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ONE HUNDRED SEVENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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February 6, 2002

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DAVID V. MARVENTANO, STAFF DIRECTOR

The Honorable Thomas Scully
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244-1850

Dear Administrator Scully:

We are writing to express our concerns regarding the implementation of the self-administered drug provisions in the Benefits Improvement and Protection Act of 2000 (BIPA).

Despite the explicit directions provided by Congress in BIPA, CMS has not yet issued a Program Memorandum notifying Medicare contractors of a change in the law. An unfortunate consequence of this inaction is that Medicare beneficiaries continue to be denied access to drugs and biological products, solely upon the basis that the product *could be* self-administered.

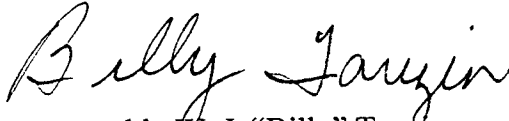
As you know, section 112 of BIPA directed Medicare to cover certain drugs and biological products. Prior to the enactment of BIPA, some Medicare contractors had restricted coverage of certain injectable products, based upon their interpretation of a 1997 Health Care Financing Administration Program (HCFA) Memorandum. This interpretation restricted Medicare's coverage to those drugs and biologicals that *could not* be self-administered.

In enacting section 112, Congress changed the law and affirmatively directed HCFA (now CMS) to cover those drugs or biologicals that are *not usually* self-administered by the patient. The intent of Congress in enacting this provision, as reflected in the House Commerce Committee's report on H.R. 5291, is very clear. The report states that Medicare carriers are to reimburse for self-injectable drugs according to the pre-1997 policy. The report further notes that in determining whether a drug or biological is self-administered by the patient, "HCFA should only consider whether a

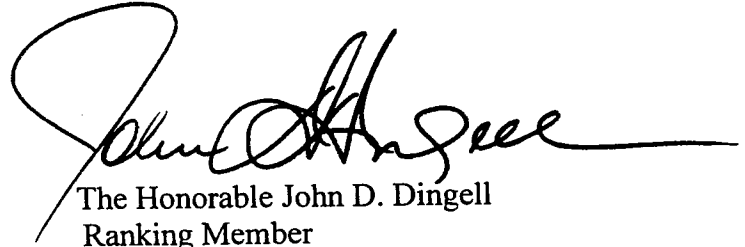
majority of Medicare patients with the disease or condition actually administer the drug to themselves.”

We are writing to urge you to issue the appropriate Program Memorandum implementing the statute. Given our shared interest in guaranteeing Medicare beneficiary access to appropriate, covered medical services and treatments, it is our hope that this can be done as expeditiously as possible. We will look forward to working with you to resolve this issue.

Sincerely,



The Honorable W. J. "Billy" Tauzin
Chairman
House Committee on Energy and Commerce



The Honorable John D. Dingell
Ranking Member



The Honorable Michael Bilirakis
Chairman
Subcommittee on Health



The Honorable Sherrod Brown
Ranking Member