



Center for Program Integrity

DATE

Dear [Medicare-enrolled dialysis facility]:

Today, CMS released a Request for Information (RFI) on inappropriate steering of people eligible for or receiving Medicare and/or Medicaid benefits into an individual market plan. In this RFI, CMS expressed serious concerns about reports of healthcare providers and provider-affiliated organizations steering people eligible for Medicare or Medicaid benefits to an individual market plan for the purpose of obtaining higher payment rates. CMS noted that arrangements driven by providers and provider-affiliated organizations that move people eligible for Medicare and/or Medicaid benefits may harm the individual, may harm the individual market single risk pool, may harm other enrollees in the individual market single risk pool, and potentially raise overall health care costs.

As we explained in the RFI, we believe there is potential for harm when a healthcare provider or provider-affiliated organization steers people eligible for Medicare and/or Medicaid benefits to enroll in an individual market plan for the healthcare provider's financial gain through higher payment rates without taking into account the needs of these individuals. People who are steered away from Medicare and/or Medicaid and to an individual market plan may experience a disruption in the coordination of their care, changes in prescription drug benefits, loss of dental care for certain Medicaid beneficiaries, and changes in the network of providers. Enrollment decisions should be made, without influence, by the consumer and based on their individual circumstances and health and financial needs. Moreover, in the case of an individual actually receiving Medicare and/or Medicaid benefits, as opposed to potentially eligible for such benefits, section 1882(d)(3)(i)(II) of the Social Security prohibits selling such a person insurance coverage knowing that it duplicates such Medicare and/or Medicaid benefits. Under section 1882(d)(3)(A)(ii), this act is punishable by imprisonment of up to five years and/or civil money penalties.

Further, CMS laid out in the RFI a number of options that we are considering with respect to these harms. We are considering revisions to Medicare and Medicaid provider enrollment rules, imposition of civil monetary penalties for individuals that failed to provide correct information to the Exchange when enrolling consumers into individual market plans, and potential regulatory changes that would allow individual market plans to limit their payment to healthcare providers to Medicare-based amounts for particular services and items of care. There may also be ways to use our existing authorities to impose civil monetary penalties on health care providers who induce Medicare eligible individuals to delay/forgo Medicare enrollment if the Medicare eligible individual is later penalized for delayed enrollment. CMS is further exploring the nexus between Medicare and Medicaid statutes and state law tortious interference claims made by individual market plans against providers engaged in this behavior.

CMS is committed to ensuring that the interests of the consumers are put first. We expect our providers to do the same. Individuals should receive health care services from the appropriate program or plan, and individual market risk pools should not be interfered with by inappropriate steering of consumers who otherwise should be receiving care through the Medicare and/or Medicaid programs. We believe this RFI would be of particular interest to you and it may be viewed directly at <http://www.archives.gov/federal-register/public-inspection/>. For your convenience, we note that comments are due September 22, 2016.

Sincerely,

Shantanu Agrawal, MD
Deputy Administrator for Program Integrity