



MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

MEMORANDUM

DATE: May 14, 2010

TO: All Medicare Advantage (MA) Organizations, Prescription Drug Plan (PDP) Sponsors, and Section 1876 Cost Plans

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

SUBJECT: Agent and Broker Compensation Rate Adjustment and Submission for CY 2011 Enrollments

This memorandum provides guidance to Medicare Advantage Organizations (MAOs), prescription drug plan (PDP) sponsors, and section 1876 cost contract plans regarding adjustments to compensation rate ceilings for CY 2011 enrollments relative to the CY 2010 rate ceilings, as well the process for submitting to CMS compensation rate information for CY 2011 enrollments.

Compensation Rate Adjustment for CY 2011 Enrollments

As provided in 42 CFR 422.2274(a)(1)(ii)(A) and 423.2274(a)(1)(ii)(A), for 2010 and subsequent years, the compensation amount paid to an independent agent or broker for an enrollment must be the prior year's paid compensation adjusted by the change in MA or Part D rates in the "Announcement of Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies" for that contact year.

On April 5, 2010, CMS released the "Announcement of Calendar Year (CY) 2011 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter" (<http://www.cms.gov/MedicareAdvtgSpecRateStats/AD/list.asp>). As provided on pages 1 and 34 of the Announcement, MA capitation rates for 2011 are the same as the capitation rates for 2010 and the Part D benefit parameters increased by 0.31%.

Compensation rates for CY 2011 enrollments must therefore be adjusted as follows:

CY 2011 compensation amount = CY 2010 compensation amount * MA or Part D rate % change.

For example, if an MA or MA-PD plan paid agents \$403 in 2010, it would pay **\$403** to agents for CY 2011 sales:

$$\$403 + \$403*(0) = \$403$$

Similarly, for a PDP that paid agents \$53 in 2010, it would pay **\$53** to its agents for CY 2011 sales:

$$\$53 + \$53*(0.0031) = \mathbf{\$53}$$

When calculating the compensation rates for CY 2011, plan sponsors should round to the nearest dollar using the following convention: amounts of 50 cents or more should be rounded up to the nearest dollar, and amounts less than 50 cents should be rounded down to the nearest dollar.

Plan sponsors that did not use independent agents or brokers for CY 2010 sales, but intend to use them for CY 2011 must choose an initial compensation amount that is at or below the CY 2011 FMV cut-off amount. The chart below summarizes the CY 2011 FMV cut-off amounts for MA and cost plans and PDPs.

| MA and Cost Plan Fair Market Value Amounts | | | | |
|---|-----------------|--|----------------------------------|---|
| | National | Connecticut, Pennsylvania, District of Columbia | California New Jersey | Puerto Rico, U.S. Virgin Islands |
| Initial | \$403 | \$454 | \$504 | \$276 |
| Renewal | \$202 | \$227 | \$252 | \$138 |
| PDP Fair Market Value Amounts | | | | |
| Initial | \$53 | | | |
| Renewal | \$27 | | | |

Compensation Rate Submission for CY 2011 Enrollments

All plan sponsors (whether using independent agents or not) must notify CMS of their CY 2011 compensation status. This year, plan sponsors will submit compensation data in the Health Plan Management System (HPMS). The HPMS functionality is still under development, but we expect the module to be finalized in early July. Detailed instructions on submitting compensation data through HPMS will be provided prior to the module's release.

Plan sponsors that are continuing to use independent agents and brokers in 2011 will only be required to attest to the CY 2011 data, which will be pre-calculated in HPMS based upon compensation amounts filed for those plans for CY 2010. Plan sponsors will be required to submit CY 2011 compensation data via HPMS if they intend to do the following: 1) create new plans for CY 2011 and use independent agents to sell them; 2) use independent agents and brokers to sell existing plans for which they did not use independent agents or brokers during CY 2010; 3) discontinue using independent agents or brokers to sell plans in CY2011; or 4) make changes like consolidating plans or expanding service areas.

Included with this memorandum are instructions for updating existing compensation submissions or for submitting new compensation amounts for CY 2011 (see Appendix A). We also include a

list of frequently asked questions regarding compensation submissions (see Appendix B). Plan sponsors should ensure that they take the information provided in this memorandum into account as they prepare for CY 2011 bid submissions.

We expect plan sponsors to keep detailed records demonstrating that they are updating their compensation schedules and paying agents and brokers for enrollment in their products consistent with all CMS guidance on agent and broker compensation. For example, plan sponsors should be able to verify that agents working for third-party marketing organizations are being compensated in accordance with the compensation schedules maintained by the plan. CMS intends to carefully audit these data on an ongoing basis.

Please note that the CY 2011 compensation information that plan sponsors submit will be made available for beneficiaries and others to view on the CMS website (www.cms.gov), with a link to that information from both Medicare Options Compare and the Medicare Prescription Drug Plan Finder on www.medicare.gov, prior to the annual election period for CY 2011.

APPENDIX A – Instructions for Updating Existing and Creating New Agent/Broker Compensation Schedules for CY2011

I. CY 2011 Updates to Existing Schedules (used for CY 2010)

Plan sponsors intending to continue to use agents to sell plans in 2011 that had compensation schedules in 2010 must adjust their 2010 compensation schedules according to the guidance outlined in the memorandum, “Agent and Broker Compensation Rate Adjustment and Submission for CY 2011 Enrollments.” Plan sponsors intending to discontinue the use of independent agents and brokers to sell plans for CY 2011 must indicate this in HPMS.

Plan sponsors with plans for which they submitted CY 2010 compensation schedules can only adjust existing CY 2010 compensation schedules; they may not create any new compensation schedules for those plans.

II. New Schedules (no schedules existed for CY 2010)

Plan sponsors may create compensation schedules for new CY 2011 plans by selecting a compensation amount that is at or below the fair market value.

Plan sponsors may create new compensation schedules for plans that existed in CY 2010 but did not have an associated compensation schedule by selecting a compensation amount that is at or below the fair market value.

III. Plan Consolidations

When a plan sponsor is consolidating plans, it may associate with the consolidated plan all, or a subset, of the CY 2010 schedules associated with the set of plans being consolidated. These schedules must be adjusted relative to the previous year’s schedules according to the guidance outlined in the memorandum, “Agent and Broker Compensation Rate Adjustment and Submission for CY 2011 Enrollments.”

Plan sponsors consolidating plans for which CY 2010 compensation schedules existed can only adjust all or a subset of the existing CY 2010 compensation schedules; they may not create any new compensation schedules for those plans.

IV. Service Area Expansions/Reductions

When a plan sponsor is reducing an existing service area, it must adjust the CY 2010 schedules associated with the reduced service area according to the instructions for updating existing schedules (see I above). Plan sponsors cannot create new compensation schedules nor can they add a compensation schedule from the part of the service area that they are reducing. For example, if there are three States in the service area in CY 2010, and, in CY 2011, the service area will only include two States, the plan sponsor cannot associate any of the schedules from the State that is no longer in the service area with the other two States that remain in the service area.

When a plan sponsor is expanding an existing service area, it must adjust its CY 2010 schedules according to the instructions for updating schedules (see I above). In the event that a service area expansion crosses State boundaries, the plan may create new schedules by selecting compensation amounts that are at or below the fair market value and can only associate them with the new portion of the service area.

APPENDIX B- Revised Compensation Guidance Qs & As

1. Are all plans required to submit compensation information for CY 2011 enrollments?

Plan sponsors that are continuing to use independent agents and brokers in 2011 will only be required to attest to the CY 2011 data, which will be pre-calculated in HPMS based upon compensation amounts filed for those plans for CY 2010.

The only plan sponsors required to submit new compensation information for CY 2011 enrollments are:

- Those that are creating new plans for CY 2011 and intend to use independent agents or brokers to sell the plans.
- Those using independent agents or brokers to sell existing plans for which they did not use independent agents or brokers during CY 2010.
- Those that will no longer use independent agents or brokers to sell plans in CY2011.
- Those that need to change their compensation amounts because they are consolidating plans or expanding or reducing the service area of existing plans.

Plan sponsors of employer plans are exempt from this requirement. Plan sponsors that are using – and intend only to use – employed sales staff are not required to enter compensation amounts in the HPMS.

2. How do new plans calculate their CY 2011 compensation amounts? What about plans that decide mid-year to use independent agents?

All plan sponsors using independent agents or brokers to sell plans for CY 2011 that must submit compensation information (see question 1 above) must do so via HPMS in the summer of 2010. More detailed information on this process will be provided to plans around the time of the launch of the new collection tool in HPMS. Plan sponsors cannot compensate independent agents during the plan year if they have not submitted compensation information to CMS. If a plan sponsor thinks it is possible that it would use independent agents for CY 2011 plan sales, it should file the anticipated compensation amount.

New plan sponsors, plan sponsors that did not use independent agents for CY 2010 but intend to use them for CY2011, or some plan sponsors that will expand their service areas must select a compensation amount that is no greater than the CY 2011 fair market value (FMV) cut-off amount. (See memorandum, “Agent and Broker Compensation Rate Adjustment and Submission for CY 2011 Enrollments.”)

3. **What do we do if we do not use independent agents, but use contracted agents who receive a base salary and sell exclusively for our plan, or are employer plans?**

Plan sponsors that are using contracted agents who receive a base salary and sell exclusively for the plan sponsor are not required to enter compensation amounts in the HPMS, but must attest that they are not using independent agents or brokers. Note that plan sponsors of employer plans are exempt from this requirement.