

**Congress of the United States**  
**Washington, DC 20515**

February 5, 2004

Honorable David M. Walker  
Comptroller General of the United States  
General Accounting Office  
441 G Street NW  
Washington, DC 20548

Dear Comptroller General Walker:

We are writing to expand the scope of the request made by Senator Lautenberg to you on January 29th regarding the misuse of government funds by the Executive Branch in violation of Public Law 108-7, Title VI, Sec. 626<sup>1</sup> for the publication of a flyer by the Department of Health and Human Services. We have now learned of further misappropriation of taxpayer funds by the Department of Health and Human Services (HHS) related to publicity and propaganda efforts around the new Medicare law.

According to media reports, HHS is planning to spend \$9.5 million on television advertisements to "build public support for the new Medicare prescription drug law, seeking to counteract Democratic criticism" through an "uncommonly aggressive campaign by the administration and congressional Republicans to promote legislation that already has become law."<sup>2</sup>

Similar to the flyer, the content of the HHS television advertisement contains misleading information that is "so oversimplified and distorted that [it] clearly constitute[s] propaganda"<sup>3</sup> and will mislead Medicare enrollees about the actual benefits they could receive under the new Medicare law.

At the heart of the television advertisement is oversimplified and misleading content. The following is from the script of the commercial:

SENIOR 3: Will I save on my medicines?

TITLE CARD: Medicare drug discount cards this June.  
New drug coverage in 2006.

ANNCR: You can save with Medicare drug discount cards  
this June. And save more with new prescription drug  
coverage in 2006.

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<sup>1</sup> This provision is included annually in the General Government Appropriations legislation. The law states: "No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United State not heretofore authorized by Congress." See also P.L. 108-199, Division F, Transportation Treasury and Independent Agencies Appropriations Act of 2004, Sec. 624.

<sup>2</sup> Amy Goldstein, *TV Ad Aims To Promote Drug Law*, The Washington Post, February 4, 2004, p. A21

<sup>3</sup> See General Accounting Office, Report of the Comptroller General of the United States, B-130961, "Problems with Publication Related to the Clinch River Breeder Reactor Project," at 1,4 (January 6, 1978).

This discussion of the law's changes to Medicare is so simplified that it does not provide any meaningful information to beneficiaries. In addition, the lack of detail about the changes in Medicare will mislead beneficiaries to make erroneous conclusions about the benefits that will be available to them.

For example, when the senior citizen in the commercial asks, "Will I save on *my* medicines?" the response is simply affirmative: "You can save with Medicare drug discount cards this June." However, the real answer is not that simple. The discount cards, which will be similar to drug discount cards currently on the market, will not provide a discount for *all* medicines. A senior viewing this advertisement could certainly be led to believe that all prescription medicines will be covered. Furthermore, the card will not be free, which is not disclosed.

As for the extremely complex Medicare prescription drug plan commencing in 2006, the overly simplistic statement that you will simply "save more" is not only incomplete but in the case of many seniors, inaccurate. Many senior citizens who enroll in the program will pay more in premiums than they will receive in benefits. Many senior citizens will find that the medicines they take will not be included on the formulary of the plan in which they enroll, and thus they will receive no savings on those medications. According to estimates by the Congressional Budget Office and independent analysts, almost three million other senior citizens will lose retirement coverage as the result of the legislation and actually end up paying more for their drugs. Many senior citizens and disabled individuals with dual eligibility for Medicare and Medicaid will be forced to pay more for drugs.

The advertisement also asserts that senior citizens can always keep their same Medicare coverage:

SENIOR 1: So how is Medicare changing?

TITLE CARD: Same Medicare. More Benefits.

ANNCR: It's the same Medicare you've always counted on, plus more benefits like prescription drug coverage.

Senior 2: Can I keep my Medicare just how it is?

TITLE CARD: You can always keep your same Medicare coverage.

However, the reality is that up to six million senior citizens will be forced into a "demonstration" program that will result in their paying more for their "same Medicare." Senior citizens may find that the only way they can receive a drug benefit is to join a Medicare HMO, if the insurance company administering the drug benefit in their area charges a premium they can't afford or does not cover the drugs their doctor prescribes.

And the advertisement fails to provide senior citizens additional important information. For example, it fails to inform them that their premium for drug coverage will vary depending on where they live—or even that they will have to pay a premium for drug coverage. It does not tell them that they are prohibited from using their own money to buy supplemental coverage. It does not tell them that they will pay a substantial penalty if they wait a year to enroll in the program.

Additionally, it has come to our attention that HHS is buying print advertising as part of this campaign, and we would request that you examine this as well. Especially problematic is that we were alerted to these print advertisements by the presence of an advertisement in the February 5, 2004 issue of the Capitol Hill newspaper *Roll Call*. Given that the target market for these “educational” advertisements are senior citizens, it makes little sense for HHS to purchase space in a publication with a 65 and over readership of only three percent (according to the publication) and is aimed at Capitol Hill staffers, Members of Congress, lobbyists and Washington insiders.

By admission of Administration officials, this advertising campaign is more about getting their side of the “story”<sup>4</sup> out -- i.e. propagandizing -- than providing needed, objective, educational information to Medicare beneficiaries. In fact, the firm National Media Inc. of Alexandria, Virginia, which is working on the Bush-Cheney reelection campaign, has been hired to buy advertising space for this HHS campaign.<sup>5</sup> In summary, the Administration is running political campaign advertisements with taxpayer funds.

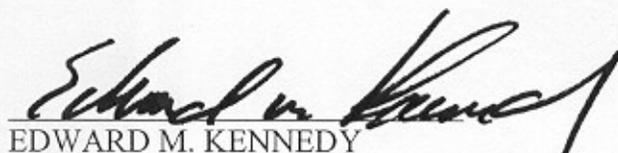
We would also like you to report to us on the true total costs of this advertising campaign, and whether the funds will come out of the Medicare Trust Funds.

In addition to your evaluation of the legality of the Administration’s actions, we would appreciate your evaluation of whether the information contained in the advertisements is accurate, complete, useful to beneficiaries, and an appropriate use of government funds.

Thank you for considering our request.

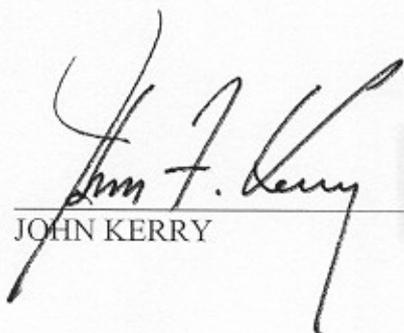
Sincerely,

  
FRANK R. LAUTENBERG

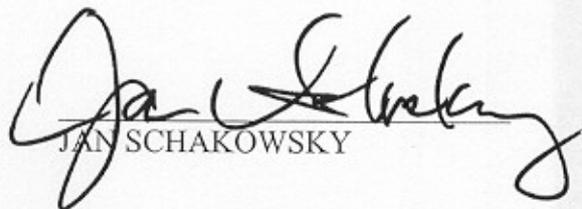
  
EDWARD M. KENNEDY

<sup>4</sup> Robert Pear, *Health Chief Attacks Democrats on Medicare*, The New York Times, January 13, 2004, p.23

<sup>5</sup> Mark Sherman, *Media Firm Does Ads for Bush and Medicare*, The Associated Press, February 5, 2004

  
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