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Congress of the United States
U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
WASHINGTON, DC 20515

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July 26, 2005

Sonia Eaddy
Mail Stop C1-25-05/Location C1-25-04
Attn: Part D Marketing Guideline Comments
7500 Security Boulevard
Baltimore, MD 21244-1850

Re: Comments on "Draft Part D Model Marketing Materials"

Dear CMS:

As the Ranking Member on the Committee on Ways and Means Subcommittee on Health, I respectfully submit the following comments on the Draft Part D Model Marketing Materials, issued July 15, 2005.

The circumstances surrounding this issuance are disconcerting. These marketing materials will be delivered to millions of Medicare beneficiaries, but neither Congressional offices nor consumer groups were notified about the issuance. Why did CMS only ask for industry guidance on materials that are so important to Medicare beneficiaries?

I only learned of these materials through a published report in the trade press. Though I have not been asked to comment, I am doing so anyway in furtherance of my duty as a Member of Congress to oversee the executive agencies in charge of implementing the laws we pass. As Part D Plan Sponsors begin marketing prescription drug benefits to Medicare beneficiaries it is imperative that lawmakers and consumer advocates have adequate input into all outreach materials.

The draft model marketing materials, as released on July 15, would do more to confuse beneficiaries than help them choose an appropriate drug plan. The same issues that confounded beneficiaries during the Discount Drug Card application process are apparent in these materials, and I am concerned that CMS believes there were any "best practices" from that failed program that should be followed here.

The marketing materials distributed by each plan must be concise, coherent and truthful. My comments focus on the most egregious errors and omissions in each document that could mislead or confuse beneficiaries.

Summary of Benefits Introduction

Beneficiaries must know what drugs are covered, and have access to a plan's limitations and exclusions. The Summary of Benefits Introduction says a beneficiary can call to receive a complete list of benefits. Does this list of benefits include all limitations and exclusions? If not, the marketing materials should be revised so to adequately notify beneficiaries that a complete list of limitations and exclusions is also available by calling the plan.

The Summary of Benefits Information discusses enrollment periods on numerous occasions. However, there is no mention of late enrollment penalties and only passing mention of the year-end open enrollment period. The model marketing materials must be revised so that every time enrollment is discussed, late enrollment penalties and dates and limitations of the year-end open enrollment period are also included.

Pharmacy Directory

The Pharmacy Directory provides important information to beneficiaries about a plan's pharmacy network. I am concerned that the draft allows individual plans to determine how they organize their pharmacy lists. CMS should create a mandatory universal template for how plans organize their pharmacy directory. Failure to do so could allow plans to organize the directory in a way that would discriminate against beneficiaries.

In the mail order section of the pharmacy directory the materials state, "You are not required to use mail order prescription drug services to obtain and extended supply of maintenance medications." This paragraph must state that if beneficiaries choose to obtain a maintenance supply of medications from a retail pharmacy instead of the mail order pharmacy, they will likely pay more their prescriptions.

Abridged & Comprehensive Formulary

Beneficiaries will choose a PDP based in part on the drugs on the formulary. I am disappointed to see the example of a four-tiered formulary. These formularies categorize drugs by cost rather than by generic versus preferred and non-preferred brands. This example could lead plans to create even more expansive formularies that will effectively restrict patient access to the drugs they need. Patients will be confused about what drugs are covered at what level, and that is exactly what the formulary is designed to avoid. CMS should delete this four-tier example, and limit the number of tiers allowed in plan formularies.

The formularies must be crystal clear that copayments only apply to drugs on the formulary, and substantial out-of-pocket costs will result when going off formulary. CMS should also revise the materials to clarify that off-formulary expenditures do not count toward the out-of-pocket expenditures necessary to reach the plans coverage limits and catastrophic thresholds.

I am very concerned with the inclusion of quantity limits in the coverage restrictions section. Congress never discussed quantity limits, and neither the statute nor the conference report includes this term. This was not envisioned by Congress and CMS should quickly clarify that plans cannot override physicians orders by limiting supply of drugs that would otherwise be covered and are medically necessary.

Explanation of Benefits (EOB)

Beneficiaries should not be misled about how much they have paid or will pay in the future for their prescription drugs. CMS should revise the materials to make clear that plans must collect and provide information to beneficiaries on all drug spending. This includes information on off-formulary spending that does not count toward the initial coverage limit or catastrophic threshold. As such, given the construction of the standard benefit and the true out-of-pocket spending policy, the EOB must be revised to include total beneficiary spending on prescription drugs during the year. This amount should include copayments or coinsurance, coverage gap payments and off-formulary drug expenditures.

Conclusion

I understand that CMS was only asking for technical review from prospective plans on these draft model marketing materials. However, it would have been nice to know that these materials existed and they were being sent out for industry comment. Because I did not learn of these materials when the plans did, my comments were prepared quickly and should not be considered exhaustive. I urge CMS to work more closely with lawmakers and consumer groups to oversee plans begin marketing prescription drug benefits to Medicare beneficiaries.

Sincerely,

Pete Stark
Ranking Democrat
Committee on Ways & Means
Health Subcommittee