



CMA Weekly Alert – April 13, 2006

## SECRETARY LEAVITT MISSTATES MANY FACTS IN THIRD PROGRESS REPORT ON MEDICARE PART D

Health and Human Services Secretary Leavitt’s third progress report on the Medicare Prescription Drug Benefit<sup>1</sup> includes far fewer statements of fact than the second report.<sup>2</sup> The third report largely uses generalities and vague descriptions of improvement; for example: “the fundamentals of the program are sound – the savings are real and so are the benefits,” CMS is making “significant improvements in data management and exchange,” “data-match rates among our partners are now very high.” Nevertheless, some specific statements of fact contained in the report are demonstrably incorrect or so misleading as to be similarly disingenuous.

Secretary Leavitt’s report says . . .	Evidence indicates that . . .
<p>“The Medicare Part D Prescription Drug Plan is now three months old. In that short time, <b>we have more than 27 million Medicare beneficiaries who have prescription drug coverage</b> and are enjoying significant savings in their drug prescription costs.”</p>	<p>Only 6 of the 27 million beneficiaries had voluntarily enrolled in a Part D plan by mid-March. Most of the 27 million beneficiaries were either auto-enrolled and had no choice about whether to participate (dually-eligible beneficiaries were auto-enrolled) or were not enrolled in a Part D plan at all (they received drug coverage elsewhere). As HHS reported in its March 23, 2006 press release, as of March 18:</p> <ul style="list-style-type: none"> <li>• 6 million beneficiaries have enrolled in stand-alone prescription drug plans,</li> <li>• About 5.7 million receive drug coverage through Medicare Advantage plans,</li> </ul> <p><b>However . . .</b></p> <ul style="list-style-type: none"> <li>• About 5.8 million dually-eligible beneficiaries were auto-enrolled,</li> <li>• More than 6.2 million beneficiaries are in employer and union-sponsored coverage,</li> <li>• 3.5 million federal retirees get their drugs through Tricare or FEHB.<sup>3</sup></li> </ul> <p>The 6 million beneficiaries who voluntarily</p>

<sup>1</sup> *Secretary’s Progress Report III on the Medicare Prescription Drug Benefit* (Apr. 4, 2006).

<sup>2</sup> See Center for Medicare Advocacy, “Second Progress Report on Medicare Part D Is at Odds with What Experts’ Reports Show” (Mar. 9, 2006).

<sup>3</sup> HHS, “More than 27 Million Medicare Beneficiaries Are Enrolled in Prescription Drug Coverage” (Mar. 23, 2006).

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	enrolled in Part D reflect only 27% of the 22.9 million beneficiaries who were most likely to enroll (because they did not have other prescription drug coverage and were not auto-assigned). <sup>4</sup> The 17.9 million beneficiaries enrolled in Medicare Part D plans as of March are 11.4 million fewer than CMS' 2006 Part D enrollment target of 29.3 million. <sup>5</sup>
<p>“We are <b>urging all seniors to sign-up</b> before the May 15 deadline so that they do not pass up an average savings of \$1,100 per person.”</p>	<p>Not all seniors (or people with disabilities who qualify for Medicare) should sign up for a Part D plan by May 15 or at any other time this year. <i>The New York Times</i> reported that some Medicare beneficiaries with cancer are declining Part D so that they can continue to receive cancer drugs from drug manufacturers' charity programs.<sup>6</sup> An estimated 10,000-20,000 beneficiaries who received free cancer drugs before Part D went into effect are losing their free drugs once they enroll in a Part D plan. In addition, Medicare beneficiaries with creditable coverage under another insurance plan do not need to enroll in Part D; and beneficiaries with drug coverage under retiree health plans, and their dependents, may lose <i>all</i> their health insurance benefits if they enroll in a Part D plan. <b>Part D is <i>not</i> for everyone.</b></p>
<p>“We are urging all seniors to sign-up before the May 15 deadline so that they do not pass up <b>an average savings of \$1,100 per person.</b>”</p>	<p>There is no way to confirm or dispute <i>today</i> that Part D participants will save an average of \$1,100 per person. Since Part D plans can change (and some have already changed)<sup>7</sup> the drugs they cover and their utilization management procedures during the year and since beneficiaries may, some</p>

<sup>4</sup> Kaiser Family Foundation, “Medicare: Tracking Prescription Drug Coverage Under Medicare; Five Ways to Look at the New Enrollment Numbers” (Feb. 2006), <http://kff.org/medicare/upload/7466.pdf>.

<sup>5</sup> Kaiser Family Foundation, “Medicare: Medicare Prescription Drug Coverage Enrollment Update” (Mar. 2006), <http://kff.org/medicare/upload/7453.pdf>.

<sup>6</sup> Alex Berenson, “Drug Plan’s Side Effect Is Severe,” *The New York Times* (Apr. 8, 2006).

<sup>7</sup> John Sullivan, “Insurer alters Medicare drug list,” *Philadelphia Inquirer* (Apr. 5, 2006), <http://www.philly.com/mld/inquirer/14264539.htm?template=contentModules/printstory.jsp> (reporting that Independence Blue Cross, the largest insurer in the Philadelphia region, was planning to “make 22 changes to its preferred list of pharmaceuticals for Medicare recipients starting June 1, marking the beginning of a shift that could alter drug plans across the country”).

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	time later in the year, develop a need for a drug not included on their plans' formulary, savings from the first three months of program may not continue throughout the year. Beneficiaries can not determine actual annual savings, if any, from participation in a Part D plan until December 31, 2006.
<p>“A relatively <b>small number</b> of beneficiaries were <b>carried on the books of more than one Medicare drug plan.</b>”</p>	<p><i>The New York Times</i> reported on March 1, 2006 that “tens of thousands” of beneficiaries had been enrolled in more than one plan at the same time.<sup>8</sup> <i>Inside CMS</i> reports “that as many as 700,000 beneficiaries are using a different drug plan than they are on the record by CMS as using.”<sup>9</sup> These 700,000 beneficiaries reflect nearly 17% of enrollees who voluntarily enrolled or were auto-assigned in Part D plans.</p>
<p>“<b>States stepped in to implement the Medicare Rx drug benefit.</b>”</p>	<p>States were not <i>implementing</i> the Part D drug program; they were acting on an emergency basis to protect beneficiaries from the failures of the Part D drug benefit. States stepped in to provide drug coverage for dually-eligible beneficiaries whose transition to Part D on January 1, 2006 failed entirely or whose drugs were not covered by the Part D plans to which they had been randomly assigned.</p> <p>On December 27, 2005, Maine Governor John Baldacci, the first governor to act, announced steps “to ensure Maine people are protected and continue to have drug coverage.”<sup>10</sup> The state had found that one in four beneficiaries had 60% or fewer of his or her drugs covered by the plan to which he or she had been auto-enrolled.</p> <p>By January 8, Connecticut, New</p>

<sup>8</sup> Robert Pear, “In Medicare Maze, Some Find They’re Tangled in 2 Drug Plans,” *The New York Times* (Mar. 1, 2006).

<sup>9</sup> “Johnson Quizzes CMS on Part D Issues, Plans Hearing on Enrollment,” *Inside CMS* (Apr. 6, 2006).

<sup>10</sup> Governor John Elias Baldacci, “Governor Announces Additional Steps to Help Mainers Transition to Medicare Part D” (News Release, Dec. 27, 2005),

<http://www.maine.gov/tools/whatsnew/index.php?topic=Gov+News&id=11322&v=Article>.

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	<p>Hampshire, North Dakota, and Vermont had joined Maine in taking “emergency action . . . to protect their citizens.”<sup>11</sup></p> <p>California joined 10 other states on January 12 to assure ““access to life-saving medicines”” for one million dual-eligible Californians, 20% of whom were estimated to be at risk of not getting all of their medically necessary medications under Part D.<sup>12</sup></p> <p>Eventually, a total of 46 states stepped in on an emergency basis and paid hundreds of millions of dollars for prescription drugs for low-income beneficiaries.<sup>13</sup></p> <p>On March 3, five states (with 10 states supporting them in a friend-of-the-court brief) sued the Secretary, arguing that Part D’s “clawback” provision (which requires states to repay the federal government a portion of their savings in drug costs) is unconstitutional.<sup>14</sup></p>

Secretary Leavitt reports, “People who had no coverage are likely to see the greatest savings.” This statement is undoubtedly true. Medicare beneficiaries who had no drug coverage at all are most likely to benefit from Part D; some coverage is better than no coverage.

But these beneficiaries, as well as all of those who have been harmed by Part D, would be better served by a real prescription drug benefit as part of the traditional Medicare program.

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<sup>11</sup> Robert Pear, “States Intervene After Drug Plan Hits Early Snags,” *The New York Times* (Jan. 7, 2006).

<sup>12</sup> “Emergency Drug Aid for Seniors: California Orders Prescription Payments Amid Medicare Glitches,” *San Jose Mercury News* (Jan. 13, 2006).

<sup>13</sup> Letter from House Democrats to HHS Secretary Leavitt (Apr. 6, 2006), [http://www.house.gov/stark/news/109th/letters/20060406\\_House\\_Leavitt.pdf](http://www.house.gov/stark/news/109th/letters/20060406_House_Leavitt.pdf); letter from Senate Democrats to HHS Secretary Leavitt (Apr. 10, 2006), [http://www.house.gov/stark/news/109th/letters/20060406\\_Senate\\_Leavitt.pdf](http://www.house.gov/stark/news/109th/letters/20060406_Senate_Leavitt.pdf).

<sup>14</sup> “Attorney General Greg Stumbo Announces Medicare Part D Clawback Suit Filed in U.S. Supreme Court” (News Release, Mar. 3, 2006), [http://ag.ky.gov/news/2006rel/final\\_clawback\\_motion\\_brief\\_complaint.pdf](http://ag.ky.gov/news/2006rel/final_clawback_motion_brief_complaint.pdf). Motion for Leave to File Bill of Complaint, Supporting Brief, and Bill of Complaint, [http://ag.ky.gov/news/2006rel/final\\_clawback\\_motion\\_brief\\_complaint.pdf](http://ag.ky.gov/news/2006rel/final_clawback_motion_brief_complaint.pdf).