Testimony

Testimony of Robert M. Hayes
President, Medicare Rights Center
Senate Democratic Policy Committee Hearing

An Oversight Hearing on Providing Relief to People With Medicare
Who Have Fallen into the Prescription Drug 'Doughnut Hole'
July 17, 2006

Good afternoon Mr. Chairman and members of the Senate Democratic Policy Committee. We appreciate the opportunity to share with you our experiences assisting people with Medicare secure needed prescription medicine. We will focus today on the plight of older and disabled Americans who find themselves in the prescription drug coverage gap, the infamous “doughnut hole.”

Regrettably, we are here to report that the toll this coverage gap is taking on the most vulnerable men and women with Medicare is devastating. For callers to the consumer hotlines at the Medicare Rights Center, the abrupt end of prescription drug coverage is just what doctors across the country anticipated: a grave threat to the health and financial security of the frailest and sickest Americans.

Staff and volunteers at the Medicare Rights Center have been counseling and helping men and women access health care since 1989. Tens of thousands of people with Medicare each year call our hotlines for help. Usually, over the years, we could offer useful advice to enable people to secure the health care they needed. From the trenches in which we work, Medicare provides evidence — day after day — that government can serve the public good. Medicare has been a cherished national treasure for the past 40 years (and two weeks, three days).

This bizarrely structured drug benefit breaks the mold by ignoring what has made Medicare great, and what has allowed older and disabled Americans security and peace of mind. This drug program is not Medicare — it is a cottage industry of for profit insurers selling incomprehensible benefit packages to people with Medicare.

Rarely have we confronted a situation where, like now, we can do so little to assist people. Rarely have we, the national experts in assisting people with Medicare, had so few options, so few answers for people in the Part D doughnut hole who call with the question: “I need to fill these prescriptions. My coverage stopped. What can I do?” It is disheartening; it is heart breaking. It is why groups like the Medicare Rights Center have brought in trauma counselors to assist our staff overcome the despair of having no answers to dire human needs.

A case in point: Mr. Frank Furfaro is a heart transplant patient who says simply and with dignity, “My bank account is wiped out.”

Mr. Furfaro takes two immunosuppressants. Before 2006, his Medicare HMO covered each of them for $29 a month. In January, he was led to believe by his Medicare HMO that nothing would change. Mr. Furfaro continued to pay $29 for each of his drugs.

But at the end of March, his life changed: co-pays for his medicines hit $661 and $339, respectively. He was trapped in the doughnut hole. He did not even know about the doughnut hole when he signed up with his HMO. He found out when he called the Medicare Rights Center for help.

> Since falling into the doughnut hole, Mr. Furfaro called the few charitable foundations that help people with co-pays. He was told that there was no point to even leave his name: the waiting list was already too long. Mr. Furfaro is alive today only because he has been hospitalized and received his immunosuppressants under Medicare Part A as an in-patient. This is bad medicine, bad economics, and a morally unacceptable consequence of the drug benefit as it is now structured.

As you know, virtually all of the profit-making Part D plans have a significant gap in coverage. Typically the coverage gap runs from the point when total drug costs reach $2,250 until the person has spent $3,600 out of pocket. People pay the full cost of their drugs during the deductible stage and in the doughnut hole, *as well as the monthly premium that is supposed to provide them drug coverage.* During the doughnut hole, drug plans are paid premiums but are not responsible for any part of the drug cost.

Those of us who have agonized over the political and policy implications of the doughnut hole since enactment of the Medicare Modernization Act in 2003 often forget the obvious. Virtually no one who signed up for a Part D plan had any idea about this coverage gap. For nearly all our callers, falling in the doughnut hole is a shock from out of the blue.

No surprise: the drug plans have kept quiet, very quiet, about the doughnut hole. Insurers hawking their goods to people with Medicare spent millions of tax dollars advertising and marketing. “We have no deductibles,” scream some plans. “We have low premiums,” say others. “We have smiling pharmacists and convenient drug stores,” they all say. “We are the trusted AARP,” says one group of plans. I challenge you to find one ad — print, internet, radio or television — that candidly tells people with Medicare about the doughnut hole. Markets do not always work fairly. Hummers don’t advertise mileage; Mini Coopers don’t advertise safety. Profiteering drug plans don’t disclose gaps in coverage.

And the Bush Administration has not been so honest either. How much did the Administration pay to run inserts in *Parade Magazine* last fall to “explain” the new drug benefit to the nation? Somehow, with hundreds of words of copy sent to millions of Americans, the Administration neglected to mention the doughnut hole as well.

If people with Medicare had the same protections against materially misleading solicitations as investors buying stock on the New York Stock Exchange, there would be a lot of people looking for criminal defense lawyers today. Of course, many Americans are securing some benefit from this drug program. But the irony is that in too many cases our clients, once they hit the doughnut hole, are worse off than they were 12 months ago. Many people are forced to stop taking medication abruptly when they hit the doughnut hole. At times, especially with certain medical or psychiatric conditions, they would have been better off never starting a course of treatment.

Others are also worse off. Some have been shifted from retiree coverage to Part D: no prior prescription drug plan ever tossed enrollees into a coverage gap. Some states, like Florida, ended their assistance programs based on the claim that Part D would take care of their citizens. Other states have cut back.

Then there is the continuing scandal of the performance of the drug industry in this country. It should be an industry of heroes; it is making itself into a band of villains.

The drug companies are making billions of dollars in profits from this Congressionally bestowed bonanza and, unbelievably, at the same time are cutting their charitable assistance programs to older Americans in need — all the while blaming the federal government for the cut-backs. Here’s the bottom line: we cannot find slots for people lost in the doughnut hole in industry sponsored drug assistance programs. It’s like dodge ball — people must choose between a patient

assistance program and a Medicare drug plan. Some companies refuse to accept applications from anyone who is eligible for Part D, whether they have enrolled or not. Almost all of the remaining assistance programs cover only a single drug.

Alas, the public relations value for drug companies to offer real money to charitable foundations to provide real help to older Americans isn't enough.

The Part D Low-Income Subsidy program, in theory, should help. But remember, thanks to a finely tuned experiment in bureaucratic disentitlement, nearly three out of four people eligible to sign up for that assistance are not getting it. The subsidy eliminates the doughnut hole for those who qualify, and that is a very good thing. That is why we have spearheaded efforts to enroll as many people as possible through labor unions, pharmaceutical companies, drug plans and senior centers. But even the Administration will tell you that 3.2 million eligible people are still without this assistance.

We should enroll people in the Low-Income Subsidy program automatically when their financial data demonstrates probable eligibility. Arduous applications were not required when President Bush wanted to send tax refunds out to people a few summers ago. Onerous eligibility review is not being required as the Administration begins next year to charge higher income Americans larger Medicare Part B premiums. This government, based on federal financial records, knows nearly everyone who is eligible for Extra Help. We should get it to them rather than creating a labyrinth of eligibility hurdles.

Many people with low incomes, yet not eligible for Extra Help, have no options. They stop taking drugs when they hit the doughnut hole. They will never see the other side of the gap.

The real solution is to eradicate the doughnut hole — as we would eradicate any other public health menace. Professor Anderson and others have taught us that Medicare could close the doughnut hole if only it were not barred from using its market power to drive drug prices to levels competitive with other developed nations. If the Veterans Administration can do it, why not Medicare?

It's a question of priorities governed by the moral compass of our national leaders.

That this White House and this Congress will not even seriously consider favoring the welfare of older Americans over the profiteering of a multinational industry defines the culture and the values of our current government.
