DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

Administrator
Washington, DC 20201

MAY - 3 2006

The Honorable Pete Stark
House of Representatives
Washington, DC 20515

Dear Mr. Stark:

Thank you for your letter expressing your concerns regarding the compensation arrangements for plan representatives enrolling Medicare beneficiaries in Medicare Advantage plans. The Centers for Medicare & Medicaid Services (CMS) believe that it is critical for beneficiaries to select the most appropriate plan to fulfill their individual needs when choosing a Medicare Advantage Plan (MA) or Prescription Drug Plan (PDP) and that access to this information is not biased by the interests of a specific plan or its agents. CMS shares your concerns and has implemented strong beneficiary protection measures, including the Medicare Marketing Guidelines, to ensure that beneficiaries are able to make informed choices.

CMS regulations and guidance prohibit plans from engaging in activities "that could mislead or confuse Medicare beneficiaries." It is a common industry practice for commercial health insurance plans to use performance-based compensation, i.e., tying a marketing representative's compensation to the value or volume of the person's sales. The CMS marketing guidelines clearly state compensation arrangements should provide reasonable compensation in line with industry standards, reasonably relate to the value of services provided, and avoid incentives for marketing representatives to mislead beneficiaries, cherry pick certain beneficiaries, or churn beneficiaries between plans. CMS will take action if a plan sponsor violates any provision of the applicable law or guidance. Additionally, all compensation arrangements between plan sponsors and marketing representatives are subject to federal laws prohibiting improper inducements or kickbacks.

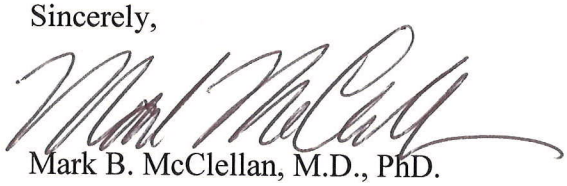
In the case of plan representatives receiving higher compensation for enrolling beneficiaries into MA plans with prescription drug benefits, rather than stand alone PDPs, the plan representative must explain both medical and prescription drug benefits that the plan offers. Furthermore, a plan representative may need to perform more work on an ongoing basis to maintain an MA-PD policy for a beneficiary than may be required if the beneficiary purchases a PDP, due to the fact that MA-PDs are more comprehensive products. This approach is in line with the common industry practice to relate marketing compensation to the value or volume of the person's sales. Plan sponsors that directly employ or contract with a person to market a plan must ensure that a plan representative or agent complies with the applicable MA and Part D laws, federal health care laws and CMS policies, which include CMS' Medicare Guidelines. If a plan or its marketing representatives are found to be in violation of the Marketing Guidelines, CMS will take the appropriate measures to notify the plan of the violation and ensure that the plan and its marketing representatives cease to engage in inappropriate marketing activities.

We certainly understand and appreciate the concerns raised in your letter regarding the compensation arrangements for enrolling beneficiaries into MA-PDs or PDPs, and agree that beneficiaries should be choosing plans based on their individual needs, not the interests of a plan sponsor or its representatives. (This is why CMS monitors plan sponsors' compliance with applicable laws and guidance and takes action when appropriate. In order to further protect beneficiaries, CMS and the National Association of Insurance Commissioners are developing a communications standard operating procedure, whereby marketing guidance will be shared in a uniform manner between CMS and the States.)

As noted above, CMS is continuing its longstanding compliance and enforcement activities under the Medicare health plan program and our other programs. In 2005, for example, CMS used the full range of enforcement tools available to us. This includes issuing numerous corrective action plans and compliance warning letters. Usually, these steps lead to responsive actions promptly by plans. However, where necessary to get compliance, we also levied civil monetary penalties and implemented intermediate sanctions freezing marketing and enrollment. Where necessary, we will also terminate plans. Based on our monitoring in all of the areas described – like pricing, and formulary and prior authorization implementation, and other areas – we will continue to use all these tools for our oversight of the drug benefit as well.

Thank you for sharing your concerns and recommendations. We look forward to working with Congress and other stakeholders in helping Medicare beneficiaries understand the Medicare Advantage program and prescription drug benefit.

Sincerely,



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