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OPINION

Tuesday, January 11, 2005

Medicare agency must be fair, accurate with citizens

GILL DEFORD AND VICKI GOTTLICH
 GUEST COLUMNISTS

The news that Billy Tauzin, a congressman who worked closely with the Bush administration in developing Medicare legislation, will become president of the chief lobby group for the drug industry is just one example of dangerously close ties between the Bush administration and private industry.

Nowhere has this problem been more evident than in the behavior of the Centers for Medicare and Medicaid Services, the agency responsible for Medicare. Over the last four years, CMS has lied, ignored the law and tried to turn Medicare into a private insurance program. Yet the administration and Congress won't rein in this rogue agency. This is particularly distressing in light of the leading role CMS plays in implementing the new Medicare prescription drug law.

The nomination of Michael Leavitt to replace Tommy Thompson as secretary of the Department of Health and Human Services, of which CMS is a critical division, offers the opportunity to reverse a consistent course of improper and ineffective behavior. Federal watchdogs just issued a report showing that CMS is not providing the elderly and disabled with accurate information when they call 1-800-MEDICARE. According to the non-partisan Government Accountability Office, CMS gives accurate answers to 6 of 10 calls.

CMS should be providing beneficiaries with the most accurate information and the interests of the elderly and disabled should be their top priority. Sadly, CMS is not only disseminating bad information, it is also blatantly violating the law, favoring private health plans and driving up costs for Medicare beneficiaries.

Another recent report evaluated CMS' Medicare Preferred Provider Organization Demonstration Project, which sought to encourage private plans to participate in Medicare. The GAO found that in order to encourage private plans to join the Medicare Demonstration Project, CMS ignored the rules by allowing 29 of the 33 participating PPOs to refuse payment for some services obtained outside the provider network, even though the private plans were required to pay for these services.

CMS has a history of lying to appease the private health industry. In April 2001, Thompson publicly announced that CMS would distribute comparative information to Medicare beneficiaries so they could make informed decisions on whether to enroll in a private plan. Four weeks later, however, in a letter sent only to industry representatives, the secretary postponed the date by which the managed care plans were required to submit the information and said that CMS would not prepare the written comparative information for beneficiaries. This was a double-bonus for the industry: Plans could take their time gathering information and there would be no neutral explanation of what they would be offering, allowing them to dazzle potential customers with misleading promises.

When consumer organizations belatedly discovered Thompson's secret initiative, they sued and ultimately forced CMS to comply with the law's explicit directives. A federal judge made the rare legal finding that CMS had acted in bad faith, referring to the agency's "audacity" and "wanton conduct" and rejecting the secretary's self-serving pretense that "his actions were really for the benefit of the intended beneficiaries of the Medicare+Choice program."

Despite warnings from the GAO and the federal court, CMS and the Department of Health and Human Services continue to ignore the Medicare law to promote their goal of turning Medicare into a private insurance program. It is disgraceful that with so much at stake in the implementation of the Medicare drug program, older people and people with disabilities cannot trust the agency charged with overseeing Medicare to make sure that the drug program helps them, rather than the private insurance industry. With a new secretary, maybe the Bush administration will finally demonstrate that it cares about its real constituency.

Gill Deford and Vicki Gottlich are attorneys in the Connecticut and Washington, D.C. offices, respectively, of the Center for Medicare Advocacy, Inc., a national non-profit, non-partisan organization that provides education and advocacy on Medicare and health care.

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