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MEDICARE ADVANTAGE NEWS

MA Plans Are Warned to Expect Intensified Marketing Regulation in Enrollment Season

As Medicare Advantage plans gear up for a more compressed and financially difficult 2011 marketing season this fall compared with a year earlier, they also should prepare for intensified regulation of their marketing efforts, industry consultants and vendors tell *MAN*. And an HHS Office of Inspector General official says that CMS now agrees with OIG's revised recommendations on steps the agency should take to detect and prevent problems involving MA sales agents.

When OIG on March 1 released a scathing report on sales-agent compensation, licensure and conduct *(MAN 3/11/10, p. 1)*, it noted that CMS did not agree with three of its five recommendations. CMS's contentions then were that existing regulations applied to some of the compensation issues turned up and that it does not have the authority to require plan sponsors to report terminations of unlicensed sales agents to states.

OIG has since modified its recommendations and obtained CMS agreement, including on making sure that unlicensed sales agents are terminated, Ann Maxwell, Chicago-based regional inspector general in HHS's Office of Evaluation and Inspections, told a session of the 2010 Medicare Compliance Congress in Washington, D.C., July 13. In response to a question at the conference, which was sponsored by Healthcare Education Associates, she added that OIG considers a person unlicensed even if his or her license expired just a short time ago.

Another recommendation that Maxwell said CMS now agrees with, even though it didn't before, is issuing additional guidance regarding payments to field marketing organizations (FMOs). The current rules, in their focus on fair market value, have "gray" areas, Maxwell asserted.

She also emphasized that CMS regulations allow payments of administrative fees to sales organizations only to reimburse actual costs. Moreover, she said, the rules say any "finder's fee" must be deducted from the overall compensation for a sales agent. And MA plan sponsors clearly are responsible for the conduct of their downstream sales-entity partners, Maxwell added.

Looking at the broader issue of overall marketing compliance, CMS generally is not finding flagrant abuses by MA plans despite the agency's expanded regulatory program, said Michael Adelberg, a former MA operations head at CMS who now is vice president, public policy and government affairs at Universal American Corp. Adelberg told a session of the conference that there are a lot of opportunities for unintentional mistakes since the CMS marketing guidelines are "complicated."

Unintentional or not, CMS has found a significant number of MA marketing problems recently, based on data presented at the conference by Scott Cranford, vice president, sales and marketing for compliance auditing firm TrendSource. In its 858 "secret shopping" excursions covering 136 MA organizations during the 2010 enrollment season, for instance, Cranford said, CMS found "deficient events" in 43.2% of the visits. Common deficiencies, he said, included lack of clear and accurate information on drug coverage, making unsubstantiated statements, requiring Medicare beneficiaries to provide contact information for themselves, and "event no-shows."

"Informal/kiosk events" represent an area that is growing and leading to frustrations regarding "last-minute cancellations" and other problems, according to Cranford.

Plans Said to Need Individual-Agent Data

He advised plans to have year-round monitoring efforts regarding their marketing and to do random sampling so that they can have confidence in the data they're getting. MA plans should have tools, he said, that will allow them to pull sales-agent data from specific enrollment periods and customized date ranges and should have predetermined pass/fail criteria for how to judge the results that turn up. Cranford added that plans should get results by individual agent and have a log of internal corrective actions they take.

Other challenges stem from the shorter enrollment season for 2011 caused by the reform law's provision ending the Open Enrollment Period (OEP) that MA plans have had from January to March *(MAN 4/15/10,*

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p. 1). Cranford said he expects as a result to see a pullback in marketing events in favor of "a lot more" activity in "one-on-one" sales efforts as well as "some increase" in call-center activity. He warned plans that their "one-on-ones" will get close market surveillance from CMS.

Bob Ditwiler, president and CEO of South Shore Venture Enterprises, a Florida-based firm that specializes in marketing to seniors and works with many Medicare plans, says he is seeing other trends in light of the lack of an OEP for 2011. In situations where plans would have done educational seminars for beneficiaries starting in mid-November in the past, he tells *MAN*, he now is seeing plans intending to start such seminars in October. Similarly, plans are eyeing "doubling up" on mailings to get more materials to beneficiaries more quickly than in the past, he says.

There are some things plans can do even before the start of the 2011 marketing season in October, says Donna Burtanger, senior director of Medicare solutions at vendor Silverlink Communications. Plans, for instance, points out Burtanger, can educate current members about upcoming changes via their websites. This could be especially useful, she tells *MAN*, in situations such as having members in private-fee-for-service plans that won't be available in most counties next year because of the end of PFFS "deeming" *(MAN 1/28/10, p. 1)*.

The websites, she says, can include details of 2010 product offerings and emphasize features such as the lack of restrictions and the attributes of the organization running the plan. Sponsors also can run non-product ads showing they've been part of a community for a long time, Burtanger adds. She says these kinds of "brand" promotions are useful in the "offseason" for marketing and are permissible under CMS guidelines.

Retention efforts are particularly important in the new MA climate stemming from the reform law, but plans need to be wary on this too for another regulatory reason, suggests Burtanger.

If plan marketing, for example, is successful in persuading a member to stay with a plan sponsor but in another product because the member's PFFS product is exiting, and if the member disenrolls from the new product within 90 days of enrolling because of dissatisfaction with it, CMS will notice that, she says. CMS considers such rapid disenrollments when it decides on an MA plan's star ratings, which in turn will determine whether the plan qualifies for the quality bonuses that begin in 2012 *(MAN 7/1/10, p. 1)*, Burtanger notes.

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