama's proposed changes to Medicare via bulletins, television ads, newsletters, and its website. According to USA Today, AARP sent 8 million direct letters about health care reform and Medicare policies under consideration in Washington to its members over Labor Day.<sup>3</sup> Additionally AARP has a "Health Action Now!" website that asks seniors to contact Members of Congress using an AARP-drafted letter that seniors can send via e-mail. These communications seem to be

<sup>1</sup> Jane Zhang, "Medicare Sets Probe of Humana Letters," Wall St. Journal, (September 21, 2009), available online at <http://online.wsj.com/article/SB125349705522626821.html>.

<sup>2</sup> Editorial, "Baucus Bludgeons Humana," Wall St. Journal, (September 22, 2009), available online at <http://online.wsj.com/article/SB10001424052970204488304574427200839672342.html>.

<sup>3</sup> Mimi Hall, "AARP Raises its Voice in Health Care Debate," USA Today, (September 2, 2009), available online at [http://www.usatoday.com/news/health/2009-09-01-seniors-AARP-health-care-debate\\_N.htm](http://www.usatoday.com/news/health/2009-09-01-seniors-AARP-health-care-debate_N.htm).

largely similar to the communications sent by Humana, other than they are in support of President Obama's position.

For example, AARP's website states that it's a "myth" that "health care reform will hurt Medicare", saying that it's a "fact" that "none of the health care reform proposals being considered by Congress would cut Medicare benefits or increase your out-of-pocket costs for Medicare services."<sup>4</sup> This flies in the face of what the non-partisan Congressional Budget Office (CBO) has found as it relates to the MA cuts.

CBO'S findings about the \$156 billion in MA cuts contained in H.R. 3200, the House Democrats' health care bill, should be of great concern to senior citizens. According to CBO, the legislation "could lead many plans to limit the benefits they offer, raise their premiums, or withdraw from the program."<sup>5</sup> CBO also predicts that H.R. 3200 will result in 3 million seniors currently enrolled in MA losing their coverage.

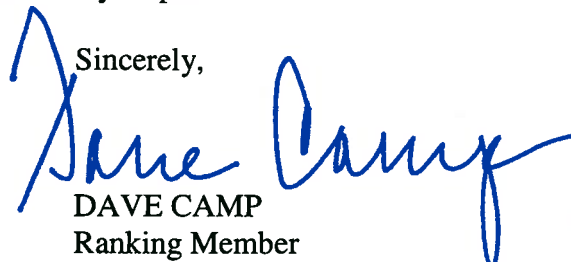
Given the requirement that communications by MA plans, or their affiliates, to current and potential MA enrollees, not contain inaccurate information, it would seem that CMS' resources would be better served ensuring AARP no longer falsely suggests that the President's plans to cut \$500 billion from Medicare will not have any negative impact on MA enrollees.

In light of CMS' seemingly uneven and potentially politically-motivated use of its regulatory authority, I therefore request that:

1. CMS immediately suspend this virtual gag order on efforts by an MA plan to let its enrollees know how they could be hurt by the health reforms plans being pushed by President Obama and Democrats in Congress;
2. CMS immediately publicly indicate that the providing of accurate information by MA plans to its enrollees is not prohibited by applicable federal rules and regulations and that no adverse action will be taken against any plan choosing to do so;
3. Provide, in writing, by September 28, 2009, an explanation of whether similar enforcement activities were taken against other MA plan and its affiliates, including AARP, and if not why no such action was taken.

I look forward to your timely response.

Sincerely,



DAVE CAMP  
Ranking Member  
Committee on Ways and Means

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<sup>4</sup> AARP, "Myths VS Facts," (last visited September 22, 2009), available online at [http://aarp.convio.net/site/PageNavigator/Myths\\_vs\\_Facts](http://aarp.convio.net/site/PageNavigator/Myths_vs_Facts).

<sup>5</sup> Congressional Budget Office, Budget Options Volume 1, (December, 2008), available online at <http://www.cbo.gov/ftpdocs/99xx/doc9925/12-18-HealthOptions.pdf>.