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FEDERAL JUDGE ORDERS GOVERNMENT NOT TO COLLECT INCORRECT PAYMENTS SENT TO MEDICARE BENEFICIARIES

Contacts: Gill Deford (860) 456-7790 or gdeford@medicareadvocacy.org
Vicki Gottlich (202) 216-0028 vgottlich@medicareadvocacy.org

On Wednesday, September 27, a federal judge in Washington, D.C. issued a preliminary injunction prohibiting the Medicare program from recovering Part D premium refunds mistakenly sent out by the Centers for Medicare & Medicaid Services (CMS) until the affected beneficiaries are given the opportunity to seek a waiver of recovery. CMS sent out a letter in late August demanding that the 230,000 beneficiaries who received the premium refunds repay them by September 30, 2006. The letter did not include a statement that the Medicare statute requires recovery of incorrect payments such as these to be waived in specified circumstances.

Acting on a lawsuit filed by Action Alliance of Senior Citizens and Gray Panthers, Judge Henry H. Kennedy, Jr. ordered CMS to send out a new letter informing the affected beneficiaries that they have a right to request a waiver of recovery and that CMS must refund any repayments that have been made, thus giving all 230,000 the chance to request a waiver. Gill Deford, an attorney with the Center for Medicare Advocacy, Inc., which represented the plaintiffs, said: “The judge did the right thing. The courts said 30 years ago that beneficiaries have to be informed of their right to a waiver when they receive an incorrect payment. The government just compounded its original mistake when it didn’t tell people of this basic right.”

The erroneous premium refunds were a result of a computer error involving the new Part D prescription drug program. For 230,000 of the Part D enrollees who have their monthly premiums deducted from their Social Security benefits, the amount of their monthly premium was mistakenly sent to them in August. Claiming that the Medicare waiver statute did not apply to mistaken Part D premium refunds, CMS then demanded that the money, which averaged \$215 per person, be returned. Center for Medicare Advocacy Executive Director Judith Stein contacted CMS administrators, including Mark McClellan, both in writing and by phone in order to request that the right to a waiver be included in the original letter, but CMS declined to take action on the concerns. The lawsuit followed.