



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-319834

September 9, 2010

The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
United States House of Representatives

The Honorable Wally Herger
Ranking Member
Subcommittee on Health
Committee on Ways and Means
United States House of Representatives

Subject: *Department of Health and Human Services—Use of Appropriated Funds
for Medicare Brochure*

This responds to your request for our legal opinion regarding the Department of Health and Human Services' (HHS) use of funds to prepare and distribute a brochure to inform Medicare beneficiaries about changes in Medicare resulting from the Patient Protection and Affordable Care Act¹ and the Health Care and Education Reconciliation Act of 2010² (hereinafter referred to jointly as PPACA).³ Specifically, you ask whether HHS's use of appropriated funds to pay for the brochure constitutes a violation of the publicity or propaganda prohibition in the Consolidated Appropriations Act, 2010, Pub. L. No. 111-117, div. C, title VII, § 720, 123 Stat. 3034, 3210 (Dec. 16, 2009).⁴ The prohibition states that “[n]o part of any appropriation

¹ Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010).

² Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

³ Letter from Ranking Member of House Committee on Ways and Means and Ranking Member of Subcommittee on Health, House Committee on Ways and Means, to Acting Comptroller General of the United States, May 26, 2010.

⁴ Our practice when rendering legal opinions is to obtain the views of the relevant agency to establish a factual record and to elicit the agency's legal position on the subject matter of the request. GAO, *Procedures and Practices for Legal Decisions*

(continued...)

contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.” Pub. L. No. 111-117, § 720.

As agreed, this opinion addresses the text of the brochure titled “Medicare and the New Health Care Law—What It Means for You” that you provided us on May 26, 2010 (HHS Brochure). We have enclosed a copy of this brochure. As we explain below, we conclude that HHS did not violate the publicity or propaganda prohibition in preparing and distributing the brochure. Although the HHS brochure contains instances in which HHS presented abbreviated information and a positive view of PPACA that is not universally shared, nothing in the brochure constitutes communications that are purely partisan, self-aggrandizing, or covert. In addition, we point out some overstatements in the brochure of PPACA’s benefits, such as where the brochure suggests that PPACA increases the number of primary care providers, when PPACA only provides incentives for such increases. In this legal opinion, we do not examine nor do we express a view on the overall economy, efficiency, or effectiveness of the brochure.

BACKGROUND

PPACA was enacted on March 23, 2010, with amendments enacted on March 30, 2010. *See* Pub. L. No. 111-148; Pub. L. No. 111-152. PPACA contained numerous provisions affecting private and public health insurance coverage. PPACA also contained numerous provisions affecting Medicare,⁵ Medicaid,⁶ health care quality

(...continued)

and Opinions, GAO-06-1064SP (Washington, D.C.: Sept. 2006), *available at* www.gao.gov/legal/resources.html. In addition to soliciting HHS’s legal views, because the request expressed concerns that the brochure may be misleading, we asked HHS to justify specific statements in the brochure that your staff identified, including the statement that PPACA made “Improvements to Medicare Advantage” and overstatements of information on Medicare cuts, increased Medicare prescription premiums, and the noninclusion of Medicare physician payment reform in PPACA. By letter of July 23, 2010, the Acting General Counsel for HHS supplied relevant information and the department’s legal justification for the brochure. Letter from Acting General Counsel, HHS, to Managing Associate General Counsel, GAO, July 23, 2010 (HHS Response).

⁵ Medicare is the federal health insurance program under title XVIII of the Social Security Act that serves beneficiaries 65 and older, certain disabled individuals under 65, and individuals with end-stage renal disease. *See* B-302504, Mar. 10, 2004, at 3.

⁶ Medicaid is a joint federal-state program that finances health insurance coverage for certain categories of low-income adults and children. *See* GAO, *Medicaid and CHIP: Enrollment, Benefits, Expenditures, and Other Characteristics of State Premium Assistance Programs*, GAO-10-258R (Washington, D.C.: Jan. 19, 2010), at 1.

measurement, and other aspects of health care delivery and payment. Among the changes to Medicare, PPACA made changes to Medicare Advantage⁷ and Medicare Part D.⁸

The HHS brochure is a four-page document dated May 2010 that HHS mailed to Medicare beneficiaries. It consists of a letter from the Secretary of HHS and three pages highlighting selected portions of PPACA. The letter introduces PPACA and states: “This brochure provides you with accurate information about the new services and benefits to help you and your family now and in the future.” HHS Brochure, at 1. It encourages beneficiaries to seek out accurate information about Medicare and warns them against giving personal information to anyone who is not a trusted source. Following the letter, a section of the brochure titled “What Stays the Same” advises beneficiaries that “[t]he guaranteed Medicare benefits you currently receive will remain the same” and that more details about benefits will be found in the *Medicare and You Handbook* in the fall. *Id.*, at 2. Sections titled “Improvements in Medicare You Will See Right Away,” “Improvements in Medicare You Will See Soon,” “Improvements Beyond Medicare That You and Your Family Can Count On,” and “The New Law Preserves and Strengthens Medicare” contain brief statements about provisions of PPACA.

HHS advised us that it focused on provisions “of more immediate benefit and apparent interest to Medicare beneficiaries and their families,” especially those provisions taking effect in 2010 and 2011. HHS Response, at 4. With respect to improvements beneficiaries should see “right away,” the brochure mentions “more affordable” prescription drug coverage, preventive care services to help beneficiaries “stay healthy,” and “improvements to Medicare Advantage” such as reducing overpayments to insurance companies and ensuring that certain proportions of funds are spent on health care instead of administrative costs. HHS Brochure, at 2. This section specifically notes that certain beneficiaries who participate in the Part D prescription drug program will receive a \$250 rebate check in 2010. With respect to improvements beneficiaries should see “soon,” the brochure highlights “better access to care” and “better chronic care.” *Id.*, at 3.

The section titled “Improvements Beyond Medicare That You and Your Family Can Count On” describes new programs for long-term care insurance, early retirees, people with preexisting conditions, and expanded coverage for young people. *Id.*

⁷ Medicare Advantage is an alternative to original Medicare fee-for-service in which private insurance plans offer health care coverage to Medicare beneficiaries. See GAO, *Medicare Advantage: Relationship between Benefit Package Designs and Plans’ Average Beneficiary Health Status*, GAO-10-403 (Washington, D.C.: Apr. 30, 2010), at 1.

⁸ Medicare Part D is the outpatient prescription drug benefit offered by Medicare. See GAO, *Medicare Part D: Spending, Beneficiary Out-of-Pocket Costs, and Efforts to Obtain Price Concessions for Certain High-Cost Drugs*, GAO-10-529T (Washington, D.C.: Mar. 17, 2010), at 1.

With respect to how PPACA “preserves and strengthens Medicare,” the brochure cites “New Tools to Fight Fraud and Protect Your Medicare Benefits” and the law’s efforts to “Keep[] Medicare Strong and Solvent.” *Id.*, at 4. Finally, the brochure contains a section titled “For More Information,” which refers beneficiaries to www.medicare.gov and 1-800-MEDICARE for more information about PPACA, as well as to the Eldercare Locator⁹ for additional information on available services. *Id.*

HHS advised us that the brochure was mailed to Medicare beneficiaries with the purpose of informing them about changes in benefits available to them and their families and about the risk of fraud accompanying those changes. HHS Response, at 4. HHS considered incorporating the brochure into a regularly scheduled mailing but determined that no such mailing was scheduled for the near future. *Id.* HHS explained that it concluded that an immediate mailing would serve the interests of Medicare beneficiaries in light of reports of fraudulent activity arising from the enactment of PPACA and the general public’s apparent interest in information about PPACA. *Id.*

HHS advised us that its printing costs for the brochure were approximately \$5.1 million, and its mailing costs were approximately \$13.8 million. HHS obligated fiscal year 2010 appropriations for the brochure. HHS Response, at 4.

DISCUSSION

At issue here is the prohibition on using appropriations for the purpose of publicity or propaganda. The prohibition applicable for fiscal year 2010 states that “[n]o part of any appropriation contained in this or any other Act shall be used directly or indirectly, including by private contractor, for publicity or propaganda purposes within the United States not heretofore authorized by the Congress.” Pub. L. No. 111-117, § 720.

GAO Case Law on Publicity or Propaganda Prohibitions

The prohibition on the use of appropriated funds for publicity or propaganda first appeared in the Labor-Federal Security Appropriation Act, 1952, Pub. L. No. 134, ch. 373, § 702, 65 Stat. 209, 223 (Aug. 31, 1951). The provision, in language almost identical to the prohibition at issue here, provided that “[n]o part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not heretofore authorized by the Congress.” Pub. L. No. 134, § 702. While the plain language of the publicity or propaganda prohibition does not provide a clear definition as to the reach of the prohibition, our case law has sought to provide guidance in a way to balance agency informational activities with the importance of transparency in government. B-319075, Apr. 23, 2010, *citing* B-302504, Mar. 10, 2004.

GAO case law addressing government communications reflects the legitimate objectives served by a robust exchange of information between the government and

⁹ The Eldercare Locator is found at www.eldercare.gov or 1-800-677-1116.

the public it serves. *See* B-319075, *citing* B-302504. An agency may be given a statutory direction that it inform the public about its programs and activities, but agencies also have a general responsibility, even in the absence of specific direction, to inform the public of the agency's policies. *Id.* In this regard, policy-making officials may use government resources to explain and defend those policies. *Id.* As part of our efforts to strike the right balance between giving meaning to the prohibition and an agency's authority to inform the public, we have historically afforded agencies wide discretion in their informational activities. When an agency "justifies its activity as 'made in connection with official duties,' and we find a basis for that justification, we will not raise a legal objection." B-302504, at 8, *citing* B-144323, Nov. 4, 1960.

Our case law has identified three categories of agency communications that are restricted by the publicity or propaganda prohibition: (1) covert communications, (2) self-aggrandizement, and (3) purely partisan activities. B-319075, *citing* B-316443, July 21, 2009. Communications are considered covert and violate the prohibition if they fail to disclose the agency's role as the source of information. *See, e.g.*, B-302710, May 19, 2004 (failure to identify agency as the source of prepackaged news stories). Communications are considered self-aggrandizement or "puffery" if the materials emphasize the importance of the agency or one of its officials. *See* B-284226.2, Aug. 17, 2000 (Department of Housing and Urban Development (HUD) materials did not emphasize the importance of HUD or HUD programs and so did not constitute puffery or self-aggrandizement). Communications are considered purely partisan in nature if they are completely devoid of any connection with official functions and completely political in nature. *See* B-304228, Sept. 30, 2005, at 2, 9 (finding that the Department of Education's use of a media analysis to gather information to evaluate a media portrayal of a particular political party's "commitment to education" as favorable or unfavorable was a purely partisan activity); B-147578, Nov. 8, 1962 (concluding that appropriated funds may never be used "in a general propaganda effort designed to aid a political party or candidates").

In the past, we have addressed communications in a number of forms, from televised public announcements to editorials written by public officials on behalf of an agency to public speeches emphasizing the virtues of an Administration's policies to Web sites dedicated to an Administration's position on health care reform. *See, e.g.*, B-319075; B-303495, Jan. 4, 2005; B-284226.2; B-118638, Aug. 2, 1974. In 2004, we examined earlier HHS print materials similar to the HHS brochure to determine whether HHS's use of appropriated funds to produce and distribute a flyer and produce and distribute a television advertisement concerning the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) constituted a violation of the applicable publicity or propaganda prohibitions.¹⁰ B-302504. We concluded that the materials did not violate the publicity or propaganda prohibition, though we noted that the flyer contained some omissions that we believed reduced the value of the flyer. We found, however, that while the materials did not provide

¹⁰ The applicable prohibitions had the same text as the prohibition in the Consolidated Appropriations Act, 2010.

beneficiaries with comprehensive information about the impact of MMA, they did identify new benefits, note when the benefits would become available, and provide some information describing the new benefits, including referring beneficiaries to other sources for further information. *Id.* at 10.

We found that the 2004 HHS materials were not “covert propaganda,” since they identified HHS as the source, and they were not “self-aggrandizement,” because they did not attribute the enactment of new benefits to HHS or any of its agencies or officials. *Id.*, at 9. We also concluded that the materials were not purely partisan, noting that the publicity or propaganda prohibition does not bar materials that may have some political content or express support for a particular view. *See also* B-284226.2 (concluding that a HUD publication that criticized proposed cuts in appropriations was a legitimate informational activity); B-212069, Oct. 6, 1983 (concluding that the Office of Personnel Management (OPM) had not violated the prohibition when it issued a press release criticizing members of the House Appropriations Committee for voting to delay implementation of proposed OPM pay-for-performance regulations).

With this analytical framework as context, we turn to an examination of the 2010 HHS brochure at issue here.

Application of Publicity or Propaganda Prohibition to Brochure

We reviewed the HHS brochure and supporting documentation that HHS provided to GAO. The brochure is subject to the same standard and analysis that we applied in our 2004 opinion. In our view, the HHS materials constitute neither “covert propaganda” nor “self-aggrandizement.” The brochure identifies HHS as the source, clearly identifying HHS and the Centers for Medicare and Medicaid Services (CMS) on the first and last pages. The brochure does not attribute the enactment of new benefits to HHS or any of its agencies or officials—it notes that PPACA was passed by Congress and signed by President Obama—nor does the brochure appear to be designed to persuade the public as to the importance of HHS. *See* B-319075, at 8; B-302504, at 9. Our focus here is whether the brochure is a purely partisan activity.

We have found communications to be purely partisan in nature if they have no connection to an agency’s official duties and were completely political in nature. B-319075, at 8, *citing* B-147578, Nov. 8, 1962; *see also* B-304228, at 9. An effort designed solely to aid a political party or candidate is a purely partisan communication, as is a communication that seeks to gather information regarding the public’s view of a particular political party or disseminate information solely to promote a favorable view of a particular political party. *See* B-302504, at 8, *citing* B-147578 (“Appropriated funds may never be used ‘in a general propaganda effort designed to aid a political party or candidates.’”); B-304228, at 2, 9 (finding that the use of a media analysis to gather information to evaluate a media portrayal of a particular political party’s “commitment to education” as favorable or unfavorable was a purely partisan activity). Agencies do, however, have the right to explain and defend their policies and respond to arguments against those policies. B-302504, at 8.

In our 2004 opinion, we noted that to restrict all materials that have some political content or express support for an Administration's policies would significantly curtail the recognized and legitimate exercise of the Administration's authority to inform the public of its policies, to justify its policies, and to rebut attacks on its policies. *Id.*, at 13. It is important for the public to understand the philosophical underpinnings of the policies advanced by elected officials and their staff in order for the public to evaluate and form opinions on those policies. *Id.*

Here, the 2010 HHS brochure focuses on the benefits of PPACA, and there are references in the brochure that assert that PPACA "preserves and strengthens Medicare," makes "improvements," and creates "new benefits." Although some may view such statements as an attempt to persuade the public to the Administration's point of view, we do not find them to be purely partisan in nature. While the brochure contains statements describing the benefits of PPACA, we cannot say that such statements are completely political in nature. *See* B-302504, *citing* B-284226.2 (concluding that an information campaign by the Department of Housing and Urban Development that criticized cuts in appropriations proposed by the House Appropriations Committee, stating that, if enacted, the "cuts would have a devastating impact on families and communities nationwide," was a legitimate informational activity and did not violate the prohibition); B-223098, B-223098.2, Oct. 10, 1986 (holding that the Small Business Administration did not violate the prohibition when it printed and disseminated a pamphlet designed to explain the Administration's proposal to transfer SBA to the Commerce Department and eliminate some of its small business assistance functions).

HHS has a responsibility to inform the public about its programs and activities. *See* B-319075, at 4, *citing* B-302504. In addition, in its letter, HHS cited its authorities under section 1851(d)(1) of the Social Security Act, which requires HHS to "provide for activities under this subsection to broadly disseminate information to medicare beneficiaries (and prospective medicare beneficiaries) on [Medicare Advantage coverage options] in order to promote an active, informed selection among such options." HHS Response, at 5; 42 U.S.C. § 1395w-21(d)(1). HHS advised us that in order to fulfill its obligations, HHS must also provide information that enables individuals to make informed decisions about their Medicare Advantage coverage options, including information about non-Medicare Advantage coverage options. HHS Response, at 5. Similarly, PPACA emphasizes the importance of informing the American public about changes to health care programs, requiring HHS to make available information on the act. Specifically, a provision of PPACA requires HHS to publish on its Web site a list of all authorities provided to HHS under PPACA. Pub. L. No. 111-148, § 1552. PPACA also requires HHS to implement a prevention and health promotion outreach and education campaign that, among other things, explains the preventive services covered under health plans made available under the act. Pub. L. No. 111-148, § 4004.

We identified additional statutory provisions that are designed to help beneficiaries make fully informed choices among the various options available to them. For example, HHS is required to prepare an annual notice to beneficiaries explaining the

benefits available to them and to provide information via a toll-free telephone number. *See* 42 U.S.C. § 1395b-2. HHS is also required to provide information to enable Medicare beneficiaries to evaluate the value of Medicare supplemental policies and the relationship of such policies to Medicare benefits. *See* 42 U.S.C. § 1395ss(e).

We note that the brochure provides information about PPACA generally that may not be directly relevant to the Medicare program or recipients of the brochure, and, in some instances, provides abbreviated information, omitting some program details. For example, the section titled “Improvements Beyond Medicare That You and Your Family Can Count On” refers to programs for which Medicare beneficiaries are likely to be ineligible, such as health coverage options for young people up to age 26 and a new long-term care insurance program that requires enrollees to work while paying premiums. *See* Pub. L. No. 111-148, §§ 1001, 1102, 8002 (extending health insurance coverage to dependents up to age 26; directing the Secretary of Health and Human Services to establish a reinsurance program for the cost of providing health insurance coverage to early retirees; and establishing a national voluntary insurance program for purchasing community living assistance services) (*to be codified at* 42 U.S.C. §§ 300gg-14, 300ll–300ll-9). HHS justifies the inclusion of this information in the brochure as being of interest to family members of beneficiaries, noting that family members often consult each other when making decisions about their health care. HHS cites similar efforts to inform Medicare beneficiaries about the Children’s Health Insurance Program so that beneficiaries may help their grandchildren enroll. HHS Response, at 6.

While the brochure contains information not directly relevant to Medicare beneficiaries, providing that information is not devoid of any connection to HHS’s official functions, and some Medicare beneficiaries, in fact, may find it relevant to their circumstances. We note that the information is placed under the heading “Improvements Beyond Medicare That You and Your Family Can Count On,” so beneficiaries are not led to believe that these changes are new benefits available to them under Medicare. Providing recipients of the brochure information about aspects of PPACA that are not directly relevant to them is not a purely partisan activity.

The brochure does not provide beneficiaries with a comprehensive summary of changes to Medicare that will be implemented as a result of PPACA, and in several instances it provides abbreviated information that leaves out details about PPACA. For example, the brochure states that “[i]nsurance companies will be prohibited from denying coverage due to a pre-existing condition for children starting in September, and for adults in 2014,” but does not explain that this provision of PPACA, although broad, does not apply to all health plans. A subset of health plans—grandfathered individual health insurance plans—are exempt. HHS Brochure, at 3; *see* Pub. L. No. 111-148, § 1201(2) (redesignating section 2701 of the Public Health Service Act as section 2704 and amending it) (*to be codified at* 42 U.S.C. § 300gg-3); *Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as*

a Grandfathered Health Plan Under the Patient Protection and Affordable Care Act, 75 Fed. Reg. 34,538, 34,542 (June 17, 2010).

There is limited space in a brochure, and we would not, therefore, expect a brochure to contain comprehensive information on the provisions of PPACA. A brochure, generally, is expected to present a brief overview of or introduction to information of interest to the recipient. The HHS brochure does provide a brief overview of PPACA by identifying programs to which PPACA made changes, providing some information on the details of those changes, and noting dates when many of the changes will take effect. Additionally, the brochure refers beneficiaries to other sources for further information, such as the Medicare Web site and toll-free telephone number. HHS Brochure, at 4. In our 2004 opinion, we found that although the flyer omitted some information regarding the impact of legislation on Medicare beneficiaries' coverage and costs and may have highlighted some of the positive aspects of Medicare changes, the flyer was not purely partisan. B-302504, at 10–11. Likewise, the information in the 2010 HHS brochure, while not comprehensive, does not amount to a violation of the publicity or propaganda prohibition.

In our view, the brochure presents a picture of PPACA that is not universally shared. For example, two government analyses have determined that PPACA reductions in funding for Medicare Advantage may decrease enrollment and result in less generous benefit packages.¹¹ In addition, one of those analyses and the 2010 Medicare Trustees Report acknowledge that while the financial outlook for the Medicare program is substantially improved as a result of PPACA, the feasibility of long-range improvements is still uncertain, and significant increases in premiums for some beneficiaries may be necessary.¹² The brochure focuses on the improvements to the financial outlook for Medicare in the section entitled “Keeps Medicare Strong and Solvent.” See HHS Brochure, at 4. In its discussion of “Improvements to Medicare Advantage,” the brochure focuses on the more immediate effects of the provisions related to Medicare Advantage rather than the projected impact over the next 10 or more years, and does not mention the government analyses. See *id.*, at 2.

We noticed, also, that the brochure overstates some of PPACA's benefits. For example, it states that PPACA “increases the number of primary care doctors, nurses, and physician assistants,” when PPACA, in fact, only provides incentives for such

¹¹ See Letter from Director, Congressional Budget Office, to the Speaker, U.S. House of Representatives, Mar. 20, 2010, at 9; Memorandum from Chief Actuary, Centers for Medicare and Medicaid Services, *Estimated Financial Effects of the “Patient Protection and Affordable Care Act,” as Amended*, Apr. 22, 2010, at 11.

¹² See Memorandum from Chief Actuary, Centers for Medicare and Medicaid Services, *Estimated Financial Effects of the “Patient Protection and Affordable Care Act,” as Amended*, Apr. 22, 2010, at 4, 8–11; *The 2010 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds* (Washington, D.C.: Aug. 5, 2010), at 7–9, 49.

increases. HHS Brochure, at 3; *see* Pub. L. No. 111-148, §§ 5205, 5501–5509 (provisions providing incentives for primary care services, including an Allied Health Loan Forgiveness Program, incentive payments, training, and demonstration projects to assess health professions workforce needs). The brochure also states that PPACA will “ensure accountability throughout the health care system.” HHS Brochure, at 1. While PPACA may help to increase accountability, it does not guarantee it. *See, e.g.*, Pub. L. No. 111-148, §§ 6102, 10303 (accountability requirements for nursing homes and provisions for developing outcome measures that address accountability issues).

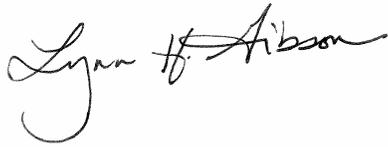
Similarly, the brochure notes that PPACA “reduces payment errors, waste, fraud, and abuse.” HHS Brochure, at 4. PPACA enacted requirements for increased oversight of payment to providers and suppliers and for reporting and returning overpayments and appropriated funding to the Health Care Fraud and Abuse Account and the Medicaid Integrity Program. *See, e.g.*, Pub. L. No. 111-148, §§ 6401–6411 (Medicare, Medicaid, and CHIP program integrity provisions); Pub. L. No. 111-152, § 1303 (appropriating funding to fight fraud, waste, and abuse). Also, the brochure mentions that “guaranteed Medicare benefits won’t change—whether you get them through Original Medicare or a Medicare Advantage plan” and contains similar statements on other pages. HHS Brochure, at 1. Beneficiaries who participate in Medicare Advantage are guaranteed original Medicare benefits, but the specific benefits beyond original Medicare offered by Medicare Advantage plans are not guaranteed and could change at a plan’s discretion. 42 U.S.C. § 1395w-22(a).

The positive tone of the brochure, however, does not make the brochure purely partisan. The publicity or propaganda prohibition does not bar materials that support a particular view or justify the agency’s policies. B-302504, at 12. Indeed, it is important for the public to understand the philosophical underpinnings of the policies advanced by elected officials and their staff in order for the public to evaluate and form opinions on those policies. In that regard, the public may find it important to know of the Administration’s views—whether the public agrees with them or not. Notwithstanding the brochure’s lack of detail and its positive tone, the content of the brochure does not constitute a purely partisan message. HHS has established a nexus to its responsibility to inform the public, and the content of the brochure is not solely political. HHS also has directed readers to additional sources of information for more details about the program.

CONCLUSION

Although the HHS brochure contains instances in which HHS presented abbreviated information and a positive view of PPACA that is not universally shared, the use of appropriated funds to prepare and disseminate it did not violate the publicity or propaganda prohibition. Nothing in the brochure constitutes communications that are purely partisan, self-aggrandizing, or covert. In this legal opinion, we do not examine nor do we express a view on the overall economy, efficiency, or effectiveness of the brochure.

If you have any questions, please contact Susan A. Poling, Managing Associate General Counsel, at (202) 512-2667, or Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, at (202) 512-8257.

A handwritten signature in cursive script that reads "Lynn H. Gibson". The signature is written in black ink and is positioned above the printed name.

Lynn H. Gibson
Acting General Counsel

Enclosure



MAY 2010

Medicare and the New Health Care Law — *What it Means for You*

A Message from Kathleen Sebelius, Secretary of Health & Human Services

The Affordable Care Act passed by Congress and signed by President Obama this year will provide you and your family greater savings and increased quality health care. It will also ensure accountability throughout the health care system so that you, your family, and your doctor—not insurance companies—have greater control over your care.



These are needed improvements that will keep Medicare strong and solvent. Your guaranteed Medicare benefits won't change—whether you get them through Original Medicare or a Medicare Advantage plan. Instead, you will see new benefits and cost savings, and an increased focus on quality to ensure that you get the care you need.

This brochure provides you with accurate information about the new services and benefits to help you and your family now and in the future.

The Centers for Medicare & Medicaid Services (the federal agency that runs the Medicare, Medicaid, and Children's Health Insurance Program) will continue to provide you with up-to-date information about these new benefits and will ensure that your personal information is safe.

Remember—rely on your trusted sources of information when it comes to accurate information about Medicare, and don't hesitate to call 1-800-MEDICARE or go on-line at Medicare.gov if you have questions or concerns. **Don't give your personal Medicare information to anyone who isn't a trusted source.**



What Stays the Same

The guaranteed Medicare benefits you currently receive will remain the same. During open enrollment this fall, you will continue to have a choice between Original Medicare and a Medicare Advantage plan. Medicare will continue to cover your health costs the way it always has, and there are no changes in eligibility. But, there are some important benefits that you and your family can take advantage of starting this year. Look for more details in your *Medicare and You Handbook* coming this fall.

Improvements in Medicare You Will See Right Away

More Affordable Prescription Drugs

- If you enter the Part D “donut hole” this year, you will receive a one-time, \$250 rebate check if you are not already receiving Medicare Extra Help. These checks will begin mailing in mid-June, and will continue monthly throughout the year as beneficiaries enter the coverage gap.
- Next year, if you reach the coverage gap, you will receive a 50% discount when buying Part D-covered brand-name prescription drugs.
- Over the next ten years, you will receive additional savings until the coverage gap is closed in 2020.

Important New Benefits to Help you Stay Healthy

- Next year you can get free preventive care services like colorectal cancer screening and mammograms. You can also get a free annual physical to develop and update your personal prevention plan based on current health needs.



Improvements to Medicare Advantage

- Today, Medicare pays Medicare Advantage insurance companies over \$1,000 more per person on average than Original Medicare. These additional payments are paid for in part by increased premiums by all Medicare beneficiaries—including the 77% of seniors not enrolled in a Medicare Advantage plan.
- The new law levels the playing field by gradually eliminating Medicare Advantage overpayments to insurance companies.
- If you are in a Medicare Advantage plan, you will still receive guaranteed Medicare benefits.
- Beginning in 2014, the new law protects Medicare Advantage members by taking strong steps to ensure that at least 85% of every dollar these plans receive is spent on health care, rather than administrative costs and insurance company profits.





Improvements in Medicare You Will See Soon

Better Access to Care

- Your choice of doctor will be preserved.
- The law increases the number of primary care doctors, nurses, and physician assistants to provide better access to care through expanded training opportunities, student loan forgiveness, and bonus payments.
- Support for community health centers will increase, allowing them to serve some 20 million new patients.

Better Chronic Care

- Community health teams will provide patient-centered care so you won't have to see multiple doctors who don't work together.
- If you're hospitalized, the new law also helps you return home successfully—and avoid going back—by helping to coordinate your care and connecting you to services and supports in your community.

Improvements Beyond Medicare That You and Your Family Can Count On

Improves Long-Term Care Choices

- New tools and resources in the Elder Justice Act, which was included in the new law, will help prevent and combat elder abuse and neglect, and improve nursing home quality.
- The new law creates a new voluntary insurance program called CLASS to help pay for long-term care and support at home.
- Individuals on Medicaid will receive improved home- and community-based care options, and spouses of people receiving home- and community-based services through Medicaid will no longer be forced into poverty.



Helps Early Retirees

- To help offset the cost of employer-based retiree health plans, the new law creates a program to preserve those plans and help people who retire before age 65 get the affordable care they need.

Helps People with Pre-existing Conditions

- The new law provides affordable health insurance through a transitional high-risk pool program for people without insurance due to a pre-existing condition.
- Insurance companies will be prohibited from denying coverage due to a pre-existing condition for children starting in September, and for adults in 2014.
- Insurance companies will be banned from establishing lifetime limits on your coverage, and use of annual limits will be limited starting in September.

Expands Health Coverage for Young People

- Young people up to age 26 can remain on their parents' health insurance policy starting in September.



The New Law Preserves and Strengthens Medicare

New Tools to Fight Fraud and Protect Your Medicare Benefits

- The new law contains important new tools to help crack down on criminals seeking to scam seniors and steal taxpayer dollars.
- It reduces payment errors, waste, fraud, and abuse to make Medicare more efficient and return savings to the Trust Fund to strengthen Medicare for years to come.
- You are an important resource in the fight against fraud. Be vigilant and rely only on your trusted sources of information about your Medicare benefits.
- Call 1-800-MEDICARE if you have any questions or want to report something that seems like fraud.

Keeps Medicare Strong and Solvent

- Over the next 20 years, Medicare spending will continue to grow, but at a slightly slower rate as a result of reductions in waste, fraud, and abuse. This will extend the life of the Medicare Trust Fund by 12 years and provide cost savings to those on Medicare.
- In 2018, seniors can expect to save on average almost \$200 per year in premiums and over \$200 per year in co-insurance compared to what they would have paid without the new law.
- Upper-income beneficiaries (\$85,000 of annual income for individuals or \$170,000 for married couples filing jointly) will pay higher premiums. This will impact about 2% of Medicare beneficiaries.



For More Information

For more information about the new health care law now, visit www.medicare.gov. If you have any questions, call 1-800-MEDICARE (1-800-633-4227) or your State Health Insurance Assistance Program (SHIP). Visit www.medicare.gov or call 1-800-MEDICARE to get their telephone

number. TTY users should call 1-877-486-2048. If you need help in a language other than English or Spanish, say "Agent" at any time to talk to a customer service representative.

Visit the Eldercare Locator at www.eldercare.gov to find out how to access home- and community-based services and benefits counseling, transportation, meals, home care, and caregiver support services. You can also call 1-800-677-1116. The Eldercare Locator, a public service of the U.S. Administration on Aging, is your first step for finding local agencies in every U.S. community.