Committee on Energy and Commerce
Rep. Henry A. Waxman, Ranking Member

For Immediate Release: March 4, 2011
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Democratic Leaders Request Hearing on Waste and Fraud in Medicare Part D Manufacturer Rebates

Washington, DC — Today Rep. Henry A. Waxman, Ranking Member of the Energy and Commerce Committee, Rep. Frank Pallone, Jr., Ranking Member of the Health Subcommittee, and Rep. Diana DeGette, Ranking Member of the Oversight and Investigations Subcommittee, sent a letter requesting hearings on the findings of a new Health and Human Services Inspector General report that identifies wasteful spending, potentially fraudulent conduct, and anti-competitive contracting related to the Medicare Part D drug benefit. The IG investigation revealed severe problems with the structure of the Part D program and the behavior of the private insurers that administer the drug benefit and the drug companies that profit from it. These failures increase drug costs for seniors and cause billions of dollars in wasted taxpayer funds.

The full text of the letter is below and also available online here. (http://democrats.energycommerce.house.gov/sites/default/files/documents/Pitts.Stearns.HHSIGReport.2011.3.4.11.pdf)

March 4, 2011

The Honorable Joseph R. Pitts
Chairman
Subcommittee on Health
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Cliff Stearns
Chairman
Subcommittee on Oversight and Investigations
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pitts and Chairman Stearns:

We are writing to ask that you hold hearings on the findings of a new report by the Inspector General of the Department of Health and Human Services on the Medicare Part

D drug benefit. According to the Inspector General, the private health insurers providing the drug benefit are commonly underreporting drug manufacturer rebates, resulting in billions of dollars of profits at the expense of taxpayers and Medicare beneficiaries.

The Inspector General found that "some sponsors may deliberately underestimate their rebates to increase profits."[1] He also found evidence that drug companies are engaged in a previously unknown form of anti-competitive behavior.

The Subcommittee on Oversight and Investigations held a hearing this week on reducing waste, fraud, and abuse in Medicare and Medicaid. The new Inspector General report identifies an enormous source of wasteful spending and potentially fraudulent conduct.

We believe that the Subcommittee on Oversight and Investigations or the Subcommittee on Health should promptly hold hearings to examine these abuses and how we can protect Medicare beneficiaries and taxpayers.

The Inspector General's report is entitled *Concerns With Rebates in the Medicare Part D Program*. It examined Part D plan sponsors' bids, contracts, and other reports, and identified numerous problems.

Failure to Accurately Estimate Rebates

On an annual basis, Part D plans estimate the costs of providing the drug benefit, reporting these estimates to the Centers for Medicare and Medicaid Services (CMS) in their bids to provide drug coverage for the upcoming year. These bids are used to determine Part D premiums. The Medicare program pays 75% of this premium, and 25% is paid by the beneficiary. When plans are able to negotiate with drug manufacturers to obtain rebates on drug purchases, they are able to use these rebates to reduce bids and premiums.

The Inspector General found that in 2008 bids, Part D plan sponsors commonly underestimated the value of the rebates that they ultimately received. This resulted in artificially inflated bids and premiums – increasing costs for Medicare beneficiaries and taxpayers that share the cost of these premiums. According to the Inspector General, "when sponsors underestimate rebates in their bids, beneficiary premiums are higher than they otherwise would be and both the Government and beneficiaries overpay for the benefit."[2]

Information in the Inspector General report allows an estimate of the cost of these underestimates. According to the report, plans serving 78% of Part D enrollees (almost 22.6 million enrollees) underestimated rebates by an average of $84 per year per beneficiary.[3] The total excess rebate payments received by these plans as a result of these underestimates would be approximately $1.9 billion annually.

Although there is a reconciliation process to match up bid estimates with actual rebates received at the end of the year, this reconciliation process does not reimburse

beneficiaries for any of the excess premiums paid, and the government gets back only a portion of excess payments. As a result, the Part D plans retain much of the excess premiums paid as profits.

Ineffective Negotiation with Drug Manufacturers

The Inspector General's report finds that on average, the rebates obtained by the Part D sponsors reduce overall Part D drug costs by approximately 10%.[4] In the case of drugs that are on the CMS list of "protected classes," which are required to be on plan formularies, the Part D sponsors receive "either no or minimal rebates."[5] These findings confirm that rebates obtained by the Part D plans are significantly lower – and Part D drug prices higher – than in other government drug programs. For example, manufacturer rebates in the Medicaid drug program reduce overall drug costs by 26%, almost three times as much.[6] If the Part D sponsors were able to obtain rebates that are as large as the Medicaid rebates, taxpayer and Part D enrollees would save billions of dollars annually.

Failure to Share Savings with Medicare Beneficiaries

According to the Inspector General, when Part D sponsors did obtain rebates, "most sponsors did not pass the full amount of rebates on to beneficiaries."[7] In addition to underestimating rebates in plan bids, the plan sponsors "did not commonly pass rebates on to beneficiaries at the point of sale," meaning that beneficiaries received no reduction in drug costs or copayments as a result of these rebates. In other cases, plan sponsors contracted with pharmacy benefit managers (PBMs) to negotiate with drug manufacturers, and the PBMs received additional payments from the manufactures. In many cases, although these payments "were structured like rebates … the PBMs … did not pass them on to the sponsors … the sponsors did not report the fees to CMS and therefore they were not passed on to the program" or to beneficiaries.[8] The net result of the failure to report these payments is higher costs for taxpayers and higher drug and premium expenses for seniors.

Anti-Competitive Contracts

The Inspector General found that "sponsors also often received rebates when they discouraged the use of competitors drugs," quoting one sponsor interviewed for the report as saying "manufacturers pay more for less competition."[9] The report described rebate arrangements where Part D sponsors were required to offer competitors products with higher copayments or exclude competitors products from their formulary altogether. These arrangements appear to offer perverse incentives for Part D plan sponsors, providing them increased rebates in exchange for increasing costs or reducing the choice of available drugs for Medicare Part D enrollees.

Other Problems

The report identified a number of other problems with Part D rebates, including a lack of transparency in contractual arrangements between plan sponsors and PBMs and loopholes in the law that allow Part D sponsors to earn extra profits by allocating drug rebates differently among different plans.

Conclusion

The Inspector General's report released today reveals severe problems with the structure of the Part D program and the behavior of the private insurers that administer the drug benefit. These failures present a severe risk to program integrity, reduce beneficiaries access to important drugs, increase drug costs for seniors, and cause billions of dollars in wasted taxpayer funds.

We believe the Committee on Energy and Commerce has a responsibility to address these problems. We ask that you hold hearings so that the Committee may hear from relevant witnesses about the extent to which the practices described in the report affect Part D enrollees and taxpayers. We would then like to work with you to enact any legislative reforms necessary to halt these abuses.

Thank you for your consideration of our request.

Sincerely,

Henry A. Waxman Ranking Member	Frank Pallone, Jr. Ranking Member Subcommittee on Health	Diana DeGette Ranking Member Subcommittee on Oversight and Investigations

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[1] Office of Inspector General, Department of Health and Human Services, *Concerns With Rebates in the Medicare Part D Program*, at 13 (Mar. 2011) (OEI-02-08-00050).

[2] Id., at ii.

[3] Id., at 12-13.

[4] Id., at 10.

[5] Id., at 16.

[6] See, e.g., Committee on Oversight and Government Reform, *Private Medicare Drug Plans: High Expenses and Low Rebates Increase the Costs of Medicare Drug Coverage* (Oct. 2007).

[7] HHS Inspector General, at 13.

[8] Id., at 18-19.

[9] Id., at 15.