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United States General Accounting Office
Washington, DC 20548

B-302504

February 6, 2004

Alex Azar
General Counsel
Department of Health and Human Services
200 Independence Avenue
Washington, D.C. 20201

Subject: Use of appropriated funds for print and broadcast advertisements regarding the Medicare Prescription, Drug Improvement, and Modernization Act of 2003

Dear Mr. Azar:

We have received congressional inquiries concerning the Department of Health and Human Services's (HHS) current plan to distribute a flyer and to broadcast radio and television advertisements regarding provisions of the Medicare Prescription, Drug Improvement, and Modernization Act of 2003 (MMA) and their effect upon Medicare beneficiaries. We have been asked whether the use of appropriated funds to pay for the flyer and advertisements constitutes a violation of the prohibitions in the Consolidated Appropriations Act of 2004¹ and/or the Consolidated Appropriations Resolution of 2003,² which state that "[n]o part of any appropriation in . . . [these Acts] shall be used for publicity or propaganda purposes within the United State not heretofore authorized by Congress." The purpose of this letter is to confirm our understanding of the facts, seek additional information, and solicit your views on possible violations of the prohibitions cited above.

We understand that HHS has already requested that the Government Printing Office (GPO) produce 36 million flyers concerning MMA for mail distribution to Medicare beneficiaries. We also understand that HHS has already obligated or plans to obligate funds for radio and television advertisements to disseminate further the information contained in these flyers. The inquiries we received raise concerns that the flyer and advertisements contain misleading and inaccurate information regarding the effect of MMA and may result in a prohibited use of appropriated funds to disseminate propaganda.

To respond to this congressional request, we would like your response to the following specific questions regarding the HHS's current and future advertising plans:

¹ Public Law 108-199, Div. F, Tit. IV, Sec. 624.

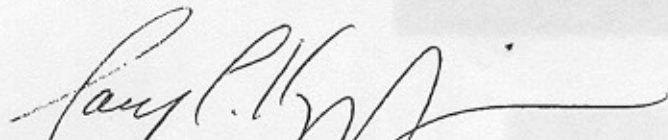
² Public Law 108-7, Div. J, Tit. VI, Sec. 626.

- (1) Other than the flyer GPO is printing, what product(s), including all print and media products, has HHS produced or is producing regarding MMA? Please provide copies of any printed materials, video and audio tapes, and transcripts of these products. What audience(s) has HHS attempted to target in the distribution of these products? How did HHS decide the informational content of these products?
- (2) What is the source of funding HHS is using to pay the costs of production and distribution of materials regarding MMA? Please include a specific Treasury account number and the public law enacting the appropriation.
- (3) What are the costs of production and distribution of these products? Please identify all current costs and estimates for future costs.
- (4) We understand that HHS has incurred or may incur mailing costs of \$6.8 million for distribution of the flyer. Did HHS consider other options besides a separate mailing of the flyers, such as combining the mailing of the flyer with another mailing to Medicare beneficiaries? If so, why were such options not pursued?
- (5) It has been asserted that the following statements in the flyer violate the propaganda prohibition cited above. Please explain your view as to whether the statements constitute propaganda for purposes of the prohibition either individually or in the broader context in which they are presented.
 - a. "This new law preserves and strengthens the current Medicare program." For example, MMA may weaken Medicare because its increased costs will worsen Medicare's already weak long-term financial condition, or the fundamental change in approach requiring Medicare beneficiaries to rely on private insurance plans for their prescription drugs would actually weaken the Medicare program.
 - b. "A discount card with Medicare's seal of approval can help you save 10-25% on prescription drugs."
 - c. "New Preventive Benefits will be covered, including: One-time initial wellness physical exam within 6 months of the day you first enroll in Medicare Part B."
 - d. "Prescription Drug Benefits will be added to Medicare in 2006. All people with Medicare will be able to enroll in plans that cover prescription drugs. You will choose a prescription drug plan and pay a premium of about \$35 a month. . . . Medicare then will pay 75% of costs between \$250 and \$2,250 in drug spending. You will pay only 25% of these costs. . . . You will pay 100% of the drug costs above \$2,250 until you reach \$3,600 in out-of-pocket spending."
 - e. "Starting immediately, Americans will be able to set aside money each year, tax free, in Health Savings Accounts."

We would appreciate a written response to the above questions, and any other information or explanations regarding MMA materials that you believe may be helpful to us. Because of the nature of the inquiry, please respond by February 23, 2004.

If you have any questions concerning this letter, please contact Thomas H. Armstrong, Assistant General Counsel, at (202) 512-8257.

Sincerely,



Gary L. Kepplinger
Deputy General Counsel