



June 3, 2005

The Honorable Mark McClellan, M.D.
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W. #314G
Washington, DC 20201

RE: Transition of Dual Eligible Beneficiaries Into the Medicare Part D Drug Benefit

Dear Dr. McClellan:

Members of the Medicare Advocacy Working Group would like to thank you for the numerous meetings that you and your staff have held with us in recent months to discuss our concerns and recommendations for a safe, seamless implementation of the Medicare Modernization Act. We welcome opportunities to continue to collaborate with CMS to ensure a smooth transition for beneficiaries with chronic health conditions and disabilities. These exchanges have been quite fruitful and we look forward to continuing this dialogue with you and your colleagues.

We are writing to follow-up on what we know is a key MMA implementation issue for CMS -- the transition of the 7 million vulnerable beneficiaries who are concurrently eligible for both Medicare and Medicaid into the Part D program. As you know, the final regulations grant CMS the authority to auto-enroll these dual eligible beneficiaries into the Part D program beginning on November 15, 2005. This is critically important to ensuring a seamless transition of coverage for initial enrollment on January 1, 2006.

While this auto-enrollment effort is critically important for limiting gaps in coverage, our organizations are also extremely concerned about whether or not individual dual eligibles will have adequate and seamless coverage for the specific drugs they are currently prescribed, both from now until January 1, 2006 and from January 1, 2006 forward as their Part D coverage becomes effective.

We are receiving anecdotal evidence that state Medicaid programs, and the Pharmacy Benefit Management (PBM) plans with which they currently contract, are already engaging in efforts to switch dual eligible beneficiaries to preferred medications in advance of the January 1 effective date. We are concerned that such efforts could be interpreted as motivated by the commercial interests of some PBM plans to steer beneficiaries toward specific products that are likely to receive favorable access terms by Part D drug plans. Likewise, some drug companies might be seeking an unfair advantage by attempting to capture market share among this population prior to the advent of the new Medicare benefit.

We are concerned that such efforts run counter to the intent of both Congress and CMS with respect to the purpose of the MMA regarding the transition of dual eligibles. More importantly, such efforts by PBMs to engage in switching in advance of the MMA effective date is clearly not in the clinical interests of vulnerable dual eligible beneficiaries. We feel strongly that individual patients and their doctors need maximum discretion to consider new drug choices under the new Medicare program. Switching medications twice in a six-month period may prove medically unsound for a majority of beneficiaries.

We urge CMS to oppose this emerging trend by placing a moratorium on switching the drugs of the dual eligible populations. CMS should not approve sweeping new proposals for restrictive Preferred Drug Lists (PDLs) that would be implemented prior to January 1, 2006.

In our view, it is also not in the fiscal interest of the states or federal government to force dual eligibles to switch drugs in the Medicaid program over the next six months. This switching could not only lead to costly adverse health events in this vulnerable population, it will likely (*inevitably* for some) lead to unnecessary and counterproductive outcomes including hospitalization, physician visits, blood tests and other provider costs associated with switching drugs. Governments should not pay the costs associated with such switching twice in a six-month period.

Instead of imposing new restrictions or switches on dual eligibles, we recommend that states instead be encouraged to focus their resources on educating and preparing dual eligibles for their transition into the Part D drug benefit. We therefore urge you to provide additional guidance to state Medicaid agencies and the PBMs with which they contract, to ensure that inappropriate switching in advance of the implementation of Part D coverage is stopped.

The Medicare Working Group looks forward to continued collaboration with you and your staff to ensure that the transition of dual eligibles into the Medicare Part D program is smooth and effective.

Sincerely,

The Arc of the United States
Asthma and Allergy Foundation of America
Easter Seals
Epilepsy Foundation
Lupus Foundation of America
National Alliance of Caregivers
National Alliance for the Mentally Ill
National Coalition for Women with Heart Disease
National Family Caregivers Association
National Grange
National Medical Association
National Mental Health Association
Parkinson's Action Network
ReitreSafe
United Cerebral Palsy
Visiting Nurse Associations of America