United States Senate

WASHINGTON, DC 20510

July 17, 2006

The Honorable Mark McClellan, M.D., Ph.D.
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Administrator McClellan:

Over the past several months, you and your staff have worked diligently to implement the Medicare prescription drug benefit. We appreciate the steps taken by the Agency and its commitment to ensure that beneficiaries have access to the drugs they need. By issuing additional guidance related to prior authorization and formulary changes, among other matters, the Agency has clearly demonstrated its authority to take swift action to improve the Medicare prescription drug benefit. As the Agency's work continues, we write to offer the following suggestions for additional improvements specifically related to pharmacies.

- Disclosure of Maximum Allowable Cost (MAC) List and Prices: It has come to our attention that in many instances, prescription drug plans (PDPs) do not disclose their MAC list and/or prices or any subsequent changes to pharmacists. This situation makes it difficult, if not impossible, for pharmacists to assess the payments they will receive under the contract. We are not aware of any other instance in Medicare in which providers would not be able to gauge their payments. For this reason, we strongly encourage the Agency to require PDPs to disclose this information to pharmacists.

- Daily Updating of Average Wholesale Prices (AWPs): The PDP practice of delaying updates to AWPs disadvantages pharmacists because they continue to be paid based on the outdated – usually lower – AWP until such time the PDP updates its pricing. PDPs should be required to update their pricing standards on a daily basis.

- Option for Electronic Funds Transfer (EFT): Independent pharmacies usually must pay their wholesalers for their inventory on a biweekly basis. PDPs often offer contracts that reimburse pharmacists every thirty days. As a result, many independent pharmacies have experienced cash-flow issues since the inception of the prescription drug benefit. Requiring PDPs to offer the option of electronic funds transfer would help mitigate this situation.

- Access to Extended Supplies of Part D Drugs at Retail Pharmacies: It appears that, some PDPs have taken steps that in effect, limit beneficiaries' ability to obtain extended supplies through retail pharmacies. Some PDPs have made their own mail-

order pharmacy the only preferred pharmacy for extended supplies; others permit retail pharmacies to provide extended supplies, but require the beneficiary to pay higher cost-sharing, consistent with the guidance issued by CMS. We recognize that the situations described above may not constitute a violation of CMS rules. We are concerned, however, that these rules may undermine the spirit of the Medicare law's provisions regarding a level playing field between mail-order and retail pharmacies and the Agency's own objective of ensuring reasonable access for beneficiaries. We request that the Agency review its current policies with respect to the availability of extended supplies at retail pharmacies and to take steps to ensure that Congressional intent is met.

- Requirements Regarding Emergency Supplies Filled By Long-Term Care Pharmacies: Under CMS guidance, PDPs must have contracts with long-term care pharmacies that have the capacity to provide emergency fills. We have heard that in some situations, long-term care pharmacies have experienced difficulties in obtaining any necessary prior authorization in these circumstances, which may contravene the requirement to provide emergency fills. We urge the Agency to assess its current policies with respect to prior authorization requirements imposed by PDPs that may inhibit beneficiary access to medications in these circumstances.

One goal of the Medicare prescription drug benefit is to ensure that beneficiaries have convenient access to their local, community pharmacies. We strongly encourage the Agency to examine PDP activities that may undermine beneficiaries' access and to consider the suggestions we offer to promote strong and continued participation of local, community pharmacies in the Medicare prescription drug program.

Sincerely,

Charles E. Grassley
Chairman

Max Baucus
Ranking Member

Blanche L. Lincoln

Rick Santorum

Ron Wyden

Mike DeWine

Susan Collins

Craig Thomas

Jay Rockefeller

Tom Kyl

Elizabeth Dole

Chuck Schumer