

## CENTER FOR DRUG AND HEALTH PLAN CHOICE

### MEMORANDUM

DATE: November 10, 2008

TO: Medicare Advantage Organizations  
Medicare Advantage-Prescription Drug Organizations  
Cost-Based Contractors  
Prescription Drug Plan Sponsors  
Employer/Union-Sponsored Group Health Plans

FROM: Abby L. Block /s/  
Director, Center for Drug and Health Plan Choice

SUBJECT: Release of Center for Medicare and Medicaid Services 4138-IFC2 and Clarification of guidance on agent/broker compensation.

On September 15, 2008, we released guidance to help the industry implement the new Medicare regulations, Center for Medicare and Medicaid Services 4131-F and Center for Medicare and Medicaid Services 4138-IFC. The guidance addressed important changes for Medicare Advantage (MA) plans, Medicare Prescription Drug Plans (PDP) and Cost-based plans. Subsequently, we conducted briefings and answered questions related to implementation of the rules. We received a lot of feedback about agent/broker compensation. As a result, we issued a new interim final regulation with comments (Center for Medicare and Medicaid Services 4138-IFC2) addressing agent/broker compensation. This memo provides guidance on the newly-released regulation, and guidance on submitting compensation structures to Center for Medicare and Medicaid Services, consistent with these new regulations, no later than November 13, 2008.

**Agent/Broker compensation** – On page 22 of the September 15, 2008, guidance document, we established a process for transitioning to the new compensation structure in the first year in which any movement of a beneficiary in 2009 would result in the agent/broker receiving an initial compensation amount. Since then Center for Medicare and Medicaid Services has become increasingly concerned about the potential incentives for agents/brokers to enroll beneficiaries in a plan that does not best meet their needs in order to receive the initial compensation amount. As a result of these concerns, Center for Medicare and Medicaid Services -4138-IFC provides for a transition to the new compensation structure under which for 2009 only, all individuals enrolling in a plan are initially deemed to be in the first year of the five renewal years in the six-year cycle provided for under Center for Medicare and Medicaid Services 4138-IFC these regulations. As described in the preamble to the Center for Medicare and Medicaid Services 4138-IFC2, the MA or PDP plan initially pays the broker or agent enrolling an individual the renewal compensation amount. Organizations would then be required to adjust the compensation from renewal compensation to an initial compensation under the circumstances described in Center for Medicare and Medicaid Services 4138-IFC2.

Plans should establish an initial and a renewal compensation structure for 2009 as described in Center for Medicare and Medicaid Services 4138-IFC2 and the Attachments to this memo.

**Submission of 2006 through 2009 compensation structures** – In light of the new requirements set forth in the Center for Medicare and Medicaid Services 4138-IFC2, organizations are required to certify and submit to Center for Medicare and Medicaid Services their compensation structures paid in years 2006 through 2008 and the compensation structures that will be used for 2009. Separate information is being collected from plans for Writing Agents (both those who are paid directly by the plan and those who are paid by marketing organizations with whom the plans contract), and Marketing Organizations (such as Field Marketing Organizations (FMOs)) with whom the plans contract.

Organizations must submit to us:

- **A certification that the Plan's 2009 compensation structure meets our requirements.** The certification form required from all organizations is included as Attachment 1a. Organizations have two options for calculating their 2009 compensation structures, which are described in Attachment 5. If a plan uses Option One, they should submit Attachment 1b by November 13, 2008 and Attachment 1a by November 17, 2008 including all the requested compensation related data; if a plan uses Option Two, they should submit Attachment 1a only by November 17, 2008 including all the requested compensation related data.
- **Each unique MA and PDP plan compensation structure, for all plan years 2006 through 2009.** Plans should follow the directions provided in Attachment 5. Each unique MA and PDP plan compensation structure must be identified with a unique ID number that is used in each compensation structure document provided to us. Plans may use the optional form (Attachment 2) or if your organization has the schedule(s) in a workbook, or some other format, you may submit that documentation in lieu of Attachment 2a or b.
- **The Excel workbook (Attachment 3 - Agent Information Sheets)**
- **The Excel workbook (Attachment 4 - Agent Compensation Data)**

Instructions for completing this information are in Attachment 5. All of this information must be submitted in accordance with Center for Medicare and Medicaid Services guidance. MA and PDP organizations that did not sell products through agents and brokers in any of these years would not be required to provide information for those years. Nevertheless, every organization must provide 2009 information, and information for the other years in which they participated in the Medicare Advantage and Prescription Drug Programs.

All of the requested information must be submitted to [CMSBroker@lmi.org](mailto:CMSBroker@lmi.org) no later than the dates identified above.

We have contracted with LMI to provide technical assistance to organizations submitting compensation data. If your organization requires technical assistance, you may contact Jim O'Keiff at LMI at 703-917-7236 no later than 12 noon eastern time on Friday November 14, 2008.

We will consider an organization that does not submit compensation structures for the appropriate years to us by the date indicated to be out of compliance with our marketing

requirements. These organizations will face potential sanctions and/or other penalties, as described in the preamble to Center for Medicare and Medicaid Services 4138-IFC2.

In order to be responsive to your questions about the implementation of these new requirements, we have created a mailbox for questions specific to the Medicare Advantage and Prescription Drug provisions of the Medicare Improvements for Patients and Providers Act (MIPPA) and our new regulations. The email address is: [regulationquestions@cms.hhs.gov](mailto:regulationquestions@cms.hhs.gov). Center for Medicare and Medicaid Services will develop answers and distribute the questions and answers to the industry, generally in the form of a cumulative summary.

Attached are the following enclosures:

- Attachment 1 - Certifications
- Attachment 2 – Compensation Structure Submission Forms
- Attachment 3 – Covered Agent Information Sheets Workbook
- Attachment 4 – Agent Compensation Information Workbook
- Attachment 5 – Instructions