



MEDICARE DRUG AND HEALTH PLAN CONTRACT ADMINISTRATION GROUP

MEMORANDUM

DATE: August 12, 2009

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

FROM: Teresa DeCaro, RN, M.S. /s/
Acting Director

SUBJECT: Agent and Broker Compensation Rate Adjustment and Submission for 2010

Compensation Rate Adjustment for 2010

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.

In April 2009, CMS released the rate announcement for CY 2010 (<http://www.cms.hhs.gov/MedicareAdvtgSpecRateStats/Downloads/Announcement2010.pdf>). As provided on pages 4 and 37 of the rate announcement, MA rates increased by 0.81%, and Part D rates increased by 5.79%.

Compensation rates for 2010 must therefore be adjusted as follows:

2010 compensation amount = 2009 compensation amount * MA or Part D rate % change.

For example, if an MA or MA-PD plan paid agents \$400 in 2009, it would pay \$403 to agents in 2010:

$$\$400 + \$400*(0.0081) = \$403$$

Similarly, for a PDP that paid agents \$50 in 2009, it would pay \$53 to its agents in 2010:

$$\$50 + \$50*(0.0579) = \$53$$

When calculating the compensation rates for 2010, 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 in 2009, but intend to use them in 2010 must choose an initial compensation amount that is at or below the 2009 FMV cut-off amount and adjust it for 2010 as described above.

Compensation Rate Submission for 2010

All plan sponsors (whether using independent agents or not) must notify CMS of their 2010 compensation status by no later than August 21, 2009. We have contracted with LMI to provide technical assistance to organizations submitting compensation data.

LMI will use an online collection tool to collect 2010 compensation information. It is important that plan sponsors be aware that, while the 2010 compensation information LMI will collect will be significantly simpler than the 2009 submission (i.e., LMI will collect a single compensation amount or a range of compensation amounts for each plan benefit package), plan sponsors must ensure that they carefully follow the guidelines specified in Appendix A to derive the information they submit to LMI. 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. CMS intends to carefully audit these data on an ongoing basis.

All plan Compliance Officers and broker compensation points of contact will receive an email containing the instructions and link to our secure compensation data collection website. A second email will follow containing a plan specific password. This tool will include functionality for plans sponsors to print, upload, and submit the required 2010 compensation information attestations. Plan sponsors should ensure that their compliance officer and broker compensation contact information in HPMS is current.

Please note that the 2010 compensation information submitted will be made available for beneficiaries to view on the CMS website (www.cms.hhs.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 2010.

If your organization requires technical assistance, you may contact Paul Costello at LMI at 571-633-7769. If you have questions regarding the information contained in this memorandum, please send them to RegulationQuestions@cms.hhs.gov.

APPENDIX A – Instructions for Updating Existing and Creating New Agent/Broker Compensation Schedules for 2010

I. 2010 Updates to Existing Schedules (created for CY 2009)

- Plan sponsors intending to continue to use agents to sell plans in 2010 that had compensation schedules in 2009 must adjust their 2009 compensation schedules according to the guidance outlined in the August 12, 2009, memorandum, “Agent and Broker Compensation Rate Adjustment and Submission for 2010.”
- Plan sponsors should base their 2010 adjustments on the compensation rate paid for 2009 enrollments after September 1, 2009.
- Plan sponsors with plans for which they submitted 2009 compensation schedules can only adjust existing 2009 compensation schedules; they may not create any new compensation schedules for those plans.

II. New Schedules (no schedules existed in CY 2009)

- Plan sponsors may create new compensation schedules for plans that did not exist in CY 2009 by selecting a compensation amount that is at or below the fair market value amount established in the July 31, 2009, HPMS memorandum, “Revised Guidance on the 2009 MA And PDP Agent And Broker Compensation Refinements” and adjusting that amount according to the guidance outlined in the August 12, 2009, memorandum, “Agent and Broker Compensation Rate Adjustment and Submission for 2010.”
- Plan sponsors may create new compensation schedules for plans that existed in CY 2009 but did not have an associated compensation schedule (i.e., the plan chose to compensate \$0 for enrollments in that particular product) by selecting a compensation amount that is at or below the fair market value established in the July 31, 2009, HPMS memorandum, “Revised Guidance on the 2009 MA and PDP Agent and Broker Compensation Refinements” and adjusting that amount according to the guidance outlined in the August 12, 2009, memorandum, “Agent and Broker Compensation Rate Adjustment and Submission for 2010.”

III. Plan Consolidations

- Where a plan sponsor is consolidating plans, it may associate with the consolidated plan all, or a subset, of the 2009 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 August 12, 2009, memorandum, “Agent and Broker Compensation Rate Adjustment and Submission for 2010.”

- Plan sponsors consolidating plans for which they submitted 2009 compensation schedules can only adjust all or a subset of the existing 2009 compensation schedules; they may not create any new compensation schedules for those plans.

Attachment 1 - Revised Compensation Guidance Qs & As

1. Are all plans required to submit compensation information for 2010?

Except for sponsors of employer plans, all plan sponsors are required to submit 2010 compensation information, even if they are not using independent agents and brokers. Plan sponsors that are using – and intend only to use – employed sales staff, may submit \$0 compensation amounts. On Wednesday, August 12, 2009, all plan Compliance Officers and broker compensation point of contacts will receive an email containing the instructions and link to our secure compensation data collection website. A second email will follow containing a plan specific password. This tool will include functionality for plans sponsors to print, upload, and submit the required 2010 compensation information attestations. Plan sponsors should ensure that their compliance officer and broker compensation contact information in HPMS is current.

2. How do new plans calculate their 2010 compensation amounts? What about plans that decide mid-year to use independent agents?

All plan sponsors using independent agents during the 2010 plan year must submit their compensation information to CMS by August 21, 2009. Otherwise, the plan sponsor cannot compensate independent agents during the plan year. If a plan sponsor thinks it is possible that it would use independent agents during the 2010 plan year, it should file the anticipated compensation amount.

New plan sponsors and plan sponsors that did not use independent agents during 2009, but intend to use them in 2010, must select a compensation amount that is no more than the 2009 fair market value (FMV) cut-off amount and adjust it as follows:

$$2010 \text{ compensation amount} = 2009 \text{ compensation amount} * \text{MA or Part D rate \% change.}$$

In April 2009, CMS released the rate announcement for CY 2010 (<http://www.cms.hhs.gov/MedicareAdvtgSpecRateStats/Downloads/Announcement2010.pdf>). As provided on pages 4 and 37 of the rate announcement, MA rates increased by 0.81%, and Part D rates increased by 5.79%.

For example, if an MA or MA-PD plan paid agents \$400 in 2009, it would pay \$403 to agents in 2010:

$$\$400 + \$400*(0.0081) = \$403$$

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$$\$50 + \$50*(0.0579) = \$53$$

When calculating the compensation rates for 2010, 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.

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?

Employed agents, contracted agents who receive a base salary and sell exclusively for a plan, and agents selling employer plans are exempt from CMS' independent agent and broker compensation requirements. Plans using employed agents must still submit compensation schedules (see Question #1).