



# Committee On Finance

Max Baucus, Ranking Member

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Contact: Russ Sullivan  
202-224-4515

**Statement of U.S. Senator Max Baucus  
Implementing the Medicare Drug Benefit and Medicare Advantage Program: Perspectives  
on the Proposed Rules**

“Thank you, Mr. Chairman. I appreciate your calling this hearing. And I thank our witnesses for participating.

Mr. Chairman, Senator Rockefeller asked that I announce that he wanted to be present at today's hearing. But because the Intelligence Committee is considering the nomination of Porter Goss, he will not be able to attend. Senator Rockefeller has submitted a number of questions for the record. I hope that all of the witnesses here today will respond to those questions in a timely manner.

Mr. Chairman, after Congress passes a law, it's up to the executive branch to write regulations and implement it — according to congressional intent. Today we'll hear about implementation of the 2003 Medicare law. And we'll get a progress report on the 2000 pages of proposed regulations for the new law. That's a huge amount of material. And I applaud Centers for Medicare and Medicaid Services (CMS) for working so hard to produce it.

But I remain disappointed with the lack of detail in the regulations. These details are very important for the new law's stakeholders: including seniors, employers, providers, and taxpayers. For example, what will CMS do to prevent large corporations from getting an unjustified windfall by reducing retiree drug benefits?

I strongly supported incentives to prevent employers from dropping retiree coverage. The employer subsidy was essential to getting the bill passed. But while employers should be encouraged to continue doing the right thing, they should not be rewarded for cutting retiree drug coverage. And even if CMS finds an acceptable standard for defining actuarial equivalence, how will CMS ensure that employers meet the standard?

Another area where I would have liked more detail is the criteria for turning down a plan's application to participate as a prescription drug plan or Medicare Advantage plan. In implementing the drug discount card, CMS appears to have accepted “all comers.”

I hope that CMS will exercise more discretion in reviewing applications for drug plans. And I would like to know more about what factors might influence a decision to turn a plan down. But the proposed rule does not provide much detail.

And finally, one of the biggest questions left unanswered is: What will the regions be for Medicare preferred provider organizations and prescription drug plans? How big will they be?

Although CMS has a process for making these vital decisions, the program starts in less than 16 months. I understand health plans have urged CMS to adopt state-based regions. But last fall, the administration argued that the best way to ensure that PPOs would serve rural states like Montana would be to create large regions encompassing several states — and to require these plans to cover the entire region.

Given all the extra money — some might argue wasteful amounts of money — that Medicare will pay PPOs to come to rural America, I for one would be more than a little disappointed if they don't.

These and many others are important issues, as we prepare to enroll millions of seniors in Medicare drug benefits starting in 2006.

To that end, I should say that I hope that millions will enroll. And I hope that the recent disappointing experience with the Medicare drug discount card does not portend seniors' response to the new drug benefit in 2006.

Montana seniors have reacted very coolly to the drug card. They are unimpressed with the level of discounts, and confused by the number of choices. The vast majority of Montana seniors have chosen not to enroll in a drug card. I hope that the drug card experience does not sour participation in the actual Medicare drug benefit.

I voted for the new Medicare law. Although it is not perfect, it holds the promise of providing a long-overdue prescription drug benefit to millions of elderly and disabled Americans, with comprehensive coverage for those of modest means. But if the law is not implemented fairly, I will not continue to support it. A lot rides on how CMS carries out the law.

I appreciate the work that CMS has done to write the regulations and implement the new law. But if we want beneficiaries to participate in this benefit, we must convince them that the benefit will help them. So far, they remain unconvinced.

Before I close, I'd like to comment on a somewhat related topic. Mr. Chairman, it is important that the Finance Committee remain vigilant in its oversight of the new Medicare law's implementation — to make sure that CMS follows the law.

In a few days, the Government Accountability Office (GAO) will issue a report that I requested last year about the PPO demonstration that CMS established in 2001 and 2002.

In many respects, that demonstration was the precursor to some of the private plan provisions that were ultimately enacted in the new Medicare law. I understand that the GAO will find that CMS exceeded its legislative authority to encourage PPOs to participate in the demonstration. This is a very troubling finding.

Dr. McClellan, I understand that CMS did not implement the PPO demonstration under your watch. But this Committee must ensure that the agency follows the law when implementing this new and important legislation. I look forward to discussing the GAO report when it is made public.

Thank you, Mr. Chairman. I look forward to our witnesses' testimony.”

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