



Centers for Medicare & Medicaid Services
**MARKETING
SURVEILLANCE
INDUSTRY SUMMARY REPORT**

Contract Year 2010

Report Date:

August 10, 2010

Introduction

The Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), enacted in July 2008, made a number of changes to the Medicare Advantage and Prescription Drug Benefit programs. Subsequently, the Centers for Medicare & Medicaid Services (CMS) issued final regulations and program guidance designed to protect Medicare beneficiaries from deceptive or high-pressure marketing tactics by private insurance companies and their agents, brokers or organization 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 Annual Enrollment Period (AEP).

For contract year (CY) 2010, CMS continued its surveillance strategy incorporating various initiatives to monitor for marketing compliance, including:

- Secret Shopping of Public Sales Events – to assess compliance with marketing requirements at public sales presentations.
- Staged Appointment Secret Shopping – to assess compliance with marketing requirements at personal/individual marketing settings with agents and organization representatives.
- Secret Shopping of Call Centers -- to assess the accuracy of information provided by customer service representatives to potential enrollees related to non-renewal activity.
- Clipping Service – to assess whether marketing events have been reported to CMS and to examine marketing advertisements for inappropriate or misleading language around non-renewal activity.
- Marketing Website Review – to verify that required marketing identification numbers and approval dates were present on organization websites as well as determining that required links were active.

The CY2010 surveillance season (herein “surveillance season”) encompassed the Annual Election Period (October 1 – December 31, 2009) and the Open Enrollment Period (January 1-March 31, 2010). CMS’ surveillance strategy was conducted at the parent organization level, which assessed the performance for all the legal entities that are owned and operated by a single organization.

This report provides a high level summary of CMS’ CY2010 surveillance strategy, including its communication and outreach approach as well as key outcomes of the surveillance activities listed above.

Communication and Outreach

CMS’ CY2010 marketing surveillance strategy included a comprehensive communication plan focused on the themes of collaboration and transparency. For example, CMS continued outreach and collaboration with our partners, including the state Departments of Insurance (DOIs), the State Health Insurance Programs (SHIPs), and the National Medicare Educational Program (NMEP) to ensure that CMS could proactively and effectively prevent, detect, and address organization marketing violations. Additionally, CMS communicated to organizations through Health Plan Management System (HPMS) memoranda, presentations to the industry, and direct communications with organizations’ compliance officers, that

CMS would actively monitor their agent performance and was prepared to impose “real time” compliance actions where the deficiencies warranted such action.

Some of the key communication and outreach events CMS undertook to communicate its surveillance strategy, to promote collaboration and transparency, or to share results with key stakeholders included:

- In late September 2009, CMS sent self assessments to parent organizations with the highest numbers of enrollees affected by non-renewals. The assessments required organizations to respond to questions designed to tell CMS whether they would be ready to meet non-renewal requirements.
- Prior to the start of the CY2010 marketing season, CMS conducted outreach calls to organizations with large enrollments reminding them of CMS’s expectation to adhere to MIPAA rules and regulations.
- In mid-October, CMS called 35 high risk organizations (and followed up with an email) to remind them of the importance of ensuring compliance with MIPAA, following the Medicare Marketing Guidelines, and ensuring marketing compliance of their agents and brokers working with our vulnerable Medicare beneficiaries.
- Industry conference held at CMS Central Office to roll out the CY2010 Marketing Surveillance strategy on October 19, 2009.
- Presentations to SHIPs on National Partners Calls regarding CMS’ CY2010 surveillance strategy and discussed ways that CMS can further collaborate and share information on surveillance activities.
- Regional Offices (ROs) conducted outreach calls to 89 agent/broker trade associations across 46 states to emphasize the MIPAA requirements at the local agent level. Over 40 of the contacts agreed to communicate the information to their membership via newsletter, email or fax.
- ROs completed over 1,953 “buzz” calls to the point of contact listed in randomly selected HPMS sales events to further heighten organizations’ awareness of CMS surveillance.
- Training sessions for the RO and contractor secret shoppers were held via video and audio-conference in fall 2009 in preparation for CY 2010 Annual Election Period (AEP) and Open Enrollment Period (OEP).
- The CMS Surveillance Team conducted secret shopping training in mid-November 2009 for the state DOI liaisons across the country.
- CMS conducted an outreach campaign to the Agent Trade Associations, which started on November 13, 2009. Each CMS RO was tasked to contact at least two trade associations in each state to request the dissemination of information regarding Medicare marketing practices. This effort yielded 88 contacts representing 48 of the 50 states and reached just over 136,000 agent trade association members.
- In February 2010, CMS conducted listening sessions with eight Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations that volunteered to provide input into CMS’ surveillance strategy. CMS also solicited and received written feedback from over 25 organizations. This feedback will be used to inform improvements in CMS’ Surveillance Strategy for CY2011 (See “Lessons Learned” section).
- In March 2010, CMS published its AEP Surveillance Report.
- CMS presented at Regional Office Compliance Conferences during the spring of 2010 to inform MA and PDP organizations of surveillance outcomes during CY2010, best practices, and lessons learned.

- ROs established valuable partnerships with state DOIs that aided in implementing more efficient processes to resolve agent/broker marketing issues quickly.

CMS Surveillance Console

In CY 2010, CMS developed a secure, online database called the CMS Surveillance Console (herein “Console”) to manage all surveillance activities. CMS used the Console to:

- Store all surveillance results gathered from each surveillance activity.
- Generate notifications to organizations of deficiencies for their review and investigation.
- Review and validate surveillance findings based on organizations’ responses to their deficiencies.
- Generate compliance letters to report areas of non-compliance to organizations.
- Generate reports representing activity results by organization.

Organization Access to the Console

Organizations were required to submit requests for access through CMS’ Surveillance Team. All organizations were encouraged to have at least two users to ensure timeliness in responding to CMS deficiencies and compliance notifications. Consequently, the industry has been exceptionally responsive to the three-day timeframe for responding to marketing surveillance deficiencies.

CMS Access to the Console

CMS account managers have access to all surveillance data affiliated with their assigned accounts. CMS management has access to various surveillance reports, so that results for various organizations can be obtained, on an as needed basis. Finally, CMS’s surveillance team members have access to the console to review deficiencies, analyze organization responses to deficiencies, and take appropriate compliance actions.

Risk Assessment Analysis

Generally, CMS sampled all organizations equally in each surveillance activity conducted, with the exception of secret shopping. For secret shopping, the CMS Surveillance Team developed a risk assessment methodology to determine the number and frequency of secret shops that CMS would conduct initially for organizations during the CY2010 AEP and OEP. The analysis was based on objective criteria and data sources available to CMS, as defined below in Table 1. Organizations with high risk scores received a larger initial number of secret shops. Each month, the shopping allocation was modified to accommodate for actual performance. This strategy allowed CMS to allocate resources and contractor dollars more effectively.

The risk assessment analysis utilized eight categories to assess an organization’s secret shopping risk score.

Table 1: CMS Risk Assessment Analysis Categories

Category	Description
Secret Shopping Performance (CY2009)	Organizations with deficiencies in secret shopping that resulted in compliance actions in CY2009.
Enforcement actions supported by surveillance results (CY2009)	Organizations with serious deficiencies discovered during surveillance that contributed to enforcement actions (e.g., marketing and/or enrollment freeze).
Clipping Service (unreported marketing events in CY2009)	Organizations that were discovered with unreported marketing events in CY2009 that resulted in compliance actions.
MIPPA Assessment Tool (CY2009)	Organizations that self-reported deficiencies with the implementation of certain MIPPA or marketing requirements through the MIPPA online assessment tool.
Marketing Misrepresentation CTM Outlier	Organizations that were outliers and received compliance notifications for high rates of marketing misrepresentation complaints in the Complaints Tracking Module (CTM) from September 2008 – July 2009.
Organization Size	Organizations received risk points based on size—i.e., larger organizations were attributed a larger risk score. Enrollment figures were based on the total Medicare Advantage Organization (MAO) and Prescription Drug Plan (PDP) enrollments for all contracts offered by that organization.
Compliance Activity Module (CAM) Analysis for marketing compliance issues (CY2009)	Organizations that received compliance level notices for marketing operational issues (other than surveillance) during 2009.
New Organizations for CY2010	Organizations that entered into contracts with CMS effective January 1, 2010.

The categories above were assigned weights and organizations were assigned into one of three risk bands - “high”, “medium” and “low” risk, depending upon on the total score for that organization. Once the risk bands were assigned, CMS conducted secret shopping for those organizations during pre-defined monthly intervals (or “clusters”). CMS then assessed performance for these organizations following the conclusion of that monthly interval and took the appropriate level of compliance action, based on the Progressive Compliance Model (see below).

Compliance Process: The Progressive Compliance Model

For each surveillance activity, each organization’s performance was analyzed for potential compliance action on regular intervals, called “clusters”. CMS assessed numerous factors in determining the appropriate compliance action including: total number of deficiencies discovered; performance percentage (e.g., percentage of shopping events with deficiencies); level of severity of the discovered deficiencies; and whether CMS issued previous compliance notification(s) for the surveillance activity.

Compliance decisions were made by a Surveillance Compliance Committee, which was made up of a team of staff and management from the following CMS components: Medicare Drug and Health Plan Contract Administration Group (MCAG), Medicare Drug and Health Benefit C & D Data Group (MDBG), Program Compliance and Oversight Group (PCOG), and the CMS Regional Offices.

The compliance actions available to CMS are as follows (in increasing level of severity):

- Technical Assistance Letter (not considered formal compliance action)
- Notice of Non-Compliance
- Warning Letters
- Warning Letter with a Request for a Business Plan
- Ad-hoc Corrective Action Plan (CAP)
- Enforcement Action

Secret Shopping of Public Sales Events

Background

CMS utilized the services of two contractors as well as support from the CMS Regional Offices to conduct secret shopping. All shoppers used the CMS Consolidated Secret Shopping Tool to evaluate each marketing event and the representative/agent compliance with CMS requirements. The tool focused on CMS marketing requirements that had the greatest potential of beneficiary harm. When a representative/agent failed to meet a requirement, the shopper document provided details supporting their findings. This tool was available to all organizations via CMS’ Surveillance Console.

CMS secret shops were conducted in 48 States (excluding Alaska and Wyoming due to the limited number of marketing events available), as well as Puerto Rico. CMS also identified 55 counties from across the country that had the largest number of beneficiaries affected by organizations not renewing their contracts for CY2010. These “non-renewal counties” were targeted for additional secret shopping to ensure that inappropriate marketing practices were not occurring in these areas with high rates of potential enrollment movement.

Results

Tables 2 & 3 present a summary of the performance of organizations in public sales event secret shopping during the AEP and the OEP. CMS conducted 858 secret shops of 136 organizations during the AEP and 450 secret shops of 91 organizations during the OEP.

Table 2: Public Sales Event Secret Shopping Results by Risk Category - AEP

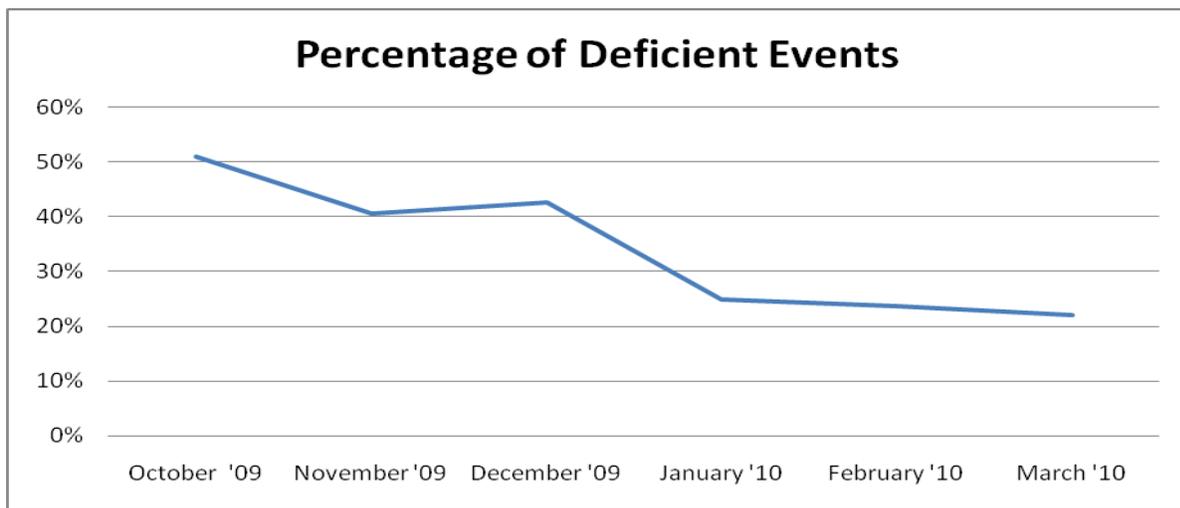
Report Item	Organization Risk Category			TOTAL - AEP All categories
	High	Moderate	Low	
Organizations shopped	34	51	51	136
Shopping events conducted	473	228	157	858
Percentage of deficient events	44.0%	47.8%	34.4%	43.2%

Table 3: Public Sales Event Secret Shopping Results by Risk Category- OEP

Report Item	Organization Risk Category			TOTAL - OEP
	High	Moderate	Low	All categories
Organizations shopped	27	32	32	91
Shopping events conducted	254	122	74	450
Percentage of deficient events	23.2%	23.8%	14.9%	22.0%

Of note is the significant decrease in the percent of deficient events throughout the surveillance season. **Exhibit 1** displays the percent of deficient events on a monthly basis for CY2010 AEP and OEP.

Exhibit 1



Note: A deficient event is an event with one or more deficiencies cited.

This data indicates that the MAOs and PDPs became increasingly responsive in ensuring compliance with marketing requirements as a result of the CMS surveillance strategy. CMS encourages organizations to be proactive in implementing controls, conducting training, and allocating resources to prevent the occurrence of marketing violations before the start of any marketing activities, especially prior to the start of the CY2011 AEP. CMS will consider prior history in marketing performance in determining the appropriateness of compliance and/or enforcement action during the CY2011 surveillance season.

Most Common Public Sales Event Secret Shopping Deficiencies

The most common deficiencies reported for public sales events during the CY2010 surveillance season were related to accuracy/completeness of drug coverage information. Deficiencies in this category were related to communicating incorrect information about the coverage gap, prescription pricing, and how to locate information on prescription drug coverage.

The second most common deficiency was event “no shows”. This deficiency was cited when CMS secret shoppers attended events that had been submitted in the HPMS Marketing Events Module by organizations as confirmed events and the event did not occur. CMS has provided clear guidance on the process for entering and cancelling events in the HPMS marketing events module.

The third most common deficiency was to require a beneficiary to provide contact information in order to attend a public sales event. In the past, a number of marketing misrepresentation complaints have been based on incidents in which agents have used contact information to enroll beneficiaries into plans without their permission. The exchange of contact information as a prerequisite to attending a marketing event is prohibited.

CMS restricts organizations from making unsubstantiated, absolute statements regarding any of their product offerings, such as the plan is "the best", "the highest-rated", as stated in the Medicare Marketing Guidelines and accounted for a significant number of deficiencies identified.

Table 4: Public Sales Events – Top 6 Deficiencies

Deficiency	Count
Drug coverage related deficiencies	195
Event no shows	134
Requiring beneficiary to provide contact information	81
Not identifying product type at the beginning of the presentation*	67
Making unsubstantiated, absolute statements about the organization such as the plan is "the best", "the highest-rated"	61
Not explaining disenrollment of members in special need plans (SNP) who are no longer eligible	25

* New requirement for CY2010

CMS Actions Taken

CMS issued 209 letters to 110 organizations with deficiencies at public sales events during the CY2010 marketing season. As indicated earlier, letters were issued monthly based on performance. These notices ranged from Technical Assistance Letters to formal compliance actions, such as Notices of Non-Compliance, Warning Letters and requests for Ad-hoc Corrective Action Plans. **Table 5** presents the numbers of compliance actions taken by CMS.

Table 5: Compliance Actions Taken Against Organizations Regarding Deficiencies for Public Sales Events

Action Taken	Total
Technical Assistance Letters*	101
Notice of Noncompliance (NONC)	76
Warning Letter	29
Ad-hoc CAP	3
Total Letters Issued	209

*Technical Assistance Letters are not considered formal compliance action, but utilized by CMS for organizations that generally performed well, but had a low volume of less severe deficiencies.

Of the 110 organizations that received letters, 105 organizations received letters during the AEP and 45 organizations received letters during the OEP. There were 40 organizations (36%) that received at least one letter in both the AEP and OEP.

Organizations' Response to Letters

CMS' CY 2010 surveillance program was more visible and comprehensive, and organizations appeared to take stricter measures to ensure more effective oversight of the behavior of their organizations' agents/representatives—particularly as CMS moved further into the marketing season. Non-compliant organizations agreed to take steps to bring agents and representatives into compliance by instituting corrective measures including:

- Improving internal training programs.
- Creating dedicated marketing agent investigative teams or departments to research and respond to allegations of inappropriate marketing practices by agents, brokers, and organization representatives.
- Taking immediate action against their organization representatives and agents with findings (ranging from placing the agent on a “watch list” to termination, dependent on the nature and volume of the alleged marketing violations).
- Utilizing training videos at events for providing clear and consistent information to beneficiaries about more complex Medicare program areas.
- Engaging third party vendors to conduct secret shopping of sales events and customer service call centers to measure compliance.
- Implementation of ride-along programs. Some organizations have reported conducting this on a random basis, while others assign a ride-along to agents or organization representatives requiring further observation (e.g., new employees or those with allegations of potential marketing violations).
- Development of approved scripts, talking points, and question and answer documents that have cleared compliance and legal team reviews.
- Instituting comprehensive enrollment verification programs to follow-up with beneficiaries that attended sales events and ensure that marketing misrepresentation did not occur.

Despite the various challenges and obstacles inherent in monitoring and controlling the behavior of marketing agents and brokers, organizations have demonstrated a willingness to improve performance by strengthening internal controls, improving training programs, and increasing oversight and monitoring efforts.

Staged Appointment Secret Shopping

Introduction

Staged appointment (also known as personal/individual marketing appointments) secret shopping began as a pilot during the CY2010 surveillance season. CMS conducted public sales event secret shopping for the past two years which has proven to be effective in reducing marketing misconduct from MAOs and PDPs and their agents. CMS decided to pilot staged appointment secret shopping to determine if marketing misrepresentation occurred more frequently in a staged appointment setting as opposed to the public sales event setting. CMS utilized two contractors and the CMS Puerto Rico Field

Office staff to conduct staged appointments with various organizations across the country. Each secret shopper utilized a tool designed especially for staged appointments to capture potential deficiencies that CMS analyzed to assess compliance with Medicare marketing guidelines.

Process Overview

The staged appointment secret shopping pilot was conducted in two phases: December 16, 2009 – January 15, 2010 and February 8, 2010 – March 15, 2010. Phase I targeted organizations that received Notices of Non-compliance (NONCs) or Warning Letters during the October and November public sales event secret shopping activity, high risk organizations, and organizations located in Puerto Rico. One contractor conducted staged appointments for the traditional Medicare products while the other focused on specialty products, such as Private Fee-For-Service (PFFS) and Special Needs Plans (SNPs).

The initial purpose for conducting shops in Phase I was to provide feedback on the surveillance tool and to identify any egregious activities. As a result of the Phase I activities, CMS determined the need to implement ways to safeguard the identity of our secret shoppers. At the completion of Phase I, CMS conducted 114 staged appointment appointments representing 41 POs in 16 states and Puerto Rico. Egregious violations were not discovered.

Phase II was dedicated to testing modifications to the shopping process to protect shopper anonymity. Phase II targeted specific geographic locations in an attempt to identify areas that have traditionally encountered high levels of marketing misrepresentation – Miami, FL; Washington DC Metro area / Baltimore, MD; Los Angeles, CA; San Antonio, Houston or Dallas TX and the Detroit, MI metro area. Modifications to the process for conducting the staged appointment appointments to protect shopper anonymity including the utilization of disposable cell phones and meeting sales agents at public venues instead of private residences.

At the completion of Phase II, CMS conducted 17 staged appointments of 14 organizations in the high risk metropolitan areas listed above and Puerto Rico. The Compliance Team issued three Technical Assistance Letters (TALs) based on findings in several of the shops. Technical Assistance Letters were issued on the grounds that the volume and nature of deficiencies did not warrant more serious formal compliance actions. The nature of deficiencies discovered during staged appointment was generally of the same nature as those discovered during public sales event. Once again, there were no instances of egregious violations.

The Staged Appointment pilot activity provided useful insight into the scheduling process and the manner in which staged appointments are conducted between potential members and sales agents. CMS conducted listening sessions with the industry where thoughts were shared regarding this activity. CMS will consider the feedback given and strengthen the activity for use during the upcoming surveillance season. Additionally, the pilot results yielded valuable insight into the scope of appointment process. This information was shared with the CMS Marketing Policy group and incorporated into the recently released Medicare Marketing Guidelines.

Non-Renewal Activities

Secret Shopping in Areas Affected by Non-Renewals

CMS targeted public marketing events by organizations in the service areas most highly impacted by non-renewals since these individuals would have to make new health plan elections and could have lost Part D coverage if a selection was not made. During these shops, CMS looked specifically for the use of aggressive marketing tactics related to non-renewals and inaccurate statements about competitors leaving their service areas (in addition to ensuring that all other marketing elements were met). Generally, CMS did not find a higher incidence of aggressive marketing tactics or inaccurate statements about competitors in non-renewal markets than in other geographic areas.

Secret Shopping of Customer Service Call Center for Non-Renewal Information

CMS completed 67 secret shopper calls to the customer service call centers of 19 non-renewing plans which had the most impacted beneficiaries. Callers asked four basic questions in each of the 67 calls, addressing beneficiary rights, choices, and necessary actions. The responses were either considered incomplete or inaccurate 82% of the time. Callers identified five typical responses which are displayed in **Table 7**.

Table 6: Plan Customer Service Call Center Responses

Plan Customer Service Call Center Responses	Number of calls in which this was said	Number of organizations that said this
When asked if people have to do anything to make sure they are still covered by someone, CSR did not provide date by which beneficiaries must choose another plan.	14	11
CSR said beneficiary has until 12/31 to choose another plan, but they actually have until 1/31.	15	12
The CSR only discussed the organization's own options, not the fact that beneficiaries can choose other organizations.	12	8
When asked what happens if they don't choose a prescription drug plan, CSR did not provide date by which beneficiary must do this.	12	7
CSR said if you don't choose a Part D plan, Medicare will choose one for you.	2	2

Through this activity, CMS determined that additional guidance for non-renewing organizations is necessary to ensure that CSRs provide critical information to members in their non-renewing plans. CMS will develop and release this guidance in the coming months. For organizations that provided incomplete information to the secret shoppers, RO Account Managers contacted these organizations to informally discuss these deficiencies. For those 10 organizations that provided inaccurate information CMS issued Technical Assistance Letters.

Reporting of Complaints Related to Non-Renewals

The Surveillance Team reviewed 5,072 complaints entered in the Complaints Tracking Module (CTM) from September 1, 2009, through March 31, 2010 originating from beneficiaries enrolled in non-renewing plans. Of these 5,072 complaints, 349 (7%) appeared to have stemmed from the fact that the beneficiaries' plans were non-renewing. Underlying issues included: assigning an incorrect enrollment or disenrollment effective date; denying enrollment to non-renewed beneficiaries with ESRD; inadvertent disenrollment from a PDP by enrolling into an MA-PD; and general questions or unhappiness with the non-renewal.

CMS' Surveillance Team will work with Regional Office account managers to address issues uncovered during CTM review with organizations, as appropriate.

Non-Renewal Readiness Assessment

CMS required 28 organizations with high numbers of beneficiaries affected by non-renewals to complete a self-assessment to inform CMS of whether they would fulfill non-renewal requirements (such as notifying beneficiaries and meeting reporting requirements). Three organizations indicated potential non-compliance:

- 2 organizations did not understand that they should include Medigap language specific to certain affected portions of their service areas.
- 1 organization was not prepared to fulfill all reporting requirements.

The Surveillance Team took proactive measures to ensure that these organizations would meet requirements.

Clipping Service for Unreported Marketing Events and Inappropriate Non-Renewal Marketing

Background

Through the use of a clipping service vendor, CMS conducted searches for advertisements that contained information on MAO and PDP marketing events. This ensured that Medicare organizations reported events to CMS in a timely manner. CMS' clipping service vendor reviewed daily and weekly print publications in U.S. domestic markets nationwide, including advertisements from English, Spanish, and Chinese language publications. CMS' clipping service contractor conducted reviews for 7,618 unique events (derived from 1,389 Medicare advertisements) from 79 organizations reviewed.

Results

The first aspect of the review encompassed examining advertisements to determine whether sales events were reported to CMS, as required by CMS' marketing guidelines. During the AEP, a thorough review of advertisements reported by 56 organizations by CMS revealed the following:

- 45 organizations reported 100% of the clipped marketing events accurately and timely into the HPMS system.
- 7 organizations reported 90% - 99% of the clipped marketing events accurately and timely into the HPMS system. These organizations received a Technical Assistance Letter.
- 4 organizations reported 56% - 89% of the clipped marketing events accurately and timely into the HPMS system. These organizations received a notice of non-compliance.

CMS further refined its compliance methodology for analyzing the review of unreported marketing events for the OEP review. The goal was to compensate for small sample size for certain organizations, which had the potential to skew the results and level of compliance action. Thus, the statistical analysis of the data was modified so that compliance action would only be taken if we could assure a 90% level of confidence that an organization was not in compliance with CMS guidelines. For this exercise, non-compliance was defined as reporting fewer than 95% of all marketing events to CMS through the HPMS system. For example, one organization had only 8 advertised marketing events reviewed (a small sample size). Of these, one event was unreported. Since the sample size was so small, we could not say with at least a 90% level of confidence that the organization reported less than 95% of their marketing events. Therefore, a technical assistance letter was issued in lieu of a formal compliance action.

The OEP review yielded the following results and compliance actions:

- 50 organizations reported 100% of the marketing events accurately and timely into the HPMS system.
- 17 organizations reported 95% or more of their advertised marketing events (at a 90% level of confidence), but had at least one unreported marketing event. These organizations received a Technical Assistance Letter.
- 5 organizations reported less than 95% of the marketing events accurately and timely into the HPMS system (at a 90% level of confidence) and did not receive a NONC during the AEP. These organizations received a NONC during the OEP.
- 1 organization that received a NONC from the AEP analysis continued to be non-compliant during the OEP, and received a Warning Letter.

Non-Renewal Area Advertising

The clipping service also scanned media content during the AEP to find any instances of inappropriate marketing in areas highly impacted by non-renewing organizations. Specifically, this activity was designed to identify Medicare advertisements published in counties with high rates of non-renewals that may convey inaccurate information or use inappropriate language or aggressive marketing tactics to attract new enrollees from the non-renewing plans. Of the advertisements reviewed during the AEP, the clipping service contractor did not identify any advertisements that contained inappropriate language in these non-renewal markets.

Marketing Website Review

Background

A new activity for CY2010 was the review of organizations' websites to ensure compliance. The purpose of this activity was to verify that the required CMS marketing ID and approval date were present on each website and that required links were active. The websites reviewed were the URL addresses which organizations provided to CMS via HPMS. In September 2009, 208 organizations were reviewed, and in February 2010, 199 organizations were reviewed. The difference in number is due to non-renewals and organizations for which CMS determined the website requirements did not apply.

Results

CMS discovered numerous instances of non-compliance in this area. **Table 7** below lists the most common website deficiencies.

Table 7: Top 6 Website Deficiencies

Deficiency	September Count	February Count
Administrative Deficiencies		
CMS website marketing ID approval missing	67	8
Approval date not included with the marketing ID	61	17
Deficiencies with Beneficiary Impact		
LIS Premium Summary Chart missing	59	22
Enrollment Instructions & Forms missing	29	11
Organizations Exceptions & Appeals Process missing	28	14
Summary of Benefits missing	14	4

After the September review, CMS issued 109 letters for website deficiencies. Of these, CMS issued 96 Technical Assistance Letters to organizations which had low numbers of website deficiencies and were considered to be administrative in nature (e.g., "Approval date not included with the marketing ID"). CMS issued 13 NONCs to organizations with high numbers of website deficiencies, or with deficiencies that directly impacted beneficiaries (e.g., missing summary of benefits).

After the February reviews, CMS issued 69 letters to organizations for website deficiencies. Of these, CMS issued 48 Technical Assistance Letters, 15 NONCs, 2 Warning Letters, and 4 Warning Letters with Requests for Business Plans on how the organizations were going to repair their website issues. The CMS Compliance Team issued the different letters depending on the seriousness of the deficiency, whether the organization had received a prior notification in the September website review and whether the organization had the same deficiencies as identified in the previous review that remained uncorrected.

Overall, CMS was pleased to see the overall decrease in deficiencies. However, believes these deficiencies were easily corrected, yet some organizations had violations that recurred during both

review periods, even following notification from CMS. Failure to be responsive to CMS notifications puts organizations at risk for increasing levels of compliance action.

Lessons Learned

CMS undertook a comprehensive lessons learned initiative that sought feedback from internal and external stakeholders as a means to improve the CY2011 surveillance marketing strategy. As part of this initiative, CMS received written feedback from over 25 organizations, RO account managers and other stakeholders. The Surveillance Team also conducted 8 conference calls with organizations that volunteered to provide verbal feedback to CMS. Comments were open to any topic related to the surveillance initiatives. The following represent some of the most common recommendations provided:

Organization Response Timeframe - CMS received feedback that additional time would be helpful in conducting a more robust and complete investigation into identified violations. Therefore, CMS will increase the time allotment for responding to deficiencies from 3 business days to 5 business days during the CY2011 surveillance season.

Weighted Scoring - Comments about the scoring of deficiencies were very common. Many organizations thought using a weighted scale or benchmark for scoring approach would create transparency and assist them in understanding CMS' compliance actions.

Refinements to Secret Shopping Tool – CMS is examining refinements to the secret shopping tool including:

- Elimination of multi-part questions—for example Question 8 of CMS' secret shopping tool (“inappropriate, inaccurate, or scare tactics”).
- Refinements to the secret shopping tool to more clearly delineate requirements for special products types, such as full-dual SNPs.

The Surveillance Console - The Surveillance Console received very positive feedback from industry and internal stakeholders alike. For the most part, users described the console as easy to access and navigate as well as being a valuable tool that substantiated CMS' promise of transparency in the surveillance process. Functionality recommendations included:

- Downloadable reports and extracts
- Upload functionality to support a defense of a particular issue with key documents
- Automatic notification to organizations of change of deficiency status

All submitted recommendations are currently being considered as potential enhancements for the 2011 or 2012 surveillance seasons.

Overall Surveillance Summary

CMS tracked the performance of all organizations across numerous surveillance activities including: secret shopping of public sales events and staged appointments with a special focus on non-renewal markets; secret shopping of customer service call centers for non-renewing organizations; marketing website review; review of advertisements for unreported marketing events; and review of marketing content for advertisements published in non-renewing markets.

Overall, CMS observed that there has been a sustained decrease in the number of serious marketing violations during the CY2010 surveillance season, continuing the improved performance CMS observed during CY2009 surveillance activities. However, CMS notes that there is still room for improvement in the following marketing areas:

- Sales Events
 - Providing clear and accurate information to Medicare beneficiaries at marketing sales events and individual appointments related to drug coverage information.
 - Eliminating any type of pressure tactics which require Medicare beneficiaries to provide their contact or personal information at marketing sales events.
 - Ensuring that guidelines are followed related to cancelled marketing events, including publishing notices of cancelled events, to minimize inconvenience to Medicare beneficiaries.
- Call Center Review for Non-Renewing Plans
 - Improving training for customer service representatives to provide clear, accurate, and complete information to beneficiaries in non-renewing plans.
- Websites
 - Improving adherence to marketing website requirements to ensure that marketing approval ID numbers are present and that links to required documents are present and active.
- Reporting Marketing Events
 - Ensuring that marketing events are reported timely and accurately to CMS.

CMS' surveillance program was more visible and comprehensive in CY2010 and organizations appear to have taken stricter measures to ensure more effective oversight of the behavior of their agents and brokers. Organizations were exceptionally responsive to CMS' requests to respond to allegations of deficiencies within three business days through CMS' new Surveillance Console.

Organizations provided feedback that they have implemented numerous measures to ensure compliance with marketing event presentations including: standardizing training packages; implementing more effective controls to track agent/broker licensing information; utilizing third party vendors to conduct internal secret shopping; taking immediate action against agents/brokers with findings; using enrollment verification programs to follow-up with beneficiaries that attended sales events and ensure that marketing misrepresentation did not occur; and utilizing training videos at events to provide clear and consistent information about more complex Medicare program areas (e.g., information related to the Private Fee for Service (PFFS) rules concerning provider access).

CMS issued 433 surveillance letters for the CY2010 surveillance season across the various surveillance activities described earlier in this report. Of these, 282 were Technical Assistance Letters sent to organizations that performed generally well, but had low numbers of less serious marketing violations. The purpose of Technical Assistance Letters was to communicate to organizations that *any* level of marketing violations would be documented, providing them the opportunity to correct and prevent future deficiencies. CMS issued 151 formal compliance letters, ranging from NONCs to requests for Corrective Action Plans.

The issuance of compliance letters is significant because it contributes to CMS' overall assessment of an organization's past performance. Each year, CMS conducts an analysis of each organization's prior year performance and uses compliance letters, along with other indicators, to deny applications for initial contracts and service area expansions on the basis of past non-compliance. CMS believes that these surveillance activities encourage all organizations to improve their internal compliance procedures to enhance their overall performance.

Questions on this report can be directed to Serrick McNeill at Serrick.McNeill@cms.hhs.gov.