DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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CENTER FOR DRUG AND HEALTH PLAN CHOICE

Date: January 16, 2009

To: Medicare Advantage Organizations,
Medicare Advantage-Prescription Drug Organizations,
Cost Based Contractors,
Prescription Drug Plan Sponsors,
Employer/Union-Sponsored Group Health Plans

From: Louis Polise
Acting Director, Medicare Drug and Health Plan Contract Administration Group

Subject: January 16, 2009 replacement of the December 24, 2008 memo: 2009 Medicare Advantage and Prescription Drug Program Agent and Broker Compensation Structures

This memo is being reissued to correct the percentage of plans that were identified as needing revision. See the italicized text below for revision.

To ensure that Medicare Advantage (MA) organizations and Prescription Drug Plan (PDP) sponsors are in compliance with the November 14, 2008 regulation concerning agent and broker compensation, and the guidance CMS provided on November 10, 2008, we required organizations to certify and submit compensation structures paid in years 2006 through 2008 and compensation structures that will be used for 2009. CMS provided organizations with two options for calculating their 2009 agent and broker compensation structures. This included option 1 - using 2006 compensation adjusted by the average change in MA or PDP rates as published in the MA and PDP rate announcement to determine the 2009 rate or option 2 - performing a market analysis of 2006-2007 for similar plan types in similar geographic areas and applying the same inflation adjusters to determine the 2009 rate.

In total, 292 parent organization submitted broker fee compensation data. Of these, 105 indicated they used brokers for 2009. Both marketing-organization-paid and plan-paid schedules to writing agents were used in the analysis. CMS performed analyses on approximately 15,000 compensation data records for 2009 (compensation schedule / plan combinations) and another 4,000 records (by plan, agent type, and year) representing means and other statistics on historical broker fees for 2006 and 2007. ***Our final analysis results in 23 percent of PDP and 21 percent of MA / Cost plan submitted compensation schedules requiring revision.***

The final result of our analysis is the national cut-off for fair market values ($400 for health plans and $50 for prescription drug plans for initial compensation) with some exceptions for specific states.

Initial Compensation Structures for 2009

All Medicare Advantage & Cost Plans		
$400	$450 Exceptions	$500 Exceptions
National	State of Connecticut Commonwealth of Pennsylvania District of Columbia	State of California State of New Jersey
Prescription Drug Plan (PDP) Sponsors		
	$50 National	

CMS analysis of the data took into account both plan geography (states and metro areas) and organization type (Local CCP, Regional CCP, PFFS, PDP, etc). Specifically, we grouped the data in four ways: national, national by organization type, state by organization type, and metropolitan area by organization type. We focused our analyses on initial (first-year) compensation values (the ensuing year amounts are a fixed 50 percent of this value).

To determine compensation schedules falling outside of an accepted range, we used a methodology that identified a modal range (most common range of observations) and then established limits just above this modal range. That methodology yielded a national cut-off value for initial broker compensation of $400 for health plans and $50 for prescription drug plans. We then established a preliminary set of exceptions based on geography and plan type differences. We applied 2006-2007 compensation schedules and growth factors to historical broker fee compensation data to validate or disprove those geographic exceptions. The analysis also identified the largest share of structures in a geographic market supplied by one organization for the purpose of ensuring that no one organization would be unfairly advantaged. If a specific geographic area (state or metropolitan area) had 50 percent or more of its broker fee structure data supplied by one organization, we did not consider that geographic area for a possible exception above the national cut-offs.

We considered all the plan types, including Special Needs Plans, for determining the geographic exceptions but ultimately used the Local CCP data to establish them because the remaining organization types generally cover large geographic areas beyond the state level. Also, we considered Metro Area exceptions but ultimately concluded that the differences we found were not meaningful.

Organizations that have been identified with outlier compensation structures are being separately notified with instructions on revising their schedules. In our November 10 guidance, CMS outlined the rationale for the fair market value and historical rates. As a result agent and broker schedules in excess of values listed above fall outside the rates and will need to be adjusted accordingly.

The Medicare Improvements for Patients and Provider Act of 2008 (MIPPA) required that CMS establish limitations on agent broker compensation to ensure that beneficiaries enroll in a plan that is intended to best meet their health care needs. On September 18, 2008, CMS published 4138-IFC that included changes to the MA Program and PDP. Among these changes, the

regulation required plans to establish compensation levels that are reasonable and reflect fair market value for the services performed. Based on the feedback received and concerns with interpreting the regulation, CMS published an additional regulation on November 14, 2008 (displayed at the Federal Register on November 10, 2008) to specify that the compensation paid for enrollment must be of fair market value. CMS further indicated that an organization could be required to adjust its compensation rates if determined not to be reasonable, or if such rates do not ensure that beneficiaries' interests are not harmed by excessive compensation paid. In addition, compensation must be paid for 5 renewal years at an amount that can be no more and no less than 50 percent of the total initial compensation amount paid for that beneficiary. In 2009, CMS requires organizations to pay the renewal rate for all enrollments except those of beneficiaries newly entitled to Medicare or enrolling in an MA plan, Cost plan or PDP for the first time. This means for example that for 2009 MA plans with an initial year commission amount of $400 will pay a commission of $200 to their agents and brokers, unless the enrollment is for a beneficiary newly entitled to Medicare or enrolling in a MA plan for the first time.

For further information on 2009 MA and PDP agent and broker compensation structures, please write to the following mailbox: regulationquestions@cms.hhs.gov.