Congress of the United States
Washington, DC 20515

February 19, 2014

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Marilyn Tavenner
Administrator
Centers for Medicaid and Medicare Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Secretary Sebelius and Administrator Tavenner:

As authors of Medicare's successful prescription drug program, we write regarding proposed changes the Centers for Medicare and Medicaid Services (CMS) published on January 6, 2014. We are strongly opposed to this proposed regulation. The 700-page proposal is a bureaucratic overreach into a highly functioning marketplace that will undermine the success of the Part D program, threatening the prescription drug coverage that provides peace of mind to 35 million seniors across the country and resulting in higher premiums, copayments, and deductibles for seniors while adding unnecessary costs for taxpayers.

Medicare Part D was designed and implemented to increase prescription drug plan options for seniors, giving them affordable access to vital medicines. It has achieved and indeed exceeded that initial goal, today giving seniors in every region of the country the ability to choose from at least 23 different competitive plan options. Surveys indicate that 94 percent of seniors are satisfied with the plan options in the Medicare Part D program. With such beneficiary satisfaction with plan offerings, we are alarmed that CMS proposed such significant changes that will undermine the market dynamics that have worked so successfully to control costs.

The success of Medicare Part D is in no small part because it requires prescription drug plans and providers to compete – without Washington interference – to provide the best prescription drug benefit at the lowest cost to Medicare beneficiaries. By empowering seniors over Washington planners, the program has cost seniors and taxpayers far less than projected.

Today, the average Part D premium is $30, roughly half of original projections. The program is now estimated to cost 48 percent less than was initially estimated by the Congressional Budget Office.

Despite the program's far-reaching success, CMS is proposing to fundamentally undermine the program and jeopardize the prescription drug plans that million of seniors rely on for their health and peace of mind. In CMS' January 6 proposed rule, the agency interpreted Medicare Part D's "non-interference" provision for the first time to allow the agency to interfere in negotiations between plans and pharmacies, a proposal that is inconsistent with both agency precedent and the plain letter of the law.

This regulation also threatens the prescription drug plans that an estimated 70 percent of Medicare seniors rely upon by limiting the number of plan options a sponsor may offer in a region. In fact, a recently released independent analysis shows that this regulation, if finalized, will cause massive market disruption and will force more than eight million beneficiaries out of their respective plans. CMS' rule means millions of seniors could face the same fate that too many Americans have experienced under the Affordable Care Act: if seniors like their health plan, they can't keep it. Not only will this regulation force many seniors out of their chosen plans, estimates indicate that this proposed change will increase premiums for seniors by more than 20 percent. These proposed changes, along with the proposed changes to certain formulary protections provided for vulnerable patients in statute, will limit choices for seniors, increase their premiums, and remove important protections that ensure appropriate access to vital medicines.

Washington should not be inserting itself between seniors and the prescription drug plans that they chose and depend on. But that is exactly what your Administration's proposed rule would do. Agency action finalizing such a rule could affect seniors' coverage as early as this year. Given the important legal questions and irreparable harm facing seniors across the country, we request that you reject these harmful changes to the Part D program and withdraw this proposed regulation. A failure to reject this rule will force Congress to evaluate all legislative options necessary to ensure seniors are protected.

Sincerely,

Fred Upton
Chairman
U.S. House of Representatives
Committee on Energy and Commerce

Dave Camp
Chairman
U.S. House of Representatives
Committee on Ways and Means

Orrin Hatch
Ranking Member
U.S. Senate
Committee on Finance