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DATE: September 28, 2010

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

FROM: Danielle Moon, J.D., M.P.A.
Director, Medicare Drug & Health Plan Contract Administration Group

RE: Reminder to Plans Regarding Third Party Marketing Activities and Educational Events

The purpose of this memorandum is to remind plan sponsors of their responsibility to ensure that all activities, including marketing, sales, and enrollment activities, undertaken by their subcontractors meet all CMS guidance and requirements. In addition, we clarify the requirements for educational events specified in section 70.7 of the Medicare Marketing Guidelines (MMG).

Third Party Activities

CMS has recently become concerned about third party marketing materials, particularly websites comparing multiple plans that are being used or proposed for use in the marketplace. It does not appear that all of these websites have been approved by CMS for use in the marketplace. We remind plan sponsors that, consistent with sections 30.5, 30.5.1, and 120.4 of the MMG, CMS must review applicable marketing materials prepared by a plan sponsor's third party, excluding marketing materials for employer/union enrollees. Marketing materials may not be submitted directly by the third party to CMS; rather, materials must be submitted directly by the plan sponsor that contracts with CMS (i.e., the MAO or PDP sponsor offering the plan being marketed, or, in the case of a material used by multiple plan sponsors, by one plan sponsor on behalf of all affected plan sponsors). It is the responsibility of plan sponsors to ensure that all applicable materials created by a third party meet the requirements outlined in the MMG.

Per our review of some of these third party marketing materials, we are also concerned that some third parties are representing themselves as an objective or unbiased source of information, even though they only display information about plans with which they contract and/or receive a commission for enrollments. We believe such messaging is potentially inaccurate and

misleading. To ensure that beneficiaries have access to and are aware of other plans that may be available to them in their service area, plan sponsors must ensure that when their contracted third parties provide beneficiaries with plan information, they include the following disclaimer on materials that provide information about only a subset of plan options in the service area: “This is not a complete listing of plans available in your service area. For a complete listing please contact 1-800-MEDICARE or consult www.medicare.gov.” This disclaimer must be prominently displayed on each material or, in the case of websites, on each webpage that lists, compares, or names available plans.

Finally, we have concerns about some of the online enrollment mechanisms used on third party websites. We remind plan sponsors that, other than the CMS Online Enrollment Center, the only online enrollment mechanism that third parties may make available is via the plan sponsor’s website. Online enrollment via other means, such as an agent/broker website, is not permitted. (Refer to sections 40.1.2 of Chapter 2 of the Medicare Managed Care Manual and 30.1.2 of Chapter 3 of the Medicare Prescription Drug Benefit Manual for additional information.) Furthermore, allowing agents/brokers – including third party plan comparison and enrollment websites that function as brokers – to assist with telephonic enrollments is also prohibited. Plan sponsors must ensure that telephonic enrollment requests are effectuated entirely by the beneficiary or his/her authorized representative and that the plan representative, sales agent, or broker is not physically present at the time of the request. (Refer to sections 40.1.3 of Chapter 2 of the Medicare Managed Care Manual, 30.1.3 of the Medicare Prescription Drug Benefit Manual, and HPMS memorandum released on August 17, 2010 titled “Clarification of Medicare Marketing Guidelines Requirements and Outbound Enrollment Verification Policy.”)

CMS is in the process of evaluating additional surveillance activities related to third party materials currently used in the marketplace, including websites, and will take appropriate compliance action if necessary.

Educational Events/Activities

CMS has received several inquiries regarding brokers/agents that are scheduling individual appointments with prospective beneficiaries but are characterizing these events as educational activities. CMS views educational activities as events that are hosted by plan sponsors or a third party entity in a public venue. Therefore, plan sponsors or their contracted third parties may not solicit prospective beneficiaries for individual appointments under the premise that the appointment is for educational purposes. In addition, plan sponsors may not conduct outbound calls to prospective beneficiaries to solicit educational appointments.

Appointments that are scheduled with a beneficiary, regardless of the intent, are considered sales appointments and must comply with the requirements specified in section 70.9 of the MMG regarding individual appointments. Plan sponsors and agents/brokers may provide educational content in addition to plan specific information during an individual appointment.

Plan sponsors should contact their CMS Regional Office Account Manager with any questions related to this memorandum.