



MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

DATE: October 19, 2011

TO: Medicare Advantage Organizations
Prescription Drug Plan Sponsors
Cost-Based Contractors

FROM: Danielle R. Moon, J.D., M.P.A., Director

SUBJECT: Excessive Referral Fees for Enrollments

CMS has recently become aware that some Medicare Advantage Organizations (MAOs) are offering excessive fees to agents for referrals in the south Florida market that in some cases are as high as the cap on total compensation in that area. (The national fair market value amount in Miami-Dade and Broward counties is \$402.) MAOs appear to be soliciting such referrals on behalf of their employed or captive agents, who then complete the enrollment.

CMS has long been concerned that referral fees that exceed a nominal amount (e.g., \$25-\$100) may result in inappropriate steering of beneficiaries to particular plans or sponsors without regard to beneficiaries' health care needs. (See our memorandum of February 24, 2009, entitled, "Payment of Referral Fees.") Referral fees that are four times the upper limit of these nominal amounts would appear to almost certainly strongly incentivize such steering. Moreover, the fact that some organizations or sponsors can offer the entire amount of compensation an outside agent receives for only a referral, while others must combine any compensation for referrals with other agent marketing activities while meeting the same total caps on compensation creates an unlevel playing field within the marketplace, and a clear financial incentive for the referring agent to steer beneficiaries to plans that offer the higher amount, without regard to whether plan benefits meet the beneficiaries' health care needs. Thus, excessive referral fees undermine CMS' efforts to fulfill its statutory mandate to ensure that compensation creates incentives for agents and brokers to enroll individuals in plans that are intended to best meet their health care needs.

It is CMS' expectation that the amount paid by an MAO for the referral of a beneficiary to the organization or its agent not exceed \$100, regardless of whether the agent that ultimately completes the enrollment is employed, captive, or independent. Therefore, we intend to more closely monitor those MAOs that offer referral fees in excess of \$100. Such efforts may take the form of heightened levels of surveillance and closer monitoring of internal and external marketing complaints and enrollments, and may lead to compliance action, as appropriate. This guidance should not be read to invite MAOs to increase their referral fee payments up to the \$100 level where the fair market value for such fees has historically been below that amount. CMS will continue to monitor payment of referral fees across the Medicare Advantage and Part D markets to ensure that MAOs and other sponsors do not create incentives for steering.

Questions on this regarding this matter should be directed to MarketingPolicy@cms.hhs.gov.