



Centers for Medicare & Medicaid Services

Contract Year 2011
Annual Election Period (AEP)

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Introduction

For the 2011 Annual Enrollment Period (AEP), the Centers for Medicare & Medicaid Services (CMS) continued its national surveillance program in order to protect beneficiaries from inappropriate marketing of Medicare Advantage and Prescription Drug Plan sponsors (herein referred to as “plan sponsors”). The surveillance program, overseen by a highly collaborative team of Regional and Central Office managers and staff (“the Surveillance Team”), consisted of secret shopping of plan sponsored marketing events, comprehensive outreach and collaboration with internal and external partners and other oversight efforts.

A number of new practices and initiatives were implemented during the 2011 AEP surveillance effort to more efficiently deploy limited resources, broaden CMS’ reach on surveillance, and improve transparency and collaboration. These practices included the incorporation of a risk assessment process used to target efforts toward those plan sponsors that posed greater marketing risks to beneficiaries as well as an in-depth communication and outreach strategy across internal and external partners. The streamlined processing of shopping results allowed the Surveillance Team to efficiently review, assess and communicate back to plan sponsors the deficiencies that were identified in order to allow for prompt correction which, subsequently, provided a positive impact in the marketplace. Outreach efforts were also a key to our success. Communications and collaboration with other CMS components, plan sponsors, trade associations, State Departments of Insurance (DOIs), State Health Insurance Programs (SHIPs), and Senior Medicare Patrols (SMPs) ensured that CMS’ marketing messages were widely disseminated thereby increasing the number of eyes watching the Medicare marketplace. End of year listening sessions with plan sponsors were held again this year to ensure that future efforts will appropriately address issues brought to our attention as well as capture any opportunities for improvement.

Finally, in order to build excellence in its operations and remain agile, CMS modified its surveillance program to explore future marketing trends and ensure new marketing rules are followed. We believe this initiative met our primary goal – to stop aggressive marketing practices that cause confusion or potential harm to Medicare beneficiaries and prevent marketing misrepresentation.

Pre-Season Activities

Risk Assessment Methodology

With the 2011 surveillance initiative, CMS implemented a risk assessment methodology to identify those plan sponsors that put beneficiaries at the greatest potential risk based on their status and previous marketing behaviors. This allowed CMS to more efficiently allocate its surveillance resources by targeting sponsors according to their risk scores. The methodology took into account the following criteria: CY2010 secret shopping results, marketing misrepresentation complaint performance, marketing-related compliance notices, experience (i.e., new contractor), and enrollment growth rate. Each plan sponsor was categorized as ultra-high, high, moderate or low risk and shopped accordingly.

Communication and Outreach

Prior to the start of the 2011 AEP, CMS undertook several outreach initiatives to ensure that our state and federal partners, plan sponsors, the industry overall and CMS staff were aware that we would be out in the marketplace surveying Medicare marketing events. Moreover, we wanted to ensure that all of the affected parties had a basic understanding of the surveillance strategy and

goal for the program. Outreach efforts continued throughout the AEP. (See Appendix 1: Communication and Outreach Activities.) Highlights of these efforts included:

- Marketing Requirement Reminders to Selected Plan Sponsors: Account Managers placed calls to 73 selected plan sponsors reminding them of their responsibility to ensure compliance with CMS marketing requirements.
- Outreach to Agent Trade Associations: CMS made outreach calls to 111 agent and broker trade associations, representing 91,500 agents/brokers nationally; this was a 48% increase over the number of associations contacted for CY 2010. Over 80 Agent Trade Associations agreed to share the article, *Medicare Marketing Reminders and Expectations for Medicare Advantage & Medicare Prescription Drug Plans*, with their membership via newsletter, website, email or fax.
- Buzz Initiative - Notification of CMS' Secret Shopping to Plan Sponsors: CMS staff placed 1,300 outreach calls to plan sponsors in order to create a "buzz" and notify plan sponsors that a CMS representative may be present at an upcoming event. The initiative served to heighten the plan sponsors' awareness of CMS' surveillance activity in the marketplace.
- Partner Communication: The Surveillance Team presented the CY2011 Surveillance Strategy to the State DOIs during national partner calls, conducted discussions with state partners on areas for collaboration, and shared information regarding surveillance activities. These efforts aided in implementing efficient processes to address agent/broker marketing issues and increased communication between the DOIs and CMS.

Secret Shopper Training

CMS-developed training was provided to all contracted shoppers, CMS-DOI liaisons and CMS surveillance staff to ensure the quality of the secret shopping initiative and consistency across shoppers. The training addressed permissible and non-permissible shopping activities, appropriate completion of the public event and targeted observation tools, and the unique aspects of different plan types including Special Needs Plans (SNPs) and Private Fee-for-Service (PFFS) products.

Contract Year 2011 AEP Surveillance Activities

The 2011 AEP national surveillance program consisted of both primary and pilot activities. The four primary surveillance activities continued from previous years were: Secret Shopping, Targeted Observations, Non-Renewal Readiness Assessment and Unreported Marketing Events. The five pilot activities were: Social Media/Social Network Surveillance, Agent/Broker Reconnaissance, Verification of Agent Licensure, Marketing to Vulnerable Populations, and Third Party Lead Generation and Field Marketing Organizations (FMOs).

Primary Surveillance Activities

Secret Shopping

Secret Shopping is the undercover surveillance of formal public MA and Part D plan marketing events. These events were identified from the formal sales/marketing events reported to CMS by plan sponsors through the Health Plan Management System (HPMS). Shops were selected through a random sampling of events pulled from the universe of events for the affected time frame. CMS staff and contracted shoppers attended the selected events, using the standardized CMS Public Event Secret Shopping (PESS) tool to evaluate and document the presenting agent's compliance with CMS marketing guidelines. A total of 1,938 public marketing events held by 75 plan sponsors in 45 States were secretly shopped during the 2011 AEP. (See Appendix 2a and 2b, Frequency of Shops by State for additional details.)

As the season progressed, plan performance improved as sales and marketing presentations became more compliant with Medicare requirements. The average number of deficiencies per event decreased from a high of 0.65 in October to a low of 0.40 in December.

Table 1: 2011 AEP - Average Number of Deficiencies by Month and Plan Sponsor Risk Level

Risk Level	Average Number of Deficiencies Per Event		
	October 2010	November 2010	December 2010
Ultra High	0.51	0.39	0.30
High Risk	0.66	0.54	0.37
Moderate	1.00	0.72	0.62
Total for all Plan Sponsors	0.65	0.51	0.40

Moreover, the number of plan sponsors with no validated deficiencies increased over the shopping period, from 8 (19.5% of sponsors shopped) in October, to 15 (24.6% of sponsors shopped) in November, and 22 (31.9% of sponsors shopped) in December. Fourteen plan sponsors (18.7%), out of 75 sponsors shopped, had no validated deficiencies for the entire surveillance season.

The eight most common deficiencies found during secret shopping accounted for 73% of the deficiency findings. These included:

- Agent tried to require attending beneficiaries to provide their contact information in order to attend the event
- Agent provided a sign-in sheet that did not clearly indicate that completion of the sheet was optional
- Distributed sales kits did not include required language on future availability (a notice requirement that was new for CY 2011 and was required to be provided whenever a beneficiary was given an enrollment form at an event)
- Distributed sales kits did not include required language on Low Income Subsidy availability (also a new notice requirement for CY 2011 and was required to be provided whenever a beneficiary was given an enrollment form at an event)
- Ad hoc deficiencies based on an agent's comments or actions that were egregiously beyond the scope of acceptable under the Marketing Guidelines (e.g., in one case, an agent marketed a prescription drug website for beneficiaries to get medications at a cheaper rate from Canada)
- Agent failed to identify the products being marketing at the beginning of the session
- Agent failed to verbally explain which prescription drugs are covered
- Scheduled event did not occur but was not reported as cancelled.

Table 2: Most Common Deficiencies

Deficiency	Number of Occurrences	Percent of Total Deficiencies
No future availability notice*	191	19%
Sign-in sheet not optional*	146	15%
No LIS notice*	90	9%
Products not identified at the beginning	81	8%
Verbal explanation of covered drugs	61	6%
Contact information required	61	6%
Event did not take place	53	5%
Ad-Hoc Deficiencies	47	5%

*New questions on the PESS tool, based on new MMG requirements.

As a direct result of feedback from industry partners, the classification of deficiencies into four categories was introduced: Administrative Errors, Errors of Omission, Undue Beneficiary Influence/Harm, and Marketing Misrepresentation. While over 54% of deficiencies were administrative and less severe in nature, more than 12% were considered potentially harmful to beneficiaries.

Table 3: Percent of Total Deficiencies by Month and Level of Severity

	October	November	December	Total
Administrative Errors	42.30%	54.13%	68.98%	54.16%
Errors of Omission	47.87%	31.65%	19.59%	33.67%
Undue Beneficiary Influence/Harm	8.52%	13.30%	10.61%	11.16%
Marketing Misrepresentation	1.31%	0.92%	0.82%	1.01%

Targeted Observations

The Targeted Observations (TO) activity was designed to capture observations of potential marketing misrepresentation allegations by agents or brokers in settings outside of formal sales presentations that had the potential to create confusion or beneficiary harm. CMS created this new surveillance activity following concerns about plan sponsors approaching beneficiaries outside of retail stores, misrepresenting products at informal informational tables, and other types of concerns that would not have been captured through CMS' current surveillance strategy. TOs were conducted based on information received from internal and external partners. This year, CMS performed 31 TOs on 11 plan sponsors and performed four TOs not attributed to any particular plan sponsor. The TOs were prompted by alleged agent misbehavior at retail store kiosks and door-to-door solicitation allegations. Other TOs investigated unsolicited phone calls and the use of lead generator websites that appeared to be endorsed by CMS.

As a result of the TO activity, two agents were terminated by their respective plan sponsors for engaging in egregious marketing activities. One agent was using "scare tactics" with potential members entering a local retail store. The agent utilized superlatives in describing the plan sponsor's products, stated that Medicare was going away and told the beneficiaries they needed to

sign up for his plan or they would not have any drug coverage next year. The other agent was marketing door-to-door at a low income housing complex, using scare tactics in an attempt to get dual eligible individuals to enroll.

In addition, the CMS TO team reviewed existing marketing complaints for trends or patterns, searched the National Insurance Producer Registry (NIPR) for agent plan assignments, and searched CMS' systems for public sales events to perform additional shopping. CMS also made referrals to the DOIs, Fraud, Waste and Abuse MEDIC, and Account Managers for further investigation and compliance actions, if necessary.

Non-Renewal Readiness Assessment

For the Non-Renewal Readiness Assessment, 58 plan sponsors that non-renewed or reduced their service area for CY2011 were sent an assessment to determine their preparedness to meet the requirements for non-renewals and service area reductions, such as notifying affected members, continuing to meet reporting requirements, and maintaining operations and services for as long as contractually required. CMS obtained 100% participation and found 15 plan sponsors that were unable to meet at least one of the following requirements: sending the required notice on time, instructing sales not to promote the remaining plan sponsors until the allotted time, not having the enrollment materials announce decision to non-renew, not being prepared to submit all risk adjustment and PDE data on time, and not being prepared to submit risk adjustment transactions for affected enrollees on time. In the end, one plan sponsor was referred to the Account Manager for a potential compliance action.

Unreported Marketing Events

The Unreported Marketing Events initiative was an effort to determine if plan sponsors were appropriately reporting and representing their sales events activity to CMS. The CMS contractor reviewed daily and weekly print publications in U.S. domestic markets nationwide, including advertisements in publications in English, Spanish, Korean, Armenian, and Mandarin Chinese. The contractor then determined if event information identified in the "clipped" advertisements was properly reported to CMS in a timely manner.

CMS reviewed advertisements that accounted for 5,256 unique events from October to December 2010. The advertisements reviewed encompassed a total of 75 plan sponsors, of which 57 submitted 100% of the clipped marketing events to HPMS in an accurate and timely manner. The remaining 18 plan sponsors had one or more deficiencies, with a total of 232 deficiencies identified.

Pilot/Research Activities

CMS conducted pilot activities to determine the feasibility of implementing a large scale version of the activity during future surveillance seasons. These pilot activities included Social Media/Social Network Surveillance, Agent/Broker Reconnaissance, Verification of Agent Licensure, Marketing to Vulnerable Populations, and Third Party Lead Generation and FMOs, which are discussed below.

Social Media/Social Network Surveillance

A new activity for CY2011 was the review of plan sponsor, agent/broker, and FMO presence on social media/social networking sites such as Facebook, Twitter, and YouTube. This activity was created to ensure that these social media/social networking sites were in compliance with CMS Medicare Marketing Guidelines. During November and December 2010, the Surveillance Team reviewed 112 social media sites attributed to ultra-high, high, or moderate risk plan sponsors, as well as 26 other social media sites for inappropriate activity directed at Medicare beneficiaries.

CMS' review showed that few ultra-high or high risk plan sponsors had Facebook pages, while approximately 25% of moderate risk plan sponsors had Facebook pages. However, these

Facebook pages focused primarily on health-related content and not on marketing or marketing events.

CMS concluded that, while social media sites are popular, they have not been utilized for Medicare Advantage marketing purposes. Use of social media among people of current Medicare age is sparse. Current use of social media by plan sponsors appears to be limited to increasing general "brand" awareness, and is not targeted to MA or PDP member acquisition. These conclusions were corroborated with feedback from a CMS contractor.

Agent/Broker Reconnaissance

Agent/Broker Reconnaissance was investigated to pursue CMS' long term goal of identifying agent/broker patterns of behavior that suggest a need for further analysis. CMS' research plan consisted of using existing marketing complaint data and identifying specific information that could be collected from plan sponsors to identify agents involved in alleged, egregious actions. If the agents are identified, CMS could decide to provide the agent name and/or license information to the appropriate State DOI for further review and possible disciplinary action.

Verification of Agent Licensure

The goal of the Verification of Agent Licensure research activity was to ensure that sales activities were conducted by licensed agents. CMS considered data from completed secret shopping events, specific information on sales made by agents, certification exam results, complaints, and information from plan sponsors that employed these agents. CMS would determine if the agent's actions required a license, such as agents who performed sales activities or described benefit information. If CMS determined the agent was not properly licensed, a referral would be made to the State DOI.

Marketing to Vulnerable Populations

CMS' research began by collaborating with and re-establishing partnerships with key groups that could assist in how best to protect vulnerable populations. These groups included the CMS Office of External Affairs, State DOI offices, and Low Income Senior and ICF/MR housing facilities. CMS, with the assistance of these groups, determined that the populations that were most at risk for inappropriate marketing activities were populations with language barriers, (e.g., Russian, Chinese, Korean, Armenian, Spanish), physical disabilities, mental challenges, (e.g., facility bound), and in low income or chronic SNPs. This research activity also considered marketing strategies toward dual eligible beneficiaries, specifically relating to the State Medicaid and CMS enrollment processing systems. CMS' longer term plan is to determine how agents and brokers obtain the names and contact information of dual eligible beneficiaries and how they target them for enrollment. The team will continue to collaborate with the CMS Center for Medicaid, Children's Health Insurance Program and Survey & Certification, as well as the State Medicaid Agencies to gain a better understanding of their processes as it relates to information about beneficiaries in these vulnerable populations. Moreover, CMS will begin outreach and communication efforts to further collaborate with these agencies when CMS takes compliance actions against particular agents.

Third Party Lead Generation and FMOs

The Surveillance Team also conducted research activities to determine the impact that third party lead generators and FMOs had on marketing misrepresentation and explore ways in which CMS could identify these entities in order to conduct outreach activities designed to help decrease deceptive or misleading marketing practices across the country. Research methodology included, but was not limited to, the review of third party lead generators and FMO websites, interviews with staff from State DOIs, and interviews with plan sponsors. Preliminary research indicated that third party lead generators and FMOs could potentially place Medicare beneficiaries at risk for exposure to deceptive marketing practices during public sales events, on-line enrollment services, and

individual or in-home sales appointments. Also, early data indicated that conducting outreach activities to State DOIs and plan sponsors may have helped decrease beneficiary exposure to deceptive marketing practices and increase knowledge of CMS' marketing regulations across the country.

Compliance Actions Based on 2011 AEP Surveillance Activities

Compliance actions taken in conjunction with the 2011 surveillance activities were based on analysis by the Surveillance Team's Compliance Decision Committee which was made up of managers and staff from the following CMS components: Medicare Drug and Health Plan Contract Administration Group, Medicare Drug Benefit and C & D Data Group, and the Consortium for Medicare Health Plans Operations. In order of severity, potential compliance actions consist of Technical Assistance Letters (not actual compliance actions), Notices of Non-Compliance, Warning Letters with a Request for Business Plan, and Ad-hoc Corrective Action Plans. Listed below are the compliance actions taken for each primary surveillance activity.

Secret Shopping Compliance Actions

CMS developed an objective, data-driven, and performance-based model for determining appropriate compliance actions for secret shopping. This model not only automated the review process but also accounted for the egregious nature of each deficiency. Previous performance was considered as well.

CMS issued 126 letters to 59 plan sponsors, 81.7% of which were Technical Assistance Letters; 15.1% of which were Notices of Non-Compliance; and, 3.2% of which were Warning Letters. Ultra high risk plan sponsors received 22.2% of CMS' notifications, while high risk and moderate risk plan sponsors received 28.6% and 49.2% respectively.

Table 4: Compliance Actions Taken by Month for Secret Shopping[#]

Action Taken	October	November	December	Total
Technical Assistance Letter*	17	41	45	103
Notice of Non-compliance	12	5	2	19
Warning Letter with Business Plan	3	1	0	4
Total Letters Issued	32	47	47	126

[#]Not including plan sponsors under referral/enforcement

*Technical Assistance Letters were sent to plan sponsors that were shopped but either did not meet the minimum number of shops, no matter how many deficiencies were found, or had minimal findings.

Table 5: Compliance Actions Taken by Risk Level for Secret Shopping[#]

Action	Ultra High	High	Moderate	Total
Technical Assistance Letter*	20	31	52	103
Notice of Non-Compliance	5	4	10	19
Warning Letter	3	1	0	4
Total Letters Issued	28	36	62	126

[#]Not including plan sponsors under referral/enforcement

*Technical Assistance Letters were sent to plan sponsors that were shopped but either did not meet the minimum number of shops, no matter how many deficiencies were found, or had minimal findings.

Unreported Marketing Events

CMS' compliance actions related to unreported marketing events were based on the entire AEP season rather than on a monthly basis. CMS issued 17 Technical Assistance Letters and one Notice of Non-Compliance related to this activity.

Table 6: Compliance Actions Taken by Risk Level for Unreported Marketing Events[#]

Action	Ultra High	High	Moderate	Low	Total
Technical Assistance Letter*	5	3	5	4	17
Notice of Non-Compliance	0	1	0	0	1
Total Compliance Actions Taken	5	4	5	4	18
Percent of Total Compliance Actions Taken	27.78%	22.22%	27.78%	22.22%	

#Not including plan sponsors under referral/enforcement

**Technical Assistance Letters were sent to Plan Sponsors that were shopped but either did not meet the minimum number, no matter how many deficiencies were found, or had minimal findings.*

Non-Renewal Assessment

The Surveillance Team found that the issues that were reported related to non-renewal assessment were limited in scope, not egregious enough to support an enforcement action, and more appropriately resolved using the Account Management process. The Surveillance Team recommended to the Account Manager that a Technical Assistance Letter be issued.

Targeted Observations

CMS took action on issues uncovered via targeted observation by making appropriate referrals to the State DOIs and CMS' Fraud, Waste and Abuse MEDIC, and Account Managers for action. Plan Sponsors were also notified of findings. Of the 31 TOs completed, two resulted in agent terminations.

Conclusion

The 2011 AEP season was both a season of success and continued growth. CMS conducted a record number of 1,938 secret shops, an increase of 125.87% from the 858 shops conducted in CY2010. Of note, the number of egregious deficiencies decreased even though the number of shops increased. For instance, there were 54 instances of agents making absolute statements about the product in CY2010 and only 32 instances in CY2011. In addition, the number of event "no shows" decreased significantly from 115 in CY2010 to 53 in CY2011.

CMS' believes that its significant outreach efforts helped lead to the decrease in deficiencies for formal marketing events. CMS effectively communicated its commitment to ensure that beneficiaries are protected in the marketplace. CY2011 data demonstrated that the communication efforts made an impact and the message was well received by plan sponsors and other external stakeholders.

Although the significant decrease in deficiencies for formal marketing events is a positive improvement, CMS believes that agent misbehavior continues to occur in other settings. As such, in developing the National Surveillance Strategy for CY2012, CMS expects to expand some existing activities, implement pilot initiatives, and determine new approaches that will address agent misbehavior in non-formal event settings.

Appendix 1: Communication and Outreach Activities

- Bi-Regional Health Plan Compliance Conference presentation on CY2010 Surveillance activities in June 2010
- National Medicare Education Program Surveillance presentation in October 2010.
- State Departments of Insurance Surveillance training in September 2010
- National Field Partnership presentation on Surveillance in November 2010.
- State Health Insurance Programs Forum presentation on Surveillance activities in November 2010
- Account Managers (AMs) and Regional Office Coordinators (ROCs) conducted calls with CEOs and Compliance Officers of 73 selected plans to remind them of marketing requirements and notify them of CY2011 Surveillance activities.
- The Regional Office Coordinators (ROCs) conducted an outreach campaign to the Agent Trade Associations in October 2010 yielding contacts with 112 agent associations.
- The ROCs called marketing event contacts within each MA Plan sponsor to alert them that CMS representatives randomly attend their marketing events. Calls began in October and continued throughout the CMS AEP marketing season.

Appendix 2a: Frequency of Shops by State (alphabetical)

State	Number of Shops	State	Number of Shops	State	Number of Shops
AL	27	MA	28	OK	7
AR	24	MD	19	OR	75
AZ	121	ME	2	PA	47
CA	310	MI	29	RI	4
CO	39	MN	30	SC	25
CT	15	MO	56	SD	1
FL	356	MS	5	TN	12
GA	66	MT	1	TX	147
HI	9	NC	26	UT	9
IA	1	NE	8	VA	22
ID	6	NH	1	VT	1
IL	71	NJ	14	WA	64
IN	26	NM	12	WI	9
KS	23	NV	13		
KY	11	NY	142		
LA	20	OH	47		

Appendix 2b: Frequency of Shops by State (from most shopped to least shopped)

State	Number of Shops	State	Number of Shops	State	Number of Shops
FL	356	AL	27	UT	9
CA	310	IN	26	WI	9
TX	147	NC	26	NE	8
NY	142	SC	25	OK	7
AZ	121	AR	24	ID	6
OR	75	KS	23	MS	5
IL	71	VA	22	RI	4
GA	66	LA	20	ME	2
WA	64	MD	19	IA	1
MO	56	CT	15	MT	1
OH	47	NJ	14	NH	1
PA	47	NV	13	SD	1
CO	39	NM	12	VT	1
MN	30	TN	12		
MI	29	KY	11		
MA	28	HI	9		