

## MEDICARE DRUG AND HEALTH PLAN CONTRACT ADMINISTRATION GROUP

### MEMORANDUM

**DATE:** July 31, 2009

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

**FROM:** Teresa DeCaro, RN, M.S. /s/  
Acting Director, Medicare Drug & Health Plan Contract Administration Group

**SUBJECT:** Revised Guidance on 2009 Medicare Advantage and Prescription Drug Program Agent and Broker Compensation Refinements

On June 26, 2009, CMS sent an HPMS email indicating that we were suspending implementation of our June 5, 2009, memorandum entitled “2009 Medicare Advantage and Prescription Drug Program Agent and Broker Compensation Refinements and Compensation Rate Adjustment for 2010.” It was followed on July 7, 2009, with another HPMS email that provided an overview of this more detailed guidance.

#### **Compensation Refinements for 2009**

In order to allow for more equity among plans with regard to independent agent and broker compensation, plans may, but are not required to, adjust their compensation amounts to any amount that is at or below the fair market value (FMV) cut-off amount established in the January 16, 2009, HPMS memorandum on agent and broker compensation structures. Plans that decide to adjust their compensation amounts must resubmit them by no later than August 10, 2009. This amount will become the new 2009 compensation amount and must be paid for enrollments effective from September 1, 2009, through the remainder of 2009.

We are establishing a new FMV cut-off amount of \$274 for initial compensation for plans in Puerto Rico (PR) and the U.S. Virgin Islands (USVI). Plans in PR and USVI with compensation rates above the FMV cut-off amount of \$274 are required to resubmit compensation schedules for 2009 with amounts at or below the FMV cut-off amount by no later than August 10, 2009. This amount will become the new 2009 compensation amount and must be paid for enrollments effective from September 1, 2009, through the remainder of 2009.

The chart below summarizes the 2009 FMV cut-off amounts for health plans and Prescription Drug plans (PDPs).

MA and Cost Plans				
	National	Connecticut, Pennsylvania, District of Columbia	California New Jersey	Puerto Rico, U.S. Virgin Islands
Initial	\$400	\$450	\$500	\$274
Renewal	\$200	\$225	\$250	\$137
PDPs				
Initial	\$50			
Renewal	\$25			

Plan sponsors should keep in mind that the compensation amount they select for the remainder of 2009 will be used to determine the amount for 2010 and subsequent years. Plan sponsors may only adjust existing schedules (all of them or a subset), but cannot create additional schedules.

Plan sponsors must submit revised compensation schedules to [CMSBroker@lmi.org](mailto:CMSBroker@lmi.org) by August 10, 2009, consistent with the instructions in Appendix 1. 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.

If you have questions regarding the information contained in this memorandum, please send them to [RegulationQuestions@cms.hhs.gov](mailto:RegulationQuestions@cms.hhs.gov).

## Appendix 1 – Instructions for Submitting Revised 2009 Compensation Schedules

**Compensation Certification:** Please complete and send to CMS the compensation certification found at Attachment A to this document. Attachment A certifies that an organization’s 2009 broker compensation structure meets the requirements outlined in this letter. The organization’s chief executive officer or other authorized official should sign it. Acceptable formats for Attachment A are PDF or other image file (we need to see the signature).

**Agent Compensation Workbook:** Please submit your revised 2009 compensation data by changing the currently approved version of Attachment 4 to the HPMS letter, dated November 7, 2008, on agent/broker compensation. Please modify (as needed) only the three 2009 tabs of the agent compensation workbook. The tabs are “2009 Marketing Orgs,” “2009 Writing Agents (Plan Paid),” and “2009 Writing Agents (M.O. Paid).” Do not modify or delete the information contained in the 2006, 2007, and 2008 tabs. Do not modify or delete column headings. Do not delete columns. Do not enter text or dollar signs in the data cells. Please remember that the values in the tab called 2009 Marketing Orgs should reflect only the compensation retained by the marketing organizations after paying agent compensation. The only acceptable format for Attachment 4 is .XLS.

Organizations are not required to submit documentation if they do not have any changes to currently approved broker compensation rates for 2009. We have contracted with LMI to provide technical assistance to organizations submitting compensation data. If your organization has any difficulty locating the currently approved electronic version of Attachment 4, please contact Paul Costello at (571) 633-7769. If your organization requires technical assistance, you may contact Jim O’Keiff at 703-917-7236.

Please e-mail the new compensation certification and the modified agent compensation workbook to [CMSBroker@lmi.org](mailto:CMSBroker@lmi.org) by August 10, 2009.

## Revised Compensation Guidance Qs & As

- 1. It will be difficult for plans to operate simultaneous agent payment systems for the remainder of 2009. Can we pay all business (including business prior to September 1, 2009) at the new 2009 compensation amounts? If so, do the new rates apply retroactively or after September 1<sup>st</sup>?**

Rather than requiring plans to operate two different payment systems simultaneously, plans may compensate agents at the new rate for all business beginning September 1, 2009, through the remainder of the year. However, plans may not adjust payments prior to September 1<sup>st</sup> retroactively. All new business, effective beginning September 1, 2009, must be compensated at the new compensation amount through the end of 2009.

- 2. What should plans do if they do not use independent agents, but use contracted agents who receive a base salary and sell exclusively for a plan? What should employer plans do?**

Employed agents, contracted agents who receive a base salary and sell exclusively for a plan, and agents selling employer plans are exempt from the independent agent and broker compensation requirements.

- 3. The FMV chart shows rates for “MA and Cost plans” and “PDPs”, but does not specifically address MA-PD plans. Does this indicate that for enrollments into MA-PD plans an agent would be compensated the MA amount plus the PDP amount?**

Agents selling MA-PD plans must be compensated at the MA amount. Plans cannot combine the MA or Cost plan amount with the PDP amount to compensate for the sale of an MA-PD plan.

- 4. Can a plan choose not to adjust its current 2009 compensation amount? If so, is a certification still required indicating that the plan is not adjusting its compensation?**

Plans are not required to adjust their 2009 compensation amounts and are required to complete a 2009 certification only if they are submitting an adjustment to their 2009 compensation amount. (Plans in PR and USVI with compensation amounts above the new FMV cutoff amount are required to resubmit compensation schedules). It is important for plans to understand that, whether they decide to adjust their compensation amount or not, the final 2009 compensation amounts will be used to calculate compensation amounts for 2010 and subsequent years.

- 5. Can a plan create additional schedules and submit them with their 2009 adjustment? Are plans required to update all schedules associated with the plan?**

Plans may only update existing 2009 schedules. They cannot create additional schedules and submit them as part of their 2009 update. Plans may update all of their existing schedules, or a subset of their existing schedules, as needed to reflect new compensation amounts.