

January 9, 2012

Jon Blum, Director, Center for Medicare
Centers for Medicare and Medicaid Services
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Subject: Urgent Need for SEP for Beneficiaries in Restrictive Network Part D Plans

Dear Jon:

We are following up on concerns that the National Community Pharmacists Association (NCPA) raised with you first in November 2010, again in our November 1, 2011 letter regarding Part D preferred network plans, and also during our December 12, 2011 teleconference with CMS' Part D marketing team. We are writing once again to update you as the 2012 Part D plan year begins regarding the negative impact on beneficiaries resulting from the troubling marketing practices by Medicare Part D preferred network plans.

We are reiterating our request for you to take action to prevent these misleading marketing practices next year, as well as taking immediate action to assist patients who believe that they have been materially misled by Part D preferred network plans for the 2012 plan year. As outlined below, many beneficiaries who signed up for a preferred network plan believed at the time of enrollment that they could get co-pays at \$0 or reduced costs, even if they did not go to one of the preferred pharmacy providers. These patients are upset and inconvenienced because they now have to drive long distances to locate preferred providers to obtain their medicines, oftentimes expending considerable resources, or pay more than they thought they would have to pay when they enrolled. We respectfully ask that this situation be remedied immediately.

Both in our November 1, 2011 letter to you and during our December 12, 2011 teleconference with the CMS Part D marketing team, we specifically outlined concerns we had that the Medicare Plan Finder and advertising by Part D preferred plans and their preferred providers, were either vague, misleading, or deceptive to beneficiaries. For example, one ad claims that beneficiaries can obtain \$0 copays at "in store" pharmacies, but doesn't explicitly and clearly say that it includes only a select group of pharmacies. We explained that Medicare Plan Finder needs to make beneficiaries aware, earlier in the plan finding process and more expressly, that preferred plan lower co-pays are only available in preferred provider pharmacies. Similarly, we explained to the marketing team that Medicare Plan Finder requires a beneficiary to maneuver the plan finder process multiple times to compare the cost of drugs at a preferred pharmacy versus a non-preferred pharmacy. Finally, with regard to Medicare Plan Finder, we notified CMS that the list of network providers that the website identifies as associated with a particular plan in a particular area are often misleading, as they include providers that most patients cannot access, such as a doctor's office, hospital pharmacy or closed door long-term care pharmacy.

Along with our Medicare Plan Finder concerns, we have expressed our concerns that the websites for some of the preferred plans and their preferred providers do not make patients aware they must obtain drugs from a preferred provider in order to obtain the advertised lower co-pays. These website and paper-based advertisements were at best confusing and at worst misleading to beneficiaries. Moreover, the plan finder doesn't tell a beneficiary that is in a long term care facility that they cannot obtain medications from closed door pharmacies.

In response to our concerns, the CMS marketing team disagreed with our characterization that Medicare Plan Finder is misleading, vague or confusing. Their advice to us was to encourage our members to tell beneficiaries to call 1-800 MEDICARE and complain about misleading marketing practices through that vehicle, which would possibly trigger scrutiny of a given plan through CMS' complaint tracking module.

As we predicted, right out the gate during the first week of the new plan year, we have been inundated with complaints regarding Part D preferred network plans. Below and attached, we are outlining a few examples:

- In Tennessee, a pharmacist owner helped several hundred patients evaluate the best plan for them and Coventry's First Health Value Plus was the best for many of them. He used the Medicare.gov website and put in his pharmacy as their preferred pharmacy to get the correct information. Now he has many patients with \$7 co-pays because Coventry had selected a preferred network of pharmacies that would offer the scripts for \$0 co-pays, which was not made clear during the enrollment period. The pharmacist feels this is false advertising and many of his patients are very upset.
- In Wisconsin a community pharmacy patient presented to the pharmacy to pick up his normal refills. He was surprised at the amount of his co-pays. The pharmacist told him they ran it through his new insurance and that things must have changed with the New Year. He didn't want to pay the co-pays so the pharmacy called his insurance company and they informed him that he had to get the meds at one of the large chain pharmacies to realize the lower co-pays. He left the meds at his independent pharmacy while he went home to look into it further. He called the pharmacy back and said there was nothing he could do besides use one of the other pharmacies because he lived on a fixed income and money was tight. The nearest chain pharmacy is 25 miles from his home. He said he's sorry but there is nothing he can do for now because he's locked in for the year.
- In North Carolina, a patient attempted to fill generic medications at his community pharmacy and was astounded to find that he had to pay co-pays. He told the pharmacist that when he signed up for the Humana Value plan, that his co-pays were supposed to be \$0 for generic medications. The pharmacist determined that the \$0 co-pays only applied to preferred pharmacies, such as Wal-Mart. The patient was very upset and told the pharmacist that he never saw information that \$0 co-pays were only available in preferred pharmacies in any of the information he was given when signing up for the plan. To go to Wal-Mart and receive the \$0 co-pays the patient must now drive 25 miles.
- In Pennsylvania, a long time customer of one of our community pharmacy members recently presented his new Humana Part D card and got his generic medication filled for a \$7 co-pay. The patient said that his agent sold him the plan based on \$0 co-pays regardless of the store. The agent never told him that the \$0 co-pay was only available at Wal-Mart.

Based on these examples, there is no question that patients feel that they were materially misled by Medicare Plan Finder, preferred plan/preferred provider advertising and/or enrollment agents. These patients are upset, feel duped and, in many cases, are extremely inconvenienced by the new long distances they have to drive to obtain their medications. Many of these elderly patients, who live on fixed incomes, cannot afford the higher copays to stick with their community pharmacy; nor can they afford to travel long distances. These are just a few examples and we are attaching to this letter written communications from our members detailing the nature of patient complaints regarding the Part D preferred plans.

When we outlined the problems we foresaw from misleading Part D preferred plan marketing practices, the CMS marketing team, during our December teleconference, told us to encourage our members to tell patients to call 1 800 MEDICARE and log complaints. Simply put, this advice does not work. We have passed along this advice to several of our members.

The response has essentially been that patients are elderly and do not want the hassle of having to deal with an automated and confusing telephone complaint system. These elderly and vulnerable patients are not likely to navigate through a multitude of telephone prompts to register their complaints, and even if they tried, may not be able to do so successfully. This does not mean that these patients are not upset. They will still complain to their old pharmacy, their new pharmacy or their new preferred plans. These patients want and need a simple method to register a complaint. CMS' current complaint system does not allow for this.

CMS has stated to us there are few complaints regarding Part D preferred plans, Medicare Plan Finder or preferred plan marketing practices, but this is simply not true. Merely because patient complaints are not logged into the CMS complaint tracking module through 1-800 MEDICARE does not mean they do not exist. Accordingly, we are requesting that CMS provide us and beneficiaries with a feasible vehicle through which patients can register complaints regarding Part D preferred plans and their related marketing practices.

We are further asking CMS to take action to help those patients who were misled. Given that these patients believe they have been subject to material misrepresentations in the marketing of their Part D plan, they should be allowed to take advantage of a Special Enrollment Period and enroll in a different Part D plan that is more convenient for them. Section 30.3.3 of Chapter 3 of the Medicare Prescription Drug Manual specifically provides that:

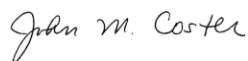
In the event an individual is able to demonstrate to CMS that the PDP of which he/she is a member substantially violated a material provision of its contract under Part D, the individual may disenroll from the PDP and enroll in another Part D plan. Substantial violations in relation to the individual include, but are not limited to: The PDP sponsor (or its agent) materially misrepresented the PDP when marketing the PDP.

We believe that this remedy is plainly applicable with regard to the beneficiary complaints that we are seeing.

Finally, CMS should take action to prohibit a repeat next year of the misleading marketing practices outlined above, as well as taking action to make next year's Medicare Plan Finder tool less confusing and more user-friendly.

Thank you for allowing us to provide our views to you on these issues. We are eager to talk further about these proposed solutions in greater detail with you.

Sincerely,



John M. Coster, Ph.D., R.Ph.
Senior Vice President, Government Affairs

Attachment