

CENTER FOR MEDICARE

DATE: September 10, 2010

TO: Medicare Advantage Organizations
Medicare Advantage-Prescription Drug Organizations
Prescription Drug Plans Sponsors
1876 Cost Based Contractors

FROM: Danielle R. Moon, J.D., M.P.A.
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SUBJECT: CMS Surveillance Information for Contract Year 2011 Annual Election Period

This memorandum serves to communicate important announcements and guidance related to CMS' surveillance strategy for Contract Year (CY) 2011 marketing activities.

I. Surveillance Console – Response Timeframes and Updated Points of Contact

In an effort to provide organizations sufficient opportunity to complete internal investigations into allegations of marketing violations, CMS is allowing organizations 5 business days (an additional 2 business days) to provide responses via the Surveillance Console. The timeframe starts on the next business day following receipt of the deficiency notification.

If there are any changes to your organization's current contact(s) in the Surveillance Console, please send an email to SurveillanceCMS@cms.hhs.gov with a copy to Serrick.McNeill@cms.hhs.gov no later than **September 20, 2010** with the following information:

- The nature of the changes (specify whether you are requesting an addition, deletion, or change to a point of contact).
- The precise name of the parent organization (as it appears in HPMS).

Anyone within your organization who was granted access to the Surveillance Console, but has not activated their account by the date of this memorandum will be removed from the Surveillance Console. If you have any questions as to the contacts currently associated with your organization, please contact your Regional Office Account Manager.

II. Expectations for Compliance

During CY2010 marketing surveillance activities, CMS observed that organizations generally improved performance following the receipt of compliance notifications. For CY2011, CMS

expects organizations to be proactive in their efforts to implement measures that will prevent or mitigate marketing violations prior to engaging in any marketing activities. This includes such measures as: instituting a robust internal surveillance program; standardizing training and presentation packages; implementing effective controls to track agent/broker licensing information; and ensuring that agents or plan representatives have completed all required training programs prior to marketing.

For CY2011, CMS will consider prior performance in determining the appropriate compliance action. Organizations with a history of poor performance will be at risk for escalating compliance and/or enforcement action if significant performance issues and/or recurrent marketing violations are discovered.

Additionally, CMS encourages organizations to take appropriate corrective action measures, including conducting training or taking action against outlier agents and brokers, as quickly as possible following receipt of the *initial* notification of deficiencies from CMS. Organizations receiving the initial notification of deficiencies should not wait for a formal compliance action before instituting internal process improvements and taking the appropriate corrective action measures. CMS considers your organization to be on notice of these violations on the date the initial notification has been issued through the Surveillance Console.

Finally, CMS will once again make the secret shopping tools available to organizations on the Surveillance Console prior to the start of the CY2011 annual election period. However, CMS requires organizations to be in compliance with all regulatory provisions and CMS marketing guideline requirements and not just those identified in these tools.

III. Common Marketing Violations

There were numerous violations occurring at a high rate during marketing surveillance activities in CY2010. We want to highlight these areas for organizations, so appropriate oversight is planned to ensure these violations do not recur.

- **Clear and Accurate Information Related to Drug Coverage**

In CY2010, CMS observed a high incidence of organizations not providing clear and accurate information related to their drug benefit, including information related to costs, plan formularies, and the coverage gap. (*See HPMS Memorandum, September 29, 2009.*)

- **Pressure Tactics, particularly related to contact information**

Organizations must eliminate any type of pressure tactics that *require* Medicare beneficiaries to provide their contact or personal information at marketing sales events. (*See Medicare Marketing Guidelines - Section 70.8 and HPMS Memorandum, September 29, 2009.*)

- **Upload and Cancelling Marketing Events**

Organizations must ensure that the provisions in the Medicare Marketing Guidelines are followed related to uploading and cancelling marketing events, to minimize inconvenience to Medicare beneficiaries. *(See Medicare Marketing Guidelines - Section 70.8 and HPMS Memorandum, September 26, 2008.)*

- **Non-Renewal Information Provided by Call Center Customer Service Representatives**

CMS observed that non-renewing organizations did not always provide accurate or complete information to callers asking questions about their options and rights. *(See Section VI below for specific guidance in this area.)*

- **Websites**

CMS expects organizations to adhere to marketing website requirements including ensuring that CMS marketing approval ID numbers are present and that links to all required documents are present, active, and current. *(See Medicare Marketing Guidelines - Section 100.)*

IV. Prohibited Activities for Inbound Informational Scripts during the Annual Election Period (AEP)

In prior year surveillance activities, CMS observed that some organizations required prospective beneficiary identification numbers (e.g., Social Security number, bank account number, credit card number, HICN) as part of pre-enrollment inbound informational scripts and found that if the caller did not provide this information, the sponsor's Customer Service Representative (CSR) would terminate the call.

CMS is reminding organizations of the requirements of Section 80.1.5 of the final CY2011 Medicare Marketing Guidelines, released June 4, 2010, which specifically states the prohibited activities for inbound informational scripts. These activities include:

- Plan sponsor's CSRs are not permitted to request prospective beneficiary identification numbers (e.g., Social Security number, bank account number, credit card number, HICN) as part of pre-enrollment inbound informational scripts (except information regarding special needs status when determining the appropriateness of enrollment into a SNP.)
- Plan sponsor's CSRs are not permitted to transfer the caller to the enrollment area.

CMS wants to remind organizations that they **may not** require or pressure a caller to provide private information when a consumer is calling for general information. Organization's CSRs must be able to provide general information in response to inquiries outlined in Sections 80.1 through 80.1.4 of the Medicare Marketing Guidelines.

V. CMS' Expectations for Call Centers of Organizations with Non-Renewing Plans or Service Area Reductions

As in the past, CMS will continue to conduct surveillance of plan sponsors that are non-renewing or reducing service areas. CMS expects plan sponsor's customer service centers to provide, at a minimum, the information outlined in the model language referenced in Section 50.1.22 of the Medicare Marketing Guidelines. Plan sponsors whose customer service representatives provide inaccurate or incomplete information will be considered non-compliant.

If you have any questions concerning this guidance, please send an email to SurveillanceCMS@cms.hhs.gov.