

To Facility Director:

The Centers for Medicare & Medicaid Services (CMS) and the Oklahoma Insurance Department wanted to share with you some important information regarding the rights and protections of your Medicare and Medicaid residents, including those who are entitled to both programs (“dual eligibles”).)

We are soliciting the assistance of facility directors who serve vulnerable Medicare beneficiaries in alerting us to instances of inappropriate and overly aggressive behavior by insurance agents selling Medicare Advantage and Prescription Drug Plans.

As you are aware, prescription drug coverage through the Medicare Prescription Drug Program began in 2006. This included a change in drug coverage for dual eligibles. All Medicare beneficiaries, including dual eligibles, can choose to enroll in a Medicare Prescription Drug Plan (PDP). PDPs are private insurance plans, offered as Medicare Part D, that have been approved by CMS as meeting all of CMS rules and requirements. Traditional Medicare coverage (Medicare Part A and Medicare Part B) does not change when a beneficiary enrolls in a PDP. Dual eligibles are also eligible to receive extra assistance from the government to help pay for premiums and copayments for their medications.

In addition to PDPs, Medicare beneficiaries also have the choice to obtain Medicare prescription drug coverage through Medicare Advantage plans with prescription drug coverage (MA-PDs), if they decide to enroll in such a plan. MA-PDs are private managed care plan options for beneficiaries that provide health benefits covered by traditional Medicare (Medicare Parts A & B), in addition to providing prescription drug coverage. However, some Medicare beneficiaries may be confused about MA-PDs. If a beneficiary currently has traditional Medicare and decides to enroll in an MA-PD, that beneficiary will no longer receive services through traditional Medicare. In addition, since MA-PDs are a private managed care option, the plan may have certain network restrictions and may limit the health care providers that the beneficiary can utilize.

Both PDPs and MA-PDs can be sold through insurance agents and brokers. While most insurance agents and brokers are honestly providing a valuable service to their clients, there have been troublesome reports of inappropriate and aggressive insurance agent and broker activity regarding enrollment of dual-eligibles into PDPs or MA-PDs. Unlike other Medicare beneficiaries, dual eligible individuals may switch PDPs or MA-PDs at any time during the year and are not limited to the set annual and open-enrollment periods established for the general Medicare-eligible population. This ability to switch plans year-round has caused some insurance agents to target the dual eligible population in order to gain commissions they may generate by switching a dually-eligible individual from one plan to another. Unfortunately, CMS and the Oklahoma Insurance Department have

become aware of incidents where certain agents have taken advantage of this situation, causing problems for vulnerable, dual-eligible individuals.

You and your residents should also be aware of a new federal law and existing state rules designed to protect individuals from inappropriate and illegal marketing practices. The Medicare Improvements for Patients and Providers Act (MIPPA) (Pub. L. 110-275), enacted in the fall of 2008, provides new protections for beneficiaries through increased oversight of such agent behavior. MIPPA provides very specific guidelines for marketing behavior, which include agent and broker activities. Because agents and brokers who sell PDPs and MA-PDs must be licensed by the states in which the agent or broker is doing business, State DOIs have the ability to take enforcement action against an agent or broker who is engaged in inappropriate marketing and sales activity. Together, MIPPA and state laws provide comprehensive rules for overseeing agent behavior.

CMS and the Oklahoma Insurance Department have been working together to ensure that PDP and MA-PD plans, along with their agents and brokers follow these rules by sharing information concerning the actions of the plans and agents. In addition, CMS instituted a comprehensive surveillance and enforcement strategy of these plans to ensure that they are in compliance with both federal and state rules. However, we know we cannot reach every beneficiary.

We need your help in monitoring for any inappropriate behavior of agents or plans. We also recognize that your residents would benefit from additional information from us. In return, we want to be a resource for you if you have concerns or specific agent complaints you would like to report. The CMS Dallas Regional Office may be contacted at 214-767-6401. The Oklahoma Insurance Department may be contacted at 1-800-522-0071 (in-state only) or 405-521-2828. Please be assured that we take all complaints very seriously and can serve as a resource for your questions. As an additional resource, the (State) Health Insurance Assistance Program (SHIP) can provide unbiased information for you and your residents.

Because insurance agents are directly compensated by the plans they represent they generally do not offer eligible Medicare beneficiaries comprehensive benefit comparisons of all products that are available. The (State) SHIP can serve as resource in helping Medicare beneficiaries obtain the information needed in order to make an informed decision about their healthcare options. The SHIP can be reached at 1-800-763-2828.

Enclosed are specifics of prohibited and inappropriate behavior of agents selling PDP or MA-PD products. We hope that you find this helpful. We have also included in this letter a document that we hope you will find helpful for your residents. Please feel free to post in common areas or use at your discretion.

Thank you for this opportunity to partner with you concerning this very important initiative.

Julie Kennedy  
Associate Regional Administrator  
Division for Medicare Health Plans Operations  
/s/

Kim Holland  
Insurance Commissioner  
State of Oklahoma  
/s/

### **Prohibited Agent Behavior**

- Agents cannot state that they are from Medicare or use “Medicare” in a misleading manner. For example, an agent cannot state that they are endorsed by Medicare, are calling on behalf of Medicare, or Medicare asked them to call or see the beneficiary.
- Agents are prohibited from soliciting potential enrollees door-to-door.
- Agents are prohibited from sending unsolicited emails
- Agents may not conduct outbound marketing calls, unless the beneficiary requested the call or the beneficiary is an existing client. (Agents are allowed to call their existing clients to discuss new plan options.)
- Agents may not approach beneficiaries in common areas (i.e. parking lots, hallways, lobbies)
- Agents may not call or visit a beneficiary who attended a sales event, unless the beneficiary gave express permission.
- Agents may not market non-health related products (such as annuities and life insurance) to prospective enrollees during MA or PDP sales activities or presentations. This is considered cross-selling and is prohibited.
- Agents may not contact friends or family of clients under the premise that they had been “referred.” Agents may leave cards behind for clients to provide to friend or family. The “referred” beneficiary has to contact the agent directly.
- Agents cannot offer gifts to potential enrollees of more than \$15. The value is based on the retail purchase price of the product.
- Agents must clearly identify the types of products that will be discussed before marketing to a potential enrollee. They must initially meet with a beneficiary to discuss specific lines of business.
- Prior to any marketing appointment, the beneficiary must agree to the “scope of the appointment” and that the agreement must be documented. For example, if a beneficiary attends a sales presentation and schedules an appointment, the agent must obtain written documentation that is signed by the beneficiary agreeing to the products that will be discussed during the appointment.
  - Additional products may not be discussed unless the beneficiary requests the information.
  - In addition, any additional lines of plan business that are not identified prior to the in-home appointment will require a separate appointment.
  - Appointments may not be re-scheduled until 48 hours after the initial appointment.
- Agents may not make unsolicited contacts to beneficiaries under the guise of selling a non-MA or non-PDP product where the conversation turns to MA or PDP. For example, an agent may not begin by selling a Medicare Supplement plan and then turning the conversation to MA or PDP products.

- Agents may not conduct sales activities in healthcare settings except in common areas. Appropriate common areas include hospital or nursing home cafeterias, community or recreational rooms, and conference rooms. Agents are prohibited from conducting sales presentation and distributing or accepting enrollment applications in areas where patients primarily intend to receive health care services. Improper areas include waiting rooms, exam rooms, hospital patient rooms, dialysis centers and pharmacy counter areas.
- Agents are only permitted to schedule appointments with beneficiaries residing in long term care facilities upon request.
- Agents may not provide meals to potential enrollees at sales presentations.
- Agents may not engage in marketing or sales activities at an educational event.

### **Appropriate Agent Behavior**

- Agents or brokers who enrolled a beneficiary in a plan may call that beneficiary while they are a member of that organization.
- Agents may call beneficiaries who have expressly given them permission for a plan or a sales agent to contact them, for example by filling out a business reply card or asking a Customer Service Representative (CSR) to have an agent call them. The permission applies only to the entity from whom the beneficiary requested contact, for the duration of that transaction, or as indicated by the beneficiary.
- Agents may initiate a phone call to confirm the appointment that has already been agreed to by a beneficiary, but may not change the scope of the appointment without appropriate documentation.
- Sales presentations to groups of beneficiaries do not require documentation of the beneficiary agreement because they are not personal/individual sales events.
- While agents are no longer permitted to provide meals, they may provide refreshments and light snacks to prospective enrollees at sales presentations.