

FRANK R. LAUTENBERG

NEW JERSEY

COMMITTEES:

COMMERCE, SCIENCE, AND
TRANSPORTATION
GOVERNMENTAL AFFAIRS

United States Senate

WASHINGTON, DC 20510

February 12, 2004

Kerry Weems
Acting Assistant Secretary for Budget,
Technology and Finance
Department of Health and Human Services
Room 514-G, Hubert H. Humphrey Building
200 Independence Avenue, Southwest
Washington, DC 20201

Dear Mr. Weems,

I am writing to alert you that you or members of your staff could be personally liable for reimbursement to the U.S. Treasury of sums authorized for disbursements regarding the publication, delivery, creation or broadcast of the following items:

- CMS Publication 11054
- Print advertisements relating to the "Same Medicare. More Benefits" campaign
- Broadcast advertisements related to the "Same Medicare. More Benefits" campaign, including the television advertisements entitled "The Right Answer"

As you know, the General Accounting Office (GAO) has begun a legal inquiry into the legality of these publications and messages (see attached letter from GAO to HHS General Counsel Alex Azar.) Under Title 31 of the United States Code, if the GAO determines the above-referenced disbursements to be illegal, the officer at HHS who signed any certificate, voucher or other record of disbursing authority could be personally liable to the United States Treasury to repay the funds.¹ Only the Comptroller General, at the GAO, can relieve this liability upon a finding that, among other things, the disbursing and certifying officials could not have discovered by "reasonable care"² or "reasonable diligence"³ that there was a legal problem with the payment. Given the GAO's letter of inquiry to HHS on February 6, it would be difficult to establish that the disbursing officer did not know of the legal issue or would not have known by the exercise of reasonable diligence.

This morning, I was informed that Secretary Thompson has rejected a request by 73 Members of Congress to suspend the Medicare campaign until the GAO rules on its legality. Thus, it is clear that you and your staff will be asked to continue to engage in activity that could subject you to substantial personal liability.

¹ See 31 U.S.C. 3528 and 31 U.S.C. 3527.

² 31 U.S.C. 3527(c)

³ 31 U.S.C. 3528(b)

I believe it is unfair for political appointees at HHS to require dedicated career employees to put their personal assets at risk in order to facilitate potentially illegal activity at the agency. The planned disbursements for this campaign are at least \$22.6 million. Therefore, I would suggest that you ask Secretary Thompson or other high-level officials to sign any further disbursement forms related to the above-mentioned materials.

Sincerely,

Frank R. Lautenberg

Enclosures