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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

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May 12, 2008

The Honorable Kerry N. Weems  
Acting Administrator  
Centers for Medicare and Medicaid Services  
Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Mr. Weems:

We are writing regarding an egregious situation that appears to be costing federal taxpayers and federal retirees as much as \$200 million per year.

The issue involves over 200,000 federal retirees who are enrolled in both Federal Employee Health Benefit Plans (FEHBP) with drug benefits and separate Medicare Part D drug benefits. In almost all cases, the additional Part D benefits are duplicative and unnecessary. They are also expensive. Because the Centers for Medicare and Medicaid Services (CMS) and the Office of Personnel Management (OPM) have not acted to require or ensure effective coordination of the drug benefits, the private insurers offering Medicare D coverage appear to be reaping a \$200 million windfall annually, paid for by the retirees and American taxpayers.

Under federal law, when retirees are covered by both Medicare and FEHBP drug coverage, Medicare is supposed to serve as the primary payer and the FEHBP coverage is supposed to serve as the secondary payer, providing "wrap-around" coverage to reduce copays and other costs under Medicare Part D. The law creating Medicare Part D legislation expressly required the Department of Health and Human Services to "establish ... requirements for prescription drug plans to ensure the effective coordination" between a Part D plan and the secondary coverage.<sup>1</sup>

The reason for requiring this coordination is obvious: Without it, the retiree would be paying twice for the same coverage. This would enrich the private insurers at the expense of the retiree and, in the case of Medicare Part D and FEHBP, where coverage is subsidized by the government, the taxpayer.

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<sup>1</sup> 42 U.S.C. 1395w-133, 42 U.S.C. 1395-w134.

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Despite the mandates of the law, CMS and OPM are apparently not coordinating coverage. On April 21, 2008, OPM briefed staff on several new pilot proposals for the FEHBP. At this briefing, OPM indicated that they were aware of over 200,000 federal retirees who were enrolled in both FEHB plans with drug coverage and Medicare Part D drug plans. OPM officials also indicated that there was no ongoing coordination between the two programs, explaining that in most cases, Medicare Part D plans and FEHB plans were not even aware of whether the retirees were enrolled in both programs.

In follow-up conversations, officials at CMS have confirmed these figures and indicated that there is virtually no coordination between the two programs.<sup>2</sup>

This information raises basic questions regarding waste and abuse of retiree and taxpayer funds, which the Committee will be investigating.

### **Why are so many retirees paying for duplicative coverage?**

It is widely accepted that the drug coverage offered by FEHB plans meets, or exceeds, the coverage offered by Medicare Part D. According to experts, FEHBP enrollees “have prescription drug coverage that is far better than what is in Medicare Part D.”<sup>3</sup> These experts say that those who enroll in Part D “would be paying twice for an inferior version” of drug coverage they already have.<sup>4</sup>

In this situation, coordination of benefits is a basic responsibility of CMS, OPM, and the insurance providers. However, it appears that because CMS and OPM have failed to implement appropriate deadlines and an adequate information sharing arrangement, the vast majority of FEHB plans and Medicare Part D do not coordinate the benefits.<sup>5</sup> Please explain why CMS and

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<sup>2</sup> CMS officials have indicated that only four of the over 200 FEHBP plans — the National Association of Letter Carriers, SAMBA, Government Employees Hospital Association, and Mailhandlers Benefit plans — coordinate Part D and FEHBP drug benefits. More than 80% of federal retirees are signed up for FEHBP plans that do not coordinate Part D benefits. FEHBP, *FEHBP OPM Headcount Totals for 2007* (May 9, 2008).

<sup>3</sup> Association of Federal Government Employees, *Attention Federal Employees & Federal Retirees* (Press Release) (Nov. 15, 2005). In rare cases, where federal retirees qualify for Part D Low Income Subsidies or use certain uniquely expensive drugs, Part D coverage may provide some benefit to those employees.

<sup>4</sup> *Id.*

<sup>5</sup> CMS and OPM have a data sharing agreement in place, the first step towards meaningful program coordination. However, according to CMS staff, the agencies have taken no steps to fully implement this data sharing arrangement, and there is no deadline in place to do so.

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OPM have failed to protect over 200,000 federal retirees by coordinating their drug coverage. Also, please provide a timeline of your plan to address to the issue of duplicative coverage.

### **What are the financial implications for federal retirees and taxpayers?**

The enrollment of retirees in Medicare Part D when they already have equivalent or even more generous coverage under FEHBP results in substantial costs to beneficiaries and to taxpayers. Each enrollee in Part D pays an average of \$300 in annual premiums, with federal taxpayers contributing another \$717 in subsidies.<sup>6</sup> The cost of duplicative coverage for the 200,000 enrollees may be over \$200 million annually: \$60 million in unnecessary premiums paid by retirees and \$140 million in unnecessary subsidies paid by taxpayers. In large part, this \$200 million represents excess profits for the private insurers that run the drug plans.

Please provide detailed estimates of the number of retirees enrolled in both FEHB plans and Part D plans, the plans in which they are enrolled, and all CMS or OPM analyses of the costs to retirees and the taxpayer from the duplicative coverage.

### **Why is OPM giving contradictory messages to federal retirees?**

OPM's website correctly states that FEHBP enrollees "do not need to enroll in Medicare Part D and pay extra for drug benefits."<sup>7</sup> At the same time, it also inaccurately states: "if you choose to enroll in Medicare Part D, you can keep your FEHB coverage and your FEHB plan will coordinate benefits with Medicare."<sup>8</sup> Similar information is provided to federal retirees in the FEHB brochures that are prepared for each plan.<sup>9</sup>

Please explain why OPM is telling federal retirees that all FEHB plans will coordinate benefits with Medicare, when in fact this does not appear to be happening.

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<sup>6</sup> Department of Health and Human Services, *2008 Medicare Trustees Report* (2008).

<sup>7</sup> OPM, *Letter from OPM About Medicare Part D* (2008) (online at [www.opm.gov/insure/health/medicare/disclosure.asp](http://www.opm.gov/insure/health/medicare/disclosure.asp)).

<sup>8</sup> *Id.*

<sup>9</sup> See, e.g., OPM, *Plan Brochure for Blue Cross and Blue Shield Service Benefit Plan* (2008), which states that "if you choose to enroll in Medicare Part D, you can keep your FEHB coverage and your FEHB plan will coordinate benefits with Medicare" (online at [www.fepblue.org/pdf/sbp2008.pdf](http://www.fepblue.org/pdf/sbp2008.pdf)).

**Did OPM's failure to allow FEHBP to participate in Medicare Part D retiree coverage subsidies exacerbate this problem?**

The Medicare Part D legislation established special rules that allowed retiree drug plans provided by private employers to serve as the primary provider of prescription drug benefits. In these cases, the employers receive a subsidy from the Medicare Part D program to serve as the primary provider of benefits.<sup>10</sup> Employers cannot receive this subsidy for retirees who sign up for Part D, and they must coordinate with the Part D program to ensure that this does not occur.<sup>11</sup> Under the Part D legislation, FEHBP could have participated in this program, saving money for federal retirees and ensuring that there was no duplication of coverage. However, OPM claimed that there was "no good rationale" for participating in this program.<sup>12</sup>

Please explain the rationale behind the OPM decision not to allow FEHBP to participate in the Medicare Part D retiree coverage subsidy and the impact that this decision has had on federal retirees signing up for duplicative coverage.

**Requests for documents**

In addition to responding to the questions raised in this letter, we ask that you provide the Committee with all documents relating to the duplication of drug benefits provided by FEHB plans and Medicare Part D plans, including all communications between CMS and OPM on this issue.

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. Enclosed with this letter is a document providing additional information about how to respond to the Committee's document request.

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<sup>10</sup> 42 U.S.C. 1395w-132.

<sup>11</sup> *Id.*

<sup>12</sup> Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, United States Senate, Testimony of Nancy H. Kichak, OPM (May 18, 2007).

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Please provide the information and documents requested in this letter no later than May 16, 2008. If you have any questions, please contact Brian Cohen of the Committee staff at (202) 226-5854.

Sincerely,



Henry A. Waxman  
Chairman



Danny K. Davis  
Chairman  
Subcommittee on Federal  
Workforce, Postal Service, and the  
District of Columbia

Enclosure

cc: Tom Davis  
Ranking Minority Member

cc: Linda M. Springer  
Director, Office of Personnel Management