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CENTERS FOR MEDICARE AND MEDICAID SERVICES



**Contract Year 2009**

**Marketing Surveillance**

Summary Report

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**Acronyms**

AEP	Annual Enrollment Period
CAP	Corrective Action Plan
CMS	Centers for Medicare & Medicaid Services
CSR	Customer Service Representative
CTM	Complaints Tracking Module
CY	Contract Year
DOI	Department of Insurance

### Acronyms (cont.)

HPMS	Health Plan Management System
MA	Medicare Advantage
MA Plan	Medicare Advantage Plan
MA-PD	Medicare Advantage Prescription Drug Plan
MIPPA	Medicare Improvements to Providers and Patients Act of 2008
OEP	Open Enrollment Period
PDP	Prescription Drug Plan
PFFS	Private-Fee-For-Service
RO	Regional Office
SHIP	State Health Insurance Program
SNP	Special Needs Plan

### Executive Summary

The Centers for Medicare & Medicaid Services (CMS) issued final regulations designed to protect Medicare beneficiaries from deceptive or high-pressure marketing tactics by private insurance companies and their agents, brokers or plan representatives. In an effort to ensure compliance with these new marketing requirements and prohibitions, CMS initiated a comprehensive surveillance program that commenced during the contract year (CY) 2009 MA Plan and MA-PD annual enrollment period (AEP) and continued through March 31, 2009, the end of the Medicare Advantage (MA) open enrollment period (OEP).

CMS' comprehensive surveillance program encompassed numerous surveillance activities including:

- Secret shopping of marketing events;
- Utilization of a clipping service to scan local media for advertisements and assess the compliance of marketing contact, as well as whether organization reported all marketing events to CMS;
- Secret shopping of customer service call centers;
- Analysis of complaints data; and
- Utilization of an online assessment tool to ascertain the compliance of organizations in implementing CMS' marketing requirements;

CMS examined the performance of 213 organizations (147 Medicare Advantage and 66 PDP organizations) across these various surveillance categories during the AEP and OEP. Overall, CMS observed a much lower incidence of serious marketing violations during the CY2009 AEP and OEP than in prior years, particularly those violations related to gross marketing misrepresentation or severe marketing abuses by plan representatives.

However, CMS did uncover marketing violations through the various surveillance initiatives and took compliance action against deficient organizations. In total, CMS issued approximately 110 compliance letters (outlier letter, notice of noncompliance, warning letter, ad-hoc CAP) to 92 organizations during the AEP and OEP. Therefore, the deficiencies discovered during the AEP and OEP were associated with approximately 40 percent of the total universe of organizations that were examined.

### Introduction

The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA),<sup>1</sup> required a number of changes to Medicare Advantage (MA) Plan, Medicare Advantage Prescription Drug Plan (MA-PD), and other prescription drug plan (PDP) organizations. The Centers for Medicare & Medicaid Services (CMS) issued final regulations designed to protect Medicare beneficiaries from deceptive or high-pressure marketing tactics by private insurance companies and their agents, brokers or plan representatives (hereinafter referred to as *plan representatives*). In an effort to ensure compliance with these new marketing requirements and prohibitions, CMS initiated a comprehensive surveillance program that commenced during the contract year (CY) 2009 MA Plan and MA-PD annual enrollment period (AEP) and continued through March 31, 2009, the end of the Medicare Advantage (MA) open enrollment period (OEP). This report focuses on the communication and outreach initiatives that occurred, and provides a description of the results from the CY2009 surveillance initiative. Based on the success of these activities, CMS intends to continue the marketing surveillance initiative and expand it to other program areas in the future.

### Communication Strategy

CMS’s CY2009 marketing surveillance strategy included a comprehensive communication plan. The first part of the communication plan was designed to ensure that organizations understood their responsibilities for complying with the new MIPAA marketing requirements. The second part of the communication plan included outreach and collaboration with CMS partners, such as state Departments of Insurance (DOI), to ensure that CMS could proactively and effectively prevent, detect, and address plan representative marketing issues. Exhibit 1 represents the 13 key communication activities that occurred from September 2008 through June 2009.

**Exhibit 1: Key Communication Activities**

Date	Audience	Details
September 15, 2008	MA and PDP organizations	Release of MIPPA Related Marketing Revisions (Mini-Bus #2 CMS- 4138-IFC)
September 15, 2008	MA and PDP organizations and the media	Press Release and Media Advisory
September 15, 2008	MA and PDP organizations	Release of MIPPA Fact Sheet
September 26, 2008	MA and PDP organizations	Health Plan Management System (HPMS) Memorandum describing CMS’s comprehensive marketing surveillance strategy
October 8, 2008	MA and PDP	Announcement to the industry of CMS’s marketing surveillance

<sup>1</sup> P. L. 110-275: The Medicare Improvement for Patients and Providers Act of 2008, July 23, 2008

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Date	Audience	Details
	organizations	initiative on National User Group call
October 28, 2008	State Health Insurance Programs (SHIPs)	Rollout of CMS's 2008 AEP surveillance initiative on the National Medicare Training Program audio-conference attended by SHIPs in all states. CMS shared the dedicated e-mail box address for receiving plan representative marketing violations
October 29, 2008	State DOIs	Rollout of CMS's 2008 AEP surveillance initiative on the monthly CMS/DOI Liaison Coordination conference call
November 12, 2008	State DOIs	Second conference call with state DOIs discussed opportunities for partnership, discussed two-way information sharing opportunities, and provided details on the CMS secret shopping audit tool, which was provided for use to the State DOIs to conduct their own secret shopping events
November 2008 through December 2008	MA and PDP Organizations	CMS senior management conducted teleconference calls with the largest MA and PDP organizations to reinforce CMS's expectations for compliance with marketing requirements.
Late November 2008 through early December 2008	MA and PDP organizations	CMS 10 Regional Offices (ROs) made outbound calls to points of contacts at plans regarding prospective marketing events that were uploaded into the CMS HPMS with the idea that a CMS representative <i>might</i> attend the event. Two thousand, four-hundred fifty-nine calls were made creating a <i>sentinel buzz</i> at the plans to ensure that plan representatives would follow the CMS requirements and that these events would, in fact, take place. <sup>2</sup>
Late November through early December 2008	Agent and Broker Associations	The ROs contacted local agent and broker associations requesting that the associations share information with their members about the new MIPPA regulations. The ROs made contact with 93 associations covering 46 states and the District of Columbia. Overall, these 93 associations covered membership of over 41,000 plan representatives.
March through June 2009	MA and PDP organizations	CMS presented preliminary results from the surveillance initiative to the managed care industry, SHIPs, and State DOIs, at compliance conferences held in Atlanta, GA; New York, NY; and the United States territory of Puerto Rico.
Recurred throughout AEP and OEP	State DOIs	CMS provided updates to the State DOIs on results and deficiencies discovered during the surveillance initiative. These results are shared through CMS's Department of Insurance coordinator.

<sup>2</sup> CMS cross-referenced the list of organizations for this outreach activity with the list of events selected for secret shopping to avoid the inherent conflicting purposes of those two activities.

### Surveillance Activities

The CY2009 surveillance strategy significantly expanded on surveillance activities conducted in the previous year. CMS utilized six primary surveillance activities, described as follows, to assess organization performance and compliance with CMS marketing requirements.

### Horizontal Secret Shopping

**Timing:** Horizontal secret shopping occurred during the annual enrollment period (AEP).

**Background:** CMS conducted a two-tier approach to secret shopping of marketing events. The first level of secret shopping (called *horizontal* secret shopping) canvassed the country by conducting secret shops for contracted MA Plans, MA-PD, and PDP organizations in over 40 states.<sup>3</sup> CMS also focused resources on high-risk geographic areas and organizations identified as high risk by allocating additional surveillance resources to these areas and organizations. In that regard, CMS developed an algorithm for establishing the risk level for each organization. The purpose of the algorithm was to assign a greater number of events to be shopped to high-risk organizations and a fewer number of events to be shopped to low-risk organizations. The algorithm took into account the size of the organization (i.e., number of Medicare beneficiaries enrolled), whether the type(s) of plan(s) offered by the organization was considered higher risk based on historical marketing issues with certain product types (i.e., Private Fee-for-Service [PFFS] or Special Needs Plans [SNPs]), whether the locality in which the organization operated was considered high risk, the number of past complaints, and whether the organization was identified as high risk by RO staff based on their prior experience.

In total, CMS conducted surveillance over 800 horizontal secret shopping marketing events, nearly tripling the number of total secret shopping events conducted in 2007.

#### Exhibit 2: Scope of Horizontal Secret Shopping of Marketing Events During the AEP

<i>Scope of Horizontal Secret Shopping of Marketing Events During AEP</i>	
Total number of horizontal secret shops conducted	<b>811</b>
Number of MA organization shops	<b>762</b>
Number of PDP organization shops	<b>49</b>
Number of shops allocated to high-risk organizations	<b>409</b>
Number of shops allocated to all other organizations	<b>402</b>
Minimum number of shops conducted for any shopped organizations	<b>1</b>
Maximum number of shops conducted for any individual organization	<b>134</b>

<sup>3</sup> Some states did not receive secret shopping as a result of limited number of marketing events available in certain states, geographic limitations, and resource constraints.

**Results:** CMS's secret shopper contractor completed over 800 horizontal secret shopping events between October 15, 2008 and December 31, 2008. During this interval, CMS identified 26 *serious* violations at marketing events where 12 organizations were represented. CMS identified certain questions as *serious* if a violation would likely impact a beneficiary's decision-making process regarding his or her choice of organization. The 12 organizations received warning letters requesting that they take immediate proactive measures to investigate these deficiencies and to implement steps to improve performance, such as improving quality control measures, implementing training, or taking action against noncompliant plan representatives.

The most common validated deficiencies discovered during horizontal secret shopping were:

- Misunderstanding and/or misuse of the scope of appointment form (e.g., gift cards provided to attendees only if a scope of appointment form was completed).
- Events held by organizations offering PFFS in which the presenter did not clearly read the required disclaimer that "...enrollees can see any provider, who agrees to accept the plans terms and conditions of payment..."
- Representatives did not provide clear instructions on the drug coverage benefit offered by that plan.

## Vertical Secret Shopping

**Timing:** Vertical secret shopping occurred during the AEP and OEP (November 24, 2008 through March 31, 2009).

**Background:** The second level of secret shopping (called *vertical* secret shopping) was based on the information collected during horizontal secret shopping and focused resources on those organizations that were found to be outliers during the initial stage of surveillance. Vertical secret shopping was conducted by trained Medicare experts that evaluated compliance by providing detailed, in-depth observations and rationales to support compliance actions. Further, vertical secret shopping identified new and emerging compliance concerns. For example, vertical shopping revealed a nationwide trend of misusing the scope of appointment forms to require attendees to provide personal contact information and/or authorize the health plan to contact the attendee after the event. This led CMS to issue guidance that clarified the scope of appointment policy.

Targeted group sales events were chosen and prioritized for vertical secret shopping based on the following steps:

1. **Events identified as not reported to CMS.** These were events not reported to CMS via the HPMS system or via the electronic mailbox established to receive these reports, indicating that the organization did not comply with the CMS requirements to submit event data for the event.

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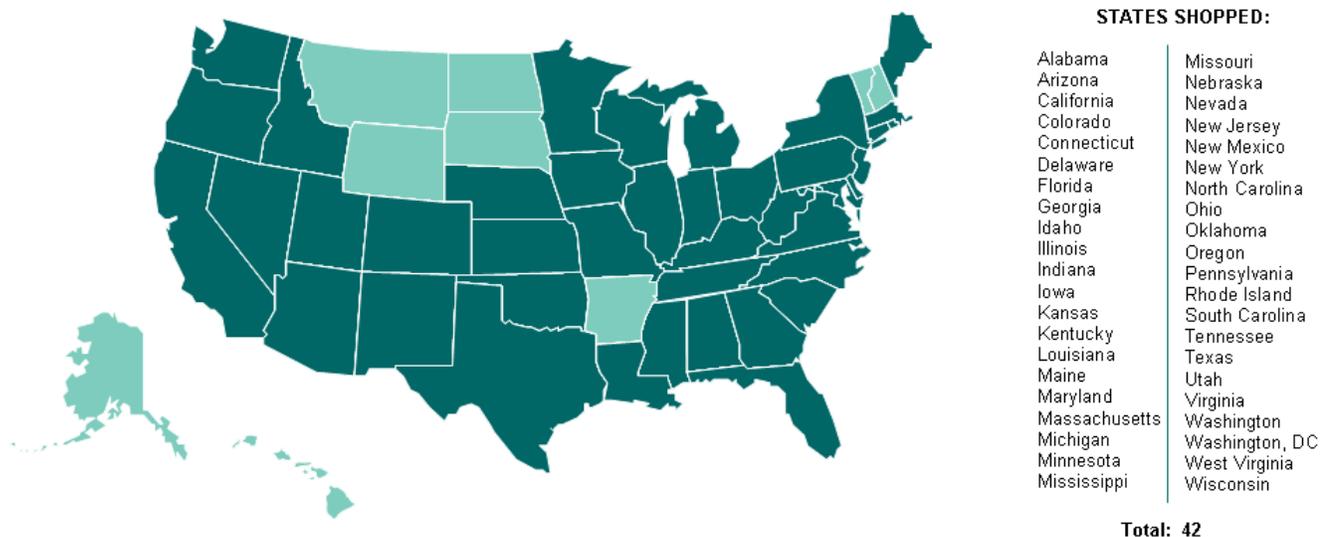
2. **Organizations identified by CMS as *priority organizations*.** These organizations were identified through horizontal secret shopping, increased beneficiary complaints, CMS Central and Regional Office input, or previous noncompliance history.

3. **Locations were selected to provide a variety** in plans, plan representatives, and demographics (e.g., urban versus rural) across audits.

When evaluating each event and the marketing representative's compliance with CMS requirements, auditors used a CMS-approved scorecard that evaluated 37 different aspects of the marketing requirements. Failing to meet the requirements outlined in one of the scorecard elements resulted in a noted *violation* and included explanatory text to detail the nature and evidence of the violation. Auditors also provided details related to the plan representatives, the presentation materials used, the venue, and the general impressions of the event attendees (e.g., whether prospective enrollees seemed to understand the information presented or if they seemed confused by it).

Overall, CMS secret shoppers conducted 650 vertical secret shops of organizations in 41 states and Washington, D.C., as shown in Exhibit 3. The audits took place between November 24, 2008 and March 31, 2009.

**Exhibit 3: States Shopped During Vertical Secret Shopping**



### Results

CMS issued compliance letters to organizations based on their performance at the end of the AEP and again at the end of the OEP. The following describes the results from violations discovered during the AEP and OEP.

### AEP Results

CMS identified 84 events, from 20 organizations, in which at least one deficiency was identified. Of these events, 48 events were found noncompliant based solely on an the plan representative requiring the attendee(s) to complete a scope of appointment form and/or to provide personal contact information or authorize post-event marketing (see *Background* above for further information on action CMS took to clarify scope of appointment policy as a result of these findings). The remaining violations were evaluated to ascertain whether the violation was deemed *serious* (i.e., violations that could significantly impact a beneficiary's decision-making process). Based on this criterion, 11 organizations conducted events during the AEP in which at least one serious marketing violation was discovered. Nine of these organizations received a warning letter from CMS.<sup>4</sup>

The warning letters instructed the organizations to investigate the nature of the deficiency and take action to remedy the problem (e.g., training the plan representatives or more severe corrective action). In a few cases, organizations terminated plan representatives that had egregious or repeat deficiencies identified by CMS. More commonly, organizations reported taking numerous steps to improve performance such as conducting focused retraining of outlier plan representatives, expanding training programs to reinforce CMS's marketing regulations and guidelines, and conducting internal secret shopping programs to assess their own performance.

### OEP Results

As described above, CMS examined the volume, nature, and severity of violations discovered during the OEP to make determinations on the appropriate level of compliance action. CMS also took into consideration the total number of shops conducted, as higher-risk organizations received significantly more secret shops.

Nineteen organizations were identified with at least one violation. CMS took action against these organizations as follows:

- **Sixteen notices of noncompliance.** Sixteen organizations were shopped in which a small number or percentage of non-egregious findings were discovered. Based on the number of shops conducted and the lower severity and quantity of deficiencies discovered, CMS issued 16 notices of noncompliance to these organizations during the OEP.
- **One warning letter.** One organization received five secret shops and all of the shops had at least one violation. In three cases, the plan representative did not show up for the scheduled event. In the remaining two cases, marketing violations were discovered, as follows: In one instance, the plan representative failed to clearly identify the plan type being offered. In another event, the plan representative provided incorrect information on eligibility rules.

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<sup>4</sup> There were just two exceptions for organizations whose violations were deemed serious enough to warrant referrals for potential enforcement action.

- **Two enforcement referrals.** Two organizations were referred to CMS's enforcement group for further investigation and possible action. In both cases, these organizations had already received a warning letter for violations discovered during the AEP. Additional shops conducted during the OEP uncovered significant numbers of violations at events hosted by these two organizations, many containing egregious violations.

### Additional Results

CMS targeted a total of 70 organizations for vertical shopping that appeared as high-risk organizations due to indications of problems through other surveillance activities. However, a significant percentage of events (66 %) complied fully with CMS requirements.

## Overall Secret Shopping Results

The following table presents the combined results for all secret shopping events (horizontal and vertical secret shopping) during the AEP and OEP.

### **Exhibit 4: Results of Marketing Event Secret Shopping**

Overall Industry Performance	
Total secret shops conducted	1,463
Percentage of organizations with violations	51.6%
Percentage of secret shopping events with violations	52.2%
Number of organizations issued compliance notices for violations discovered during secret shopping	28

## Clipping Service

**Timeframe:** October 22, 2008 through March 31, 2009

**Background:** CMS utilized a clipping service, starting in November 2008. The clipping service scanned local media for advertisements to assess the compliance of marketing content, whether the organization had uploaded the advertisement into CMS's HPMS, and whether organizations are reporting all marketing events to CMS.

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As part of the clipping service analysis, CMS received and reviewed both English and Spanish advertisements for this initiative. These advertisements are identified through two tiers of keywords approved by CMS. For example, the contractor would identify relevant advertisements based on the inclusion of keywords in the ads or specific plan names. Exhibit 4 shows examples of keywords as follows:

### Exhibit 5: Clipping Service Keyword Search Examples

Examples of Tier One Keywords	Examples of Tier Two Keywords <i>(may be used in combination with Tier One keywords)</i>
Medicare Advantage	agent
Medicare Prescription Drug Plan	over 65
Medicare Rx Plan	broker
Medicare Drug Plan	enrollment
	CMS approved
	health fair

At the start of the AEP, CMS focused on the following market areas: Miami, FL; Greater New York; St. Louis, MO; South Texas; Tucson, AZ; and Virginia. These were areas of the country where higher rates of marketing issues have been reported in the past. CMS made two significant adjustments to the clipping service analysis:

1. On November 26, 2008, CMS halted the assessment of compliance of marketing content as CMS found general compliance with CMS requirements. CMS redirected these resources to more results-oriented market surveillance activities, including vertical secret shopping.
2. Around early March 2009, CMS expanded its clipping analysis to cover all markets in the United States for the assessment of whether organizations were reporting to CMS all marketing events identified in advertisements.

**Results:** CMS's clipping service reviewed 1,307 advertisements during the timeframe of October 22, 2008 through March 31, 2009. Through review of these advertisements, CMS discovered the following organizations with issues identified in the clipping service analysis:

- **Marketing Content Issues:** One organization was found to be noncompliant due to multiple advertisement content issues, and that organization received a warning letter.

It should be noted that nine organizations were identified with relatively few incidents of marketing content issues. The majority of the advertisement content problems identified were related to failure to comply with some aspect of CMS' marketing guidelines (e.g., inclusion of TTY numbers, font size, and use of all required disclaimers). These instances of noncompliance were not deemed to be *serious* violations (i.e. not likely to unduly influence a beneficiary's healthcare decision-making process). However, since these were still violations of CMS' marketing guidelines, CMS asked organizations to make the

appropriate corrections by referring these issues for resolution through the organizations' designated CMS RO account managers.

- **Unreported Marketing Events:**

- Seven organizations (one of which self-reported to CMS) ran advertisements during the AEP that contained a reference to marketing event(s) that were not reported to CMS. Each of these noncompliant organizations received warning letters issued by CMS in December 2008. Four of the seven organizations demonstrated significant improvement during the OEP in reporting marketing events, and no further action will be taken against them. However, three of the organizations remained deficient in reporting marketing events during the OEP. Since these organizations had previously received a warning letter during the AEP and had not improved performance, CMS issued ad-hoc Corrective Action Plans (CAPs) to these three organizations in June 2009.
- Seven organizations were deficient in reporting marketing events during the OEP only. Since these organizations had not received prior compliance notifications in this area, CMS issued warning letters to these organizations, which required them to institute internal controls to ensure that this problem would not recur.

## Secret Shopping of Customer Service Call Centers

**Timing:** This activity occurred during the AEP.

**Background:** During the AEP, CMS conducted over 5,000 phone calls to 213 MA and PDP organization call centers from November 15, 2008 to December 31, 2008, to assess the accuracy and understandability of customer service representative (CSR) information and determine whether any marketing misrepresentation (MM) occurred. CMS assigned the number of calls based on the same risk factors identified in the horizontal secret shopping surveillance activity. Thus, CMS conducted approximately 1,200 calls to the top 10 high-risk organizations (at least 100 calls per organization), and the remaining 3,800 calls were divided among the 203 remaining organizations (at least 15 calls per organization).

**Results:** CMS evaluated performance based on the CSR's ability to clearly and accurately communicate basic Medicare rules, enrollment information, or basic plan benefit information to a beneficiary. CMS assessed performance by rating the CSR's abilities in answering questions in seven broad categories:

1. Basic plan information
2. Description of how MA plans cover services
3. Enrollment requirements
4. Health screening questions
5. Member costs
6. Enrollment and disenrollment rules
7. Marketing misrepresentation or pressure tactics

CMS assessed the performance of organizations around mid-December 2008, examining the overall average score by survey and comparing performance across all organizations. CMS deemed 13 organizations whose overall average error score was twice the national performance average as outliers. These 13 organizations received compliance letters identifying them as an outlier and asking these organizations to assess performance and implement improvements. Organizations were able to work with their CMS RO account manager to identify areas for improvement and target training efforts for specific poor-performing CSRs.

Across all organizations, the questions identified as the lowest scoring areas were:

- Clearly and understandably explaining that an MA Plan pays instead of Medicare.
- Clearly explaining that a beneficiary must be entitled to and enrolled in Medicare Part A and Part B in order to enroll in a MA Plan.
- Providing clear instructions about the cancellation and disenrollment rules for Medicare beneficiaries
- Providing clear information about the plan's monthly premium, including amounts.
- Providing clear information about the plan's co-payment and coinsurance amount for various services.

## Complaints Data Analysis

**Background:** CMS utilized complaints data submitted to CMS to assess organizations' performance during the AEP. Complaints were received and entered into a centralized complaints repository called the Complaints Tracking Module (CTM). CMS RO staff or 1-800-MEDICARE customer service representatives typically enter these complaints in the CTM. A specific complaint category, marketing misrepresentation (MM), was developed to capture complaints related to marketing violations or abuses that impacted beneficiaries' health care or prescription drug benefit decision-making process.

During the AEP, CMS conducted a two-pronged analysis of MM complaints in the CTM to identify outliers. The first prong was based on an evaluation of the number of MM complaints per 100,000 enrollees during the period of January 2008 through November 2008. Organizations with high rates of MM complaints using this analysis were targeted for vertical secret shopping.

In the second prong of the analysis, CMS examined the total number of MM cases and measured this against change in enrollment. This type of adjustment (versus looking at complaints compared to total enrollment) allows for an analysis of MM complaints against an enrollment figure that is, to a certain degree, reflective of *new* enrollees (new enrollees are most likely to have been impacted by marketing violations). Based on this method of analysis, 14 organizations

scored greater than 15 complaints per 1,000 enrollees based on change in enrollment and were identified as outliers.

These 14 organizations received a notification from CMS identifying them as an outlier in complaints performance. This caused the organizations submit recurring reports to CMS that detailed their investigation into and response to all MM cases identified in the CTM during recurring reporting periods. These organizations will continue to provide reports to CMS until further notice. CMS will be using this data set to analyze whether these organizations are taking appropriate corrective action measures and to inform CMS on the nature of the types of complaints that are being entered into the CTM (e.g., percentage of misclassified and unsubstantiated complaints). CMS has completed some preliminary analyses based on plan feedback during a one-month reporting period (January 25, 2009 through February 21, 2009). The following information represents some of the key findings:

- CMS referred 6,436 MM complaints to these organizations for investigation.
- Organizations reported taking specific corrective action in 933 of these cases (~14.5%). These types of corrective action included retraining and counseling of plan representatives, placing the plan representatives on a watch list, suspending them, or terminating them.
- Organizations reported that 1,501 of the cases were unsubstantiated or inconclusive (~23.3% of total complaints).
- Organizations reported that 953 cases were misclassified – i.e., either belonged to another organization or were not truly marketing misrepresentation complaints (~14.8% of total complaints).
- Organizations reported that 162 cases were duplicates (~2.5% of total complaints).
- Organizations reported that 2,018 cases were marked as *pending*. These are cases that are still being investigated by these organizations (~31.3% of the total complaints).

This analysis also demonstrated significant variances between the percentages of cases for which each organization took some type of corrective action. Corrective action ranged from 6 percent to 62 percent of the total MM complaints volume. CMS will continue to monitor this area more closely in the future and has concerns about organizations that are taking corrective action on only a small percentage of MM complaints received. Organizations that are found to be unresponsive to plan representative complaints may be at risk for further compliance action.

### MIPPA Online Assessment Tool

**Background:** CMS utilized an online assessment tool as a means to assess the compliance of organizations in implementing the new MIPPA marketing requirements. Organizations were sent

an Internet hyperlink to an online questionnaire that asked a series of questions related to the level of compliance with the implementation of various MIPPA requirements.

**Results:** Fifty-six organizations identified that they had not successfully or timely implemented at least one of the new MIPPA marketing requirements or a current CMS marketing requirement. The most common deficiencies included:

- Untimely implementation of updated policies and procedures. In some cases, organizations did not have final, updated policies and procedures until late in the OEP, well after the MIPPA implementation date. The specific areas identified as most problematic were as follows:
  - Policies and procedures to ensure sales staff were trained, educated, and compliant with the prohibition on conducting sales activities at educational events (15 noncompliant organizations).
  - Policies and procedures to ensure that beneficiaries were informed of all products that will be discussed during an in-home appointment prior to that appointment (13 noncompliant organizations).
  - Policies and procedures to ensure that an effective process is in place to comply with the reporting of terminated plan representatives and the reasons for termination to the respective state (12 noncompliant organizations).
  - Policies and procedures to ensure that all plan and sales representatives tested after September 18, 2008, have obtained a passing score of 85 percent or higher on tests (11 noncompliant organizations)
- Untimely implementation of updated call scripts that met all of CMS's requirements (e.g., include the privacy statement, submitted to CMS for approval, and do not imply an organization is endorsed by Medicare).
- Twenty-eight organizations were noncompliant in their responses to this question.

Many organizations were deficient in multiple categories. CMS issued notices of noncompliance against the 58 organizations that were noncompliant in one or more of their responses.

## Overall Compliance Summary

CMS tracked the performance of all contracted organizations across the various surveillance activities described. Overall, CMS has observed a much lower incidence of serious marketing violations during the CY2009 AEP and OEP than in prior years, particularly those violations related to gross MM or severe marketing abuses by plan representatives. CMS's surveillance program was more visible and comprehensive, and organizations appear to have taken stricter measures to ensure more effective oversight of the behavior of their plan representatives. CMS

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has received feedback from organizations that they have implemented numerous measures to ensure compliance including:

- Standardizing training packages
- Implementing more effective controls to track plan representatives licensing information
- Conducting their own secret shopping programs
- Taking action against plan representatives with findings
- Utilizing training videos at events for providing clear and consistent information about more complex Medicare program areas (e.g., information related to the PFFS rules about provider access)

Despite improved performance, CMS found organizations that were in violation of a specific marketing requirement. For example, deficiencies were discovered at secret shopping events where specific marketing guidelines (including some of the new MIPAA provisions) were violated. In instances where CMS identified organizations with marketing violations discovered at a secret shopper marketing event, CMS took the step of issuing compliance letters to those organizations. CMS also issued compliance letters to organizations where serious marketing violations were discovered through the clipping service (unreported marketing events or significant marketing content issues), as well as organizations that self-disclosed that they were deficient in certain marketing areas through their responses in the MIPPA online assessment tool.

Additionally, CMS examined and compared organization performance in the following areas: (1) rates of marketing misrepresentation complaints category in the CTM, and (2) performance in the customer service call center performance study. Organizations that were found to be outliers *only* in these comparative performance categories (i.e., no incidents of serious secret shopping violations or clipping service violations) received an outlier letter. The outlier letters asked organizations to implement processes, such as targeted training or taking specific actions against poor-performing plan representatives, to improve their organizational performance. Organizations found as outliers with respect to marketing misrepresentation complaints rates were required to take the additional measure of submitting recurring reports to CMS that detailed their investigation into and response to all marketing misrepresentation cases identified in the CTM during weekly reporting periods.

CMS issued approximately 110 total compliance letters (outlier, notice of noncompliance, warning letter, ad-hoc CAP) to 92 organizations during the AEP. A compliance letter requires an organization to implement immediate corrective measures to address the deficient practices, resulting in improved protections for Medicare beneficiaries. Furthermore, the issuance of compliance letters is significant in that it contributes to CMS' overall assessment of an organization's performance. Each year, CMS conducts an analysis of an organization's prior year performance and has used compliance letters, along with other indicators, to deny applications for initial contracts and service area expansions on the basis of non-compliant past performance. The documentary record created by these notices also serves as the basis for CMS to assess an organization's overall performance when making decisions on whether or not take sanctions or other enforcement actions. CMS believes that these efforts motivate all Medicare

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Advantage (MA) Plan, Medicare Advantage Prescription Drug Plan (MA-PD), and other prescription drug plan (PDP) organizations to enhance their compliance operations, and this leads to their improved overall performance.

It should be noted that CMS examined the performance of 213 organizations (147 Medicare Advantage and 66 PDP organizations) across these various surveillance categories during the AEP and OEP. Therefore, the deficiencies discovered during the AEP and OEP were associated with approximately 40 percent of the total universe of organizations that were examined.