Statement of Consumers Union
William Vaughan, Senior Policy Analyst
Before the Subcommittee on Health, Committee on Ways and Means
U. S. House of Representatives
May 4, 2006

Oversight of the Medicare Prescription Drug Program

Madame Chair, Members of the Subcommittee:

Thank you very much for the opportunity to testify.

Consumers Union, the independent, nonprofit publisher of *Consumer Reports*,[1] strongly supports major reform of the new Medicare prescription drug program (Part D). We believe that the current structure of the program will always be too confusing for seniors and people with disabilities, and be subject to plan abuse and adverse selection. We also believe that the program is too expensive for beneficiaries, taxpayers, and future generations, and that we must find a way to obtain lower-cost pharmaceuticals. Therefore, we support major amendments to the law that would provide for the option of a Medicare-administered, dependable, reliable, standard plan in which Medicare negotiates (much like the Department of Veterans Affairs) to get lower-cost pharmaceuticals.

Pending those reforms, the key to improving the current program is to give beneficiaries the quality information that CMS should already be collecting from plans, so that consumers can make informed choices when selecting a plan. New enrollees (e.g., people turning 65) should have this information in order to make the best initial selection. All beneficiaries should have this information to use in this fall's open enrollment season (November 15-December 31, 2006) so that they can have some comparative standards by which to judge the plan they chose (or were auto-enrolled in). Making the full range of collected information public is particularly important this first year, because Medicare has not been able to start the consumer satisfaction survey called for in the law.

CMS is to be congratulated for requiring an extensive set of data from the plans. The first quarter of data must be reported by the end of this month. The agency is also to be commended for proposing to improve those data requirements for plan year 2007 (see attached letter commenting on those proposed changes).

Yet data collected, but not made public, does nothing to empower consumers.

On January 5, we asked CMS for information on exactly what data would be made public and how soon. We thank CMS for a number of personal, high-level meetings to explore how this should be done. On April 25, we received a letter describing four issue areas where information would eventually be made public. On May 1, we responded to that letter (see attachments).

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[1] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the State of New York to provide consumers with information, education and counsel about goods, services, health, and personal finance. Consumers Union's income is solely derived from the sale of Consumer Reports and ConsumerReports.org, its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, Consumer Reports and ConsumerReports.org, with approximately 6.5 million combined paid circulation, regularly carry articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions that affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

As our May 1 letter mentions, Consumers Union is encouraging beneficiaries to report on their Part D experiences, good or bad, though a 'Share Your Story' website (http://www.consumersunion.org/issues/medicaredrugs.html). We have received some reports of absolutely abysmal service and quality. We hope to increase the number of stories on that website to provide ideas for administrative and legislative reform, and as guidance to consumers. But consumers need more than anecdotes, they need the CMS's large database of quality indicators to make the best decisions.

We urge the Subcommittee and Congress to request that in addition to call center performance data, that CMS make information public as soon as possible on:

--the generic dispense rate;

--the number of grievances and appeals filed per 1,000 enrollees;

--the resolution, pro-consumer or anti-consumer, of appeals;

--the number of prior authorization, step therapy, tier, and non-formulary exception requests received per 1,00 enrollees (Section VI of the January 25, 2006 Reporting Requirements).

We are not asking for new data — this is information that Medicare is already scheduled to collect, starting May 31st. We are simply asking that this collected data be made public.

We are pleased that the Administration frequently mentions—as Dr. McClellan did in his testimony before you yesterday—Consumers Union's efforts to educate the public about safe, effective and lower cost generic drugs. This is part of our BestBuyDrugs.org campaign. I've attached a sample of that work. We hope you will let your constituents know about this free service. As the Administration says, if people aggressively use these kinds of shopping guides they can save thousands and thousands of dollars---whether they are in Medicare, Medicaid, uninsured, or in the private sector.

CMS is to be commended for its recent guidance designed to stabilize formularies (while encouraging the movement toward generics). No action was taken, however, on the serious problem in many plans of the constantly changing cost of drugs that are on the formulary. And we also think consumers need to be told more clearly that if they enroll in a plan with a percentage co-pay, they are likely to see a great deal of price instability. If beneficiaries want price stability during their year of enrollment, then they should be strongly warned to join plans with a set dollar co-payment (e.g., $10 per generic; $20 per brand) and avoid plans that offer percentage co-payments (e.g., 20 percent of plan price for brand).

Each month this year we have monitored all the plans offered in one zip code in each of five large states. Monthly, we have checked the price of a consistent package of five commonly used prescription drugs offered by 40-50 plans in these zip codes. Each month, we have seen a lot of price movement: sometimes down (which is good for consumers), sometimes up (which is disappointing). But we are continually surprised by the number of changes and the price volatility. We believe that many people sign up for a plan for a year and expect some dependability and stability during that year. It would help consumers pick plans in future open enrollment seasons if the degree of price increase (and formulary) instability is documented (for example, of 1,000 drugs on a formulary, 300 of them increased in price at one time or another). We urge CMS to make this kind of data available to consumers before each open enrollment season.

Thank you for your consideration of these recommendations.

Attachment 1

April 3, 2006

The Honorable Mark McClellan
Administrator
Centers for Medicare and Medicaid Services
PartDplanreporting@cms.hhs.gov
Washington, DC

Dear Dr. McClellan:

Thank you for the opportunity to comment on the *Draft Medicare Part D Reporting Requirements for Contract Year 2007,* Updated 02/23/2006.

The key to all of these reporting requirements, of course, is that they be made public both quarterly and annually so that Medicare beneficiaries can have the latest information on the relative quality of the different Plans and Sponsors so they can make informed enrollment decisions. As per our letter of January 5, we continue to hope that as much information as possible will be made public before this fall's open enrollment season. All the reporting in the world will do no good, if it just sits buried in CMS files.

Congratulations on the Draft for 2007.

It provides some major increases in the 'granularity' or detail of the 2006 data, and will help the public and advocates understand better how the low income and most vulnerable are being served in the various Plans. It will require important information on how well Plans deal with transition formulary issues (clearly a major problem this winter). The increased information about possible conflicts of interest in the plan Pharmacy and Therapeutics (P&T) Committees is important and will help ensure 'good-for-patient formularies'—not just 'good for Plan-profits' formularies.

The addition of information on the 'number of pharmacy transactions rejected due to need for prior authorization' will be especially helpful to consumers in understanding which Plans require the least hassle—and which Plans to avoid.

The additional reporting requirements for Plan Call Centers are excellent. The failure of Plan call centers is a major source of frustration, and Consumers Union has received a number of complaints about unbelievably poor service at these centers. Attached is one example sent to us from a XXX enrollee. Enrollees in other Plans have reported similar problems.

We suspect that you will receive comments from Plans opposing these expanded reporting requirements. We hope you will stand firm with your Draft proposal: far too many Plans have woefully failed to prepare for and staff for the new benefit and they have contributed mightily to the rocky start of this important program. They have not earned the consumers' trust and therefore expanded reporting requirements are totally in order.

Thank you for your consideration of these comments.

Sincerely,

William Vaughan
Senior Policy Analyst

<u>Attachment example deleted:</u>

Attachment #2

January 5, 2006

The Honorable Mark McClellan, MD
Administrator
Centers for Medicare and Medicaid Services
Washington, DC 20201

Dear Dr. McClellan:

Consumers Union is interested in what information may be available to consumers in the early fall of 2006 regarding the performance and quality of various Medicare Part D providers (including MA-PD plans).

It would be a great help in our work if CMS could inform us exactly what information will be available prior to the next open enrollment period that will speak to consumer satisfaction, quality performance, etc. For example, the law calls for consumer satisfaction surveys (1860D-4(d)). Will they be conducted in 2006 and be made public before the open enrollment period? If so, what satisfaction issues will be measured?
In addition, the enclosed "Final Medicare Part D Reporting Requirements (Updated: 04/18/2005) lists a number of items that are to be reported, with many of the first quarterly reports due at the end of May. Will this data be made available publicly as it is received? If not, what data will not be publicly released?

Thank you very much for your assistance in this request.

Sincerely,

William Vaughan
Senior Policy Analyst

Attachment #3, CMS response to the above letter

Retyped copy of original letter, for inclusion in electronic file

CMS
DHHS

CENTER FOR BENEFICIARY CHOICES

Apr 25, 2006

Mr. William Vaughan
Senior Policy Analyst
Consumers Union
1666 Connecticut Avenue, NW, Suite 310
Washington, DC 20009

Dear Mr. Vaughan:

Thank you for your inquiry on behalf of Medicare beneficiaries seeking information on the performance of Part D plans. The Centers for Medicare & Medicaid Services (CMS) would like to demonstrate to our beneficiaries that we are continually raising the bar on the level of quality of service we provide.

In promoting this vision on performance improvement, we are pleased to announce that metrics related to the performance of Part D plan sponsors are being planned for the near future. These metrics will address four areas: effective customer service, effective exceptions/appeals, effective data systems, and effective pricing.

- Effective customer service will address a Part D Sponsor's ability to provide superior service to beneficiaries and to pharmacists. Excellent performance in responding to inquiries and issues helps to ensure a high level of beneficiary satisfaction. Therefore, ensuring that Part D sponsors are meeting standards related to low call abandonment rates and a high percentage of calls answered within a short time are a priority of CMS;
- Effective exceptions/appeals will be monitored via complaint data and data from the Independent Review Entity (IRE). Ensuring that appropriate exceptions and appeals processes are being followed is crucial to providing beneficiaries access to the prescription medications they need;
- Effective data systems will measure Part D sponsor's ability to process data files in a timely manner; and
- Effective pricing will focus on Part D sponsors ability to provide accurate pricing data for the Medicare Prescription Drug Plan Finder and to ensure formulary synchronicity between approved formularies and the formularies displayed on the Medicare Prescription Drug Plan Finder.

The release of these data will be completed in phases. However, please be assured that CMS is committed to ensuring Plans meet the statutory requirements as set forth by the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

Sincerely,
/s/
Cynthia Tudor, Ph.D.
Acting Director
Medicare Drug Benefit Group

Attachment #4, Consumer Union response to above CMS letter

May 1, 2006

Dr. Cynthia Tudor
Acting Director
Medicare Drug Benefit Group
CMS
Baltimore, MD

Dear Dr. Tudor:

Thank you very much for your letter of April 25th (copy attached) providing information about the schedule of the types of data that will be made available to help Medicare beneficiaries choose a prescription drug plan, either as a new enrollee or during this fall's open enrollment season.

The letter is certainly helpful. Public information about the quality of plan call centers is certain to improve service in that area. A small survey we have on our Consumers Union Website where we ask people to 'share their story' about the plans has brought us some dramatic examples of poor service, often centered on non- or mal-functioning call centers.

The other three items listed in the letter are very important, but — and this is said with great respect for the enormous task and burden the agency has been through in the last two years — they are fairly self-evident. The plans should be following an appropriate appeals process, processing of appeals should be timely, and the data on prices and formularies should be accurate. If a plan is failing to carry out these fundamentals, then we hope the plan will not be allowed to continue in Medicare in 2007.

In terms of consumers making a choice, there is a great deal more to this program than the quality of the call centers. Medicare has been unable to conduct the consumer satisfaction surveys called for in the law, therefore, we hope that additional plan quality information can be made public as soon as possible, and certainly before the advertisements for the new plan year (roughly October 15, 2006). Specifically, we hope that more information can be provided on plans:

> -- Generic dispense rate: Dr. McClellan and others in the Administration have repeatedly cited a Consumers Union study that showed how beneficiaries could save thousands of dollars, and perhaps avoid falling into the 'donut hole,' if they considered the use of generics that are as effective and safe as brand-name drugs. Giving consumers information on the 'generic dispense rate' that CMS is already collecting will help beneficiaries understand which plans may provide the most financial relief. This information is particularly important because we note that the final version of the anti-fraud manual unfortunately deletes language calling for plan pharmacy and therapeutics (P&T) committees to have members who are free of conflict from pharmacy benefit managers. Dropping that conflict of interest ban may increase the influence of PBMs in a plan's formulary, and result in the listing of brand-name drugs that offer a larger rebate (profit) to the plan, rather than generics that are a better bargain for consumers.

--the number of grievances received per 1,000 enrollees;

--the number of prior authorization, step therapy, tier, and non-formulary exception requests received per 1,000 enrollees;

--the number of appeals/exceptions it receives per 1,000 enrollees, and

--the resolution of those appeals (pro- or con- consumer).

The sooner quality information that CMS is already collecting is made public, the sooner plans will seek to improve their performance, and the sooner customers can make informed decisions when selecting a plan.

Thank you for your consideration of these additional requests.

Sincerely,

William Vaughan
Senior Policy Analyst
Consumers Union