

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**BENEFICIARIES REMAIN  
VULNERABLE TO SALES AGENTS'  
MARKETING OF MEDICARE  
ADVANTAGE PLANS**



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Inspector General

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## OBJECTIVES

- (1) To examine selected Medicare Advantage (MA) plan sponsors' compensation of sales agents.
- (2) To determine whether selected MA plan sponsors ensured that their sales agents were qualified.
- (3) To compare the number and topics of Medicare beneficiaries' complaints about sales agent marketing before and after implementation of sales agent marketing regulations.

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## BACKGROUND

The Centers for Medicare & Medicaid Services (CMS) contracts with private companies, known as plan sponsors, to provide health insurance plans under MA. Plan sponsors may market their MA plans through independent sales agents, who may market on their own or through a field marketing organization (FMO), or by employing their own sales agents.

Between June 2007 and June 2008, Congress held three hearings examining sales agents' marketing of MA plans. During these hearings, witnesses testified that sales agents had marketed without licenses, portrayed themselves as Medicare employees, and misled Medicare beneficiaries about plan benefits. These types of aggressive, deceptive, and fraudulent marketing practices could result in Medicare beneficiaries enrolling in plans that do not meet their health care needs. Several members of Congress raised concerns about sales agents' marketing to Medicare beneficiaries to the Office of Inspector General (OIG); one specifically requested that OIG examine the marketing practices of MA plans.

In July 2008, Congress enacted the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), which prohibited or limited certain marketing activities by sales agents and plan sponsors. In September 2008, CMS published regulations implementing the MIPPA's marketing provisions, including limiting sales agent compensation to independent sales agents. In addition, CMS regulations required that all sales agents be trained and tested annually and be State licensed.

To examine selected MA plan sponsors' compensation of sales agents and determine whether the selected plan sponsors ensured that their

sales agents were qualified, we reviewed compensation, testing, and licensure data for a random sample of sales agents. We purposively selected the plan sponsors based on their size and the rate of marketing complaints they received. We also compared complaints regarding sales agent marketing reported to CMS from 2008 and 2009 to determine whether the number and topics of Medicare beneficiaries' complaints changed after implementation of the sales agent marketing regulations.

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## FINDINGS

### **All five plan sponsors using independent sales agents had compensation practices that resulted in inappropriate financial incentives.**

Five selected plan sponsors' compensation practices may have led sales agents to enroll Medicare beneficiaries in MA plans that did not best meet Medicare beneficiaries' health care needs. Three of the five selected plan sponsors that used independent sales agents made payments to sales agents in excess of their CMS-approved compensation schedules. In addition, three of the five selected plan sponsors made payments to FMOs that may have created inappropriate financial incentives to market their MA plans. One plan sponsor did both.

### **Five of the six selected plan sponsors did not ensure that all sales agents were qualified under CMS's regulations.**

Five of the six selected plan sponsors used unqualified sales agents who either had not passed the marketing test for 2009 or were not licensed at the time they took Medicare beneficiaries' enrollment applications. In our random sample of 30 sales agents per plan sponsor, there were 12 unqualified sales agents, the majority of whom had not passed the marketing test for 2009. Despite a requirement that MA plans have systems in place to confirm that enrolled Medicare beneficiaries are aware of their enrollment in the plans and that the Medicare beneficiaries understand the plans' rules, no plan sponsor had a policy to contact Medicare beneficiaries enrolled by an unqualified sales agent to ensure that they knew of their enrollment or understood the plans' rules.

### **The number and topics of sales agent marketing complaints remained unchanged after implementation of sales agent marketing regulations.**

About 13,000 sales agent marketing complaints were reported to CMS during each of the 2008 and 2009 annual enrollment periods. For both years' annual enrollment periods, these complaints represented less than 10 percent of all complaints reported to CMS. For

both years, sales agent marketing complaints referenced one or more of the same three broad topics: (1) providing misleading information about plan benefits, (2) enrolling Medicare beneficiaries without their consent, and (3) engaging in aggressive sales tactics.

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## RECOMMENDATIONS

Each of the six selected plan sponsors did not follow at least one of the marketing regulations concerning sales agent compensation and qualifications. Any such instances represent gaps in plan sponsors' oversight and implementation of the sales agent marketing regulations. In addition, results from CMS's oversight of plan sponsor marketing activities after implementation of the sales agent marketing regulations indicate that compliance concerns are not limited to the six selected plan sponsors. Therefore, we recommend that CMS:

- **take appropriate actions regarding the specific instances of noncompliance documented in this report,**
- **audit plan sponsors and include an assessment of the vulnerabilities identified in this report,**
- **issue additional regulations concerning FMO payments,**
- **issue regulations requiring plan sponsors to contact all new enrollees to ensure that they understand plan rules, and**
- **issue guidance clarifying that plan sponsors should terminate unlicensed sales agents immediately upon discovery.**

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## AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

CMS concurred with our first recommendation. CMS concurred in part with our second recommendation, stating that it would conduct audits or other oversight activities of plan sponsors posing the greatest risk to Medicare beneficiaries. As such, we have amended the wording of the recommendation. CMS did not concur with our final three recommendations. We continue to recommend that CMS issue additional regulations and guidance to protect Medicare beneficiaries from inappropriate sales agent marketing. However, we have modified the wording of two of the recommendations to reflect alternative approaches that are consistent with CMS's comments.



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## BACKGROUND

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) replaced the Medicare + Choice program with the MA program and made qualified prescription drug coverage available to Medicare beneficiaries.<sup>1, 2</sup> The Centers for Medicare & Medicaid Services (CMS) contracts with private companies, known as plan sponsors, to provide health insurance plans under MA. Plan sponsors may offer multiple MA plans.

Between January 2008 and September 2009, enrollment in MA plans increased from 9.2 million Medicare beneficiaries to over 11.2 million, or nearly a quarter of the more than 45 million Medicare beneficiaries.<sup>3</sup> For each Medicare beneficiary enrolled in MA in 2009, the Medicare Payment Advisory Committee (MedPAC) projected that Medicare pays

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<sup>1</sup> MMA, P.L. 108-173 § 201, 42 U.S.C. § 1395w-21 note.

<sup>2</sup> MMA, P.L. 108-173 §101, Social Security Act, § 1860D-1 et seq., 42 U.S.C. § 1395w-101 et seq.

<sup>3</sup> CMS, *Medicare Advantage, Cost, PACE, Demo, and Prescription Drug Plan Contract Report - Monthly Summary Report* (Data as of January 2008). Available online at [http://www.cms.hhs.gov/MCRAdvPArDENrolData/Downloads/Contract\\_Summary\\_January\\_2008.zip](http://www.cms.hhs.gov/MCRAdvPArDENrolData/Downloads/Contract_Summary_January_2008.zip). Accessed on October 16, 2009. CMS, *Medicare Advantage, Cost, PACE, Demo, and Prescription Drug Plan Contract Report - Monthly Summary Report* (Data as of September 2009). Available online at [http://www.cms.hhs.gov/MCRAdvPArDENrolData/Downloads/Contract\\_Summary\\_September\\_2009.zip](http://www.cms.hhs.gov/MCRAdvPArDENrolData/Downloads/Contract_Summary_September_2009.zip). Accessed on October 16, 2009. CMS, *Medicare Enrollment: National Trends 1966 – 2008*. Available online at <http://www.cms.hhs.gov/MedicareEnRpts/Downloads/HISMI08.pdf>. Accessed on September 24, 2009.

MA plan sponsors 14 percent more than if a Medicare beneficiary remains in fee-for-service Medicare.<sup>4</sup>

Medicare beneficiary complaints about MA plan marketing raised concerns in Congress and with CMS. Between June 2007 and June 2008, Congress held three hearings examining MA plan marketing in response to complaints of aggressive, deceptive, and fraudulent marketing practices reported by Medicare beneficiaries and consumer advocates. During these hearings, witnesses testified that sales agents had marketed without licenses, portrayed themselves as Medicare employees, and misled Medicare beneficiaries about plan benefits.<sup>5</sup> After discussions with CMS, in June 2007, seven MA plan sponsors agreed to suspend their marketing of specific MA plan types that were the subject of many complaints.

Protecting Medicare beneficiaries from inappropriate sales agent marketing practices is critical to ensuring that Medicare beneficiaries enroll in plans that meet their health care needs. In 2008, several members of Congress raised concerns about sales agents marketing to Medicare beneficiaries to the Office of Inspector General (OIG). This study is in response to a request from Congressman Fortney “Pete” Stark that OIG examine the marketing practices of MA plans.

### **Marketing MA Plans To Enroll Medicare Beneficiaries**

Plan sponsors market through advertisements and sales agents to attract Medicare beneficiaries to enroll in their plans. CMS allowed plan sponsors to begin marketing activities on October 1, 2008, for the 2009 plan year.<sup>6</sup> A plan year begins January 1 and ends December 31.

Medicare beneficiaries may choose to enroll in MA when they are first eligible for Medicare and then annually thereafter between November 15 and March 31 (hereinafter referred to as the annual

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<sup>4</sup> MedPAC, *A Data Book: Healthcare Spending and the Medicare Program*, June 2009, p. 155. Available online at <http://www.medpac.gov/chapters/Jun09DataBookSec10.pdf>. Accessed on September 30, 2009.

<sup>5</sup> 42 U.S.C. § 1320b-10.

<sup>6</sup> CMS, *2009 Call Letter*, March 17, 2008, p. 7. Available online at <http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/CallLetter.pdf>. Accessed on April 1, 2009.

enrollment periods).<sup>7</sup> Aside from their initial eligibility and the annual enrollment periods, most Medicare beneficiaries may not change plans and must remain enrolled in their chosen plans throughout the plan year.<sup>8</sup>

### **Marketing MA Plans Through Sales Agents**

Plan sponsors may contract with independent sales agents or employ sales agents to market their plans to Medicare beneficiaries. Independent sales agents may contract with one or more plan sponsors.

Independent sales agents may market MA plans on their own or as employees of field marketing organizations (FMO). When sales agents market MA plans as FMO employees, FMOs typically provide sales agents with enrollment leads and marketing assistance. Plan sponsors pay sales agents directly or through an FMO.

### **Laws and Regulations Governing Sales Agent Marketing of MA Plans**

In July 2008, Congress enacted the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).<sup>9</sup> In the MIPPA, Congress prohibited or limited certain sales and marketing activities by sales agents and plan sponsors. For instance, the MIPPA required CMS to issue guidance limiting sales agent compensation and requiring sales agents to be trained and tested annually and be State licensed.<sup>10</sup>

More than half of the limitations on sales agent and plan sponsor activities codified in the MIPPA had been previously released as guidance in 2006. For example, in previous guidance, CMS directed

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<sup>7</sup> Technically, there are two separate enrollment periods with slightly different rules. From November 15 to December 31, Medicare beneficiaries may enroll in, or disenroll from, MA plans as often as they like. From January 1 to March 31, Medicare beneficiaries may enroll in, or disenroll from, MA plans only once. CMS, *Medicare Managed Care Manual* (MMCM), Pub. 100-16, ch. 2, §§ 30.1, 30.3. Available online at <http://www.cms.hhs.gov/MedicareMangCareEligEnrol/Downloads/2009MAenrollmentguidance.pdf>. Accessed on February 18, 2009.

<sup>8</sup> MMCM, ch. 2, § 30. CMS allows certain Medicare beneficiaries more flexibility to change plans. Medicare beneficiaries eligible for Medicaid may enroll in or switch MA plans at any time. In addition, CMS provides special enrollment periods for Medicare beneficiaries whose plans terminate, who change residence, or who meet exceptional conditions.

<sup>9</sup> MIPPA, P.L. 110-275.

<sup>10</sup> MIPPA, §§ 103(b)(1) and (d)(1), Social Security Act, §§ 1851(j) and (h), 42 U.S.C. §§ 1395w-21(j) and 1395w-21(h).

plan sponsors to reasonably compensate sales agents in line with industry standards and to use State-licensed sales agents.<sup>11</sup>

CMS published regulations implementing the MIPPA's sales agent marketing provisions on September 18, 2008, 2 months before the annual enrollment periods for the 2009 plan year began.<sup>12</sup> Appendix A lists the sales agent marketing provisions in the MIPPA and associated CMS guidance for implementing the MIPPA's provisions and indicates whether CMS addressed the provisions in its previous 2006 guidance.

***Sales agent compensation.*** In September and November 2008, CMS issued regulations implementing the MIPPA provision concerning sales agent compensation.<sup>13</sup> These regulations are intended to ensure that sales agents enroll Medicare beneficiaries “based on the plan that best meets their health care needs.”<sup>14</sup> They govern compensation of independent sales agents, including those employed by FMOs. These regulations do not cover sales agents that are plan sponsor employees.<sup>15</sup>

CMS defines compensation as the monetary or nonmonetary payment for the sale or renewal of a plan policy (i.e., the initial enrollment of a Medicare beneficiary into an MA plan or the renewal of a Medicare beneficiary's enrollment), including but not limited to commissions, bonuses, gifts, prizes, awards, and finders' fees. In its definition of compensation, CMS does not include fees for complying with State laws; training, certification, and testing costs; or reimbursement for mileage and actual costs associated with sales appointments.<sup>16</sup> Thus, plan sponsors may pay for these items in addition to any compensation for the sale or renewal of a plan policy.

CMS requires a 6-year compensation cycle for sales agents, whether paid by a plan sponsor directly or through FMOs, consisting of two types of compensation: initial-year compensation and renewal-year

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<sup>11</sup> CMS, *Medicare Marketing Guidelines for: Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, Prescription Drug Plans, and 1876 Cost Plans*, pp. 128–138 (2<sup>nd</sup> revision, July 25, 2006). Available online at <http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/FinalMarketingGuidelines.pdf>. Accessed on June 26, 2009.

<sup>12</sup> 73 Fed. Reg. 54208 and 54226 (Sept. 18, 2008).

<sup>13</sup> 73 Fed. Reg. 54226 (Sept. 18, 2008); 73 Fed. Reg. 67406 (Nov. 14, 2008).

<sup>14</sup> 73 Fed. Reg. 54226, 54237 (Sept. 18, 2008); 73 Fed. Reg. 67406, 67407 (Nov. 14, 2008).

<sup>15</sup> 42 CFR § 422.2274 (as of Nov. 14, 2008). All subsequent citations in this report to 42 CFR pt. 422 are to the regulation as amended in September and November 2008.

<sup>16</sup> *Ibid.*

compensation. Plan sponsors must pay sales agents an initial-year compensation rate for a Medicare beneficiary's initial year of enrollment into an MA plan. Plan sponsors must pay sales agents a renewal-year compensation rate, equal to 50 percent of the initial-year compensation rate, each year for 5 years after a Medicare beneficiary's initial year of enrollment so long as the Medicare beneficiary remains enrolled.<sup>17</sup>

For 2009, CMS required plan sponsors to submit compensation schedules for sales agents and FMOs.<sup>18</sup> This submission included plan sponsor's compensation schedules for sales agents and FMOs from the past 3 years and their proposed schedule for the 2009 plan year.<sup>19</sup>

CMS used the compensation schedules to determine market rate limits for sales agents. For 2009, CMS set the market rate limit for initial-year compensation at \$400, with exceptions for certain States.<sup>20</sup> Accordingly, for 2009 the maximum renewal-year rate for most States is \$200. CMS required plan sponsors to resubmit their sales agent compensation schedules for approval if they were out of compliance with the market rate limit.

CMS stated that administrative difficulties with the enrollment process would prevent CMS from distinguishing between initial- and renewal-year enrollments at the time of enrollment.<sup>21</sup> Thus, for 2009, CMS instructed plan sponsors to pay sales agents the renewal-year compensation rates until CMS notified them that enrollments were eligible for initial-year compensation.<sup>22</sup> CMS did permit plan sponsors to pay initial-year compensation for individuals newly eligible for Medicare.<sup>23</sup>

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<sup>17</sup> 42 CFR § 422.2274(a)(1).

<sup>18</sup> 73 Fed. Reg. 67406, 67410 (Nov. 14, 2008).

<sup>19</sup> Ibid.; CMS, *Release of Centers for Medicare & Medicaid Services 4138-IFC2 and Clarification of guidance on agent/broker compensation*, November 10, 2008.

<sup>20</sup> CMS, *January 16, 2009 replacement of the December 24, 2008 memo: 2009 Medicare Advantage and Prescription Drug Program Agent and Broker Compensation Structures* (January 2009 Replacement Memorandum), January 16, 2009. Available online at [http://www.cms.hhs.gov/ManagedCareMarketing/Downloads/CompStructureRepMemo\\_011609.pdf](http://www.cms.hhs.gov/ManagedCareMarketing/Downloads/CompStructureRepMemo_011609.pdf). Accessed on June 30, 2009. For Connecticut, Pennsylvania, and the District of Columbia, the initial-year compensation rate could be as high as \$450 for MA plans. For California and New Jersey, the initial-year compensation rate could be as high as \$500.

<sup>21</sup> 73 Fed. Reg. 67406, 67408 (Nov. 14, 2008).

<sup>22</sup> Ibid.; 42 CFR § 422.2274(a)(1)(iii).

<sup>23</sup> 42 CFR § 422.2274(a)(1)(iii).

Beginning in May 2009, CMS identified enrollments for which sales agents should have been paid the initial-year compensation rate. CMS requires plan sponsors to retroactively adjust sales agent compensation to the initial-year compensation rate if CMS identifies the beneficiary as new to MA or newly eligible for Medicare in 2009.<sup>24</sup>

The regulations also address payments to FMOs for ancillary services, such as training, material development, customer service, direct mail, and agent recruitment. CMS did not establish limits for such payments. Rather, the regulations state that plan sponsors must pay FMOs for services at fair-market value and each plan sponsor's payment must not exceed an amount commensurate with what that plan sponsor paid FMOs in each of the prior 2 years.<sup>25</sup> The regulations also do not state that plan sponsors must pay FMOs for ancillary services using a 6-year compensation cycle.

**Sales agent qualifications.** In September 2008, CMS also issued regulations implementing the MIPPA provisions requiring plan sponsors to ensure that sales agents meet certain qualifications.<sup>26</sup> First, plan sponsors must ensure that all sales agents are trained and that they pass an annual written or electronic test on Medicare (hereinafter referred to as the marketing test) with a score of 85 percent or better.<sup>27, 28</sup> CMS does not specify the content of the training or the test or the number of times a sales agent may attempt the test. Training and testing may be provided in person or online.

Second, plan sponsors must use only State-licensed sales agents to market their plans.<sup>29, 30</sup> The process for attaining licensure is determined by each State. State licenses may be valid for as little as 1 year or may not expire at all.

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<sup>24</sup> 42 CFR § 422.2274(a)(1)(iii).

<sup>25</sup> 42 CFR § 422.2274(a)(1)(iv).

<sup>26</sup> 73 Fed. Reg. 54208 and 54226 (Sept. 18, 2008).

<sup>27</sup> 42 CFR §§ 422.2274(b) and (c).

<sup>28</sup> CMS, *Guidance for regulations in CMS 4131-F and CMS 4138-IFC*, September 15, 2008, p. 23. Available online at

[http://www.cms.hhs.gov/ManagedCareMarketing/Downloads/MIPPA\\_Imp\\_memo091208Final.pdf](http://www.cms.hhs.gov/ManagedCareMarketing/Downloads/MIPPA_Imp_memo091208Final.pdf). Accessed on September 9, 2009.

<sup>29</sup> 42 CFR § 422.2272(c).

<sup>30</sup> California does not require sales agents who market Health Maintenance Organization (HMO) plans to be licensed. Knox-Keene Health Care Service Plan Act of 1975, Cal Health & Saf Code § 1359.

*Plan sponsor reporting of terminated sales agents.* CMS regulations also require plan sponsors to report the termination of licensed sales agents to the applicable State.<sup>31</sup> If State laws require, plan sponsors must also include the reasons for sales agent terminations. In addition, plan sponsors must make their reports of sales agent terminations available to CMS upon request.<sup>32</sup> However, CMS regulations and guidance do not specify circumstances under which plan sponsors should terminate sales agents.

### **CMS and Plan Sponsor Oversight of Sales Agent Marketing**

In September 2008, CMS announced an oversight strategy to ensure that plan sponsors comply with sales agent marketing regulations.<sup>33</sup> CMS staff stated that they visited more than 1,500 marketing events unannounced and reviewed 1,300 advertisements during the 2009 annual enrollment periods. CMS staff noted that they expanded oversight activities to include monitoring of sales agents in one-on-one settings. In addition, in the summer of 2009, CMS staff audited one plan sponsor to ensure compliance with the sales agent marketing regulations. CMS staff indicated that they plan to conduct more compliance audits in the future.

As part of CMS's oversight strategy, CMS staff also assessed complaints reported to the 1-800-MEDICARE hotline or Medicare Drug Integrity Contractors (MEDIC).<sup>34</sup> CMS registers complaints reported to either source in its Complaint Tracking Module. CMS assigns each complaint to one of several categories. One category, "marketing," is for complaints about plan sponsor marketing. Within the "marketing" category, CMS includes a "marketing misrepresentation" subcategory. For the 2009 annual enrollment periods, CMS staff stated that hotline employees were instructed to place all sales agent marketing complaints in the "marketing misrepresentation" subcategory.

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<sup>31</sup> 42 CFR § 422.2272(d).

<sup>32</sup> CMS, *Medicare Marketing Guidelines for: Medicare Advantage Plans, Medicare Advantage Prescription Drug Plans, Prescription Drug Plans, and 1876 Cost Plans*, p. 141. Available online at <http://www.cms.hhs.gov/ManagedCareMarketing/Downloads/R91MCM.pdf>. Accessed on January 5, 2010.

<sup>33</sup> CMS, *Final Marketing Provisions and CMS Marketing Surveillance*, September 26, 2008.

<sup>34</sup> MEDICs are responsible for managing reports about fraud, waste, and abuse in the prescription drug program and working with CMS, plan sponsors, and others to protect Medicare beneficiaries.

Because of its oversight activities, CMS sent warning letters to 92 plan sponsors regarding 1 or more of the following issues: (1) a high number of sales agent marketing complaints, (2) noncompliance with a sales agent marketing regulation detected at marketing events or through advertisement reviews, (3) deficiencies in plan sponsors' implementation of the sales agent marketing regulations, or (4) poor customer service. Of the 92 warning letters, 84 referenced 1 or more of the first 3 issues related to marketing.

Plan sponsors must also monitor compliance with sales agent marketing regulations. Specifically, CMS requires plan sponsors to monitor sales agents to ensure that they comply with all applicable laws, CMS policies, and marketing guidelines.<sup>35</sup> In addition, CMS requires that plan sponsors have a meaningful procedure for receiving and resolving complaints reported to plans.<sup>36</sup>

#### **State Departments of Insurance Oversight of Sales Agents**

State Departments of Insurance oversee and license sales agents employed in their States. Like CMS, the Departments of Insurance receive complaints from Medicare beneficiaries and use them to oversee and discipline sales agents whose actions violate State laws or regulations.

CMS has signed Memorandums of Understanding with all Departments of Insurance to allow the exchange of complaint data involving sales agents and plan sponsors. In addition, CMS holds quarterly teleconferences with all State Departments of Insurance to exchange information about sales agent and plan sponsor marketing.

#### **Related Office of Inspector General Work**

In 2006, OIG published a report assessing CMS oversight of MA marketing materials. OIG found that some MA marketing materials lacked CMS-required information essential for Medicare beneficiaries to make informed choices. For instance, plan sponsors' advertisements did not include operating hours for their customer service numbers, did not state that the 1-800-MEDICARE line is available 24 hours a day and 7 days a week, or did not clearly identify resources for Medicare

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<sup>35</sup> CMS, "*Marketing Guidelines*," p. 130.

<sup>36</sup> 42 CFR § 422.564.

beneficiaries with special needs. Furthermore, some marketing materials used unclear and technical language.<sup>37</sup>

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## METHODOLOGY

To examine selected MA plan sponsors' compensation of sales agents and determine whether the selected plan sponsors ensured that their sales agents were qualified, we reviewed compensation, testing, and licensure data for a random sample of sales agents. We also compared complaints regarding sales agent marketing reported to CMS from 2008 and 2009 to determine whether the number and topics of Medicare beneficiaries' complaints changed after implementation of the sales agent marketing regulations. See Appendix B for a more detailed description of our methodology.

### Scope

We reviewed plan sponsors offering MA plans. We did not review plan sponsors that offered only prescription drug plans and no MA plans. According to CMS staff, plan sponsors offering only prescription drug plans account for a small number of sales agent marketing complaints.

This study is designed to identify whether selected plan sponsors have problems associated with the compensation or qualifications of their sales agents. It does not project the extent of any problems for MA plan sponsors. Because of the intensity of the review, we focused our analysis on a purposive sample of six plan sponsors that used sales agents to market to Medicare beneficiaries.

We limited our analysis of plan sponsors to 3 of the marketing provisions in the MIPPA: (1) compensation of sales agents, (2) annual training and testing of sales agents, and (3) use of State-licensed sales agents. These three marketing provisions are critical to protecting Medicare beneficiaries because they address sales agents' financial motivation and their qualifications to market MA plans. See Appendix A for a complete list of the marketing provisions in the MIPPA.

In addition, we limited our analysis of plan sponsors' compliance with sales agent marketing regulations to dates between October 1, 2008,

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<sup>37</sup> OIG, *Medicare Advantage Marketing Materials for Calendar Year 2005*, OEI-01-05-00130, August 2006.

when marketing began for the 2009 annual enrollment periods, and March 31, 2009, the end of the 2009 annual enrollment periods. Most Medicare beneficiary enrollment occurs during this timeframe.<sup>38</sup>

Finally, we did not determine whether plan sponsors' payments complied with the Federal antikickback statute.<sup>39</sup> A legal analysis of whether plan sponsor payments violated the Federal antikickback statute was beyond the scope of this study.

### **Examining Sales Agents' Compensation and Qualifications**

To examine sales agents' compensation and qualifications, we collected data from 6 of the 266 plan sponsors offering MA plans in 2009. From three strata of plan sponsors, we purposively selected six plan sponsors with the highest rate of marketing complaints per enrolled Medicare beneficiary. We selected one plan sponsor from a stratum of plan sponsors with small enrollment, two from a stratum with medium enrollment, and three from a stratum with large enrollment. These six plan sponsors represented approximately 7 percent of MA enrollment at the time of our review. They are geographically dispersed and three of the six plan sponsors offered their plans nationally.

Within each plan sponsor, we randomly sampled 30 sales agents. We do not project our findings to all sales agents from the six plan sponsors or to the universe of MA plan sponsors.

We conducted site visits at each of the selected plan sponsors during April 2009. During each site visit, we conducted structured interviews of plan sponsor representatives and collected data on the random sample of 30 sales agents. For each sampled sales agent, we collected all enrollment applications, compensation, and testing data. While onsite, we verified the accuracy and completeness of these data.

We determined whether five of the six selected MA plan sponsors followed CMS's compensation regulations regarding sales agent compensation. We dropped one plan sponsor from this analysis because it did not use independent sales agents. Only independent sales agents are subject to the compensation regulations. For each of the 5 plan sponsors, we compared the payments made to each of the 30 sampled sales agents to the plan sponsors' CMS-approved compensation schedules.

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<sup>38</sup> MMCM, ch. 2, § 30.

<sup>39</sup> 42 U.S.C § 1320a-7b.

We also compared payments made to FMOs on a per enrollment basis to each of the plans sponsor's CMS-approved compensation schedule. For this analysis, we did not determine whether these payments comply with CMS regulations. In particular, we did not determine whether FMO payments were fair-market value or whether payments exceeded the amounts that plan sponsors paid FMOs for similar services in the previous 2 years.

We determined whether selected plan sponsors ensured that their sales agents were qualified by checking whether sales agents were appropriately trained and licensed at the time they enrolled Medicare beneficiaries. To determine whether their sales agents for the 6 selected plan sponsors were trained, we reviewed the date on which each of the 30 sampled sales agents passed the marketing test. For each sampled sales agent, we compared the date the sales agent passed the marketing test to the Medicare beneficiary's signature date on each enrollment application submitted by that sales agent.

We determined whether the 6 selected plan sponsors used licensed sales agents by checking whether each plan sponsor's 30 sampled sales agents had licenses in the States at the time they generated enrollment applications. We dropped one plan sponsor from this analysis because it operated as an HMO in California and California does not license sales agents to market HMOs. For the five selected plan sponsors, we compared the Medicare beneficiaries' signature dates to the licensure dates for all sales agents available on State Department of Insurance Web sites or through the National Insurance Producer Registry database.<sup>40</sup>

### **Medicare Beneficiary Complaints Regarding Sales Agent Marketing**

*Number of sales agent marketing complaints.* To determine the number of sales agent marketing complaints reported to CMS, we selected 2 stratified random samples of 400 complaint records from the Complaint Tracking Module from October 1, 2007, to April 30, 2008, and from October 1, 2008, to April 30, 2009. We chose these periods because they capture complaints from when plan sponsors may begin marketing for the plan year to 1 month after the end of the annual enrollment periods. We

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<sup>40</sup> Two States' licensure information is not available on their Department of Insurance Web sites. For these States, we used the National Insurance Producer Registry, a private compilation of current licensure information.

stratified the complaint records by those that are categorized as “marketing misrepresentation” and those that are not. We selected 100 complaint records from the “marketing misrepresentation” stratum and 300 complaint records from the other stratum for each period in case some sales agent marketing complaints were placed under an incorrect category.

We manually reviewed all sampled Complaint Tracking Module complaint records. We used each complaint’s categorization and description to determine whether the complaint concerned sales agent marketing. We projected the number of sales agent marketing complaints to the total number of complaints for the 2008 and 2009 annual enrollment periods. See Appendix C for a list of 95-percent confidence intervals for all statistical projections.

*Topics of sales agent marketing complaints.* To determine the nature of complaints in the Complaint Tracking Module, we analyzed sales agent marketing complaints from the “marketing misrepresentation” stratum only. The proportion of sales agent marketing complaints we found in the “marketing misrepresentation” stratum is large enough to make valid projections between periods. We then compared the proportion of complaints by type between the 2008 and 2009 annual enrollment periods.

To determine the nature of sales agent marketing complaints reported to other sources during the 2009 annual enrollment periods, we collected data from the Departments of Insurance, MEDICs, and the six selected plan sponsors. From the Departments of Insurance, we requested the types of complaints they received. From the MEDICs and the six selected plan sponsors, we requested actual complaints. We compared the Complaint Tracking Module complaints to those collected from other sources.

#### **Data Limitations**

We were unable to verify the accuracy and completeness of some compensation data from one plan sponsor. While we were able to assess the accuracy and completeness of payments to the sampled sales agents for that plan sponsor, we were not able to verify the completeness and accuracy of other payments, such as finders’ fees. Because this plan sponsor’s payments to sales agents were accurate and complete and because none of the other plan sponsors provided inaccurate compensation data, we included these unverified data in our analysis.

## I N T R O D U C T I O N

The number of sales agents we report as unqualified under CMS regulations and the number of enrollment applications they generated are conservative. Representatives from some selected plan sponsors stated that they were unable to find a small number of enrollment applications associated with our sampled sales agents. These enrollment applications could have had problems; however, we could not determine this because they were missing.

We use the number of sales agent marketing complaints reported to CMS as a way to identify potential concerns with sales agent marketing tactics. However, some of these complaints may have been unjustified, resulting in a potential overstatement of concerns with sales agent marketing tactics.

### **Standards**

This study was conducted in accordance with the *Quality Standards for Inspections* approved by the Council of Inspectors General on Integrity and Efficiency.

## ► FINDINGS

### **All five plan sponsors using independent sales agents had compensation practices that resulted in inappropriate financial incentives**

All five of the plan sponsors using independent sales agents had compensation practices that resulted in inappropriate financial

incentives for sales agents or may have created inappropriate financial incentives for FMOs to market their MA plans. The plan sponsor that did not use independent sales agents is not included in this analysis of compensation practices because only independent sales agents are governed by CMS compensation regulations.

Three of five selected plan sponsors using independent sales agents made payments to sales agents in excess of their CMS-approved compensation schedules. In addition, three selected plan sponsors made payments to FMOs that may have created inappropriate financial incentives to market their MA plans. One plan sponsor did both.

Inappropriate financial incentives for sales agents and FMOs may affect Medicare beneficiary enrollment. Sales agents and FMOs may encourage Medicare beneficiaries to enroll in MA plans that pay more than other MA plans without regard to whether those MA plans best meet Medicare beneficiaries' health care needs. Once enrolled, Medicare beneficiaries have limited opportunities to switch MA plans before the next annual enrollment periods begin.

### **Three of the selected plan sponsors made payments in excess of their CMS-approved compensation schedules, resulting in inappropriate financial incentives**

*Payment of administrative fees in excess of compensation rate.* One selected plan sponsor paid in excess of its CMS-approved compensation schedule by paying additional flat administrative fees to sales agents in our sample. For each enrollment, this plan sponsor paid flat administrative fees of \$50 to sales agents. These payments were in addition to its CMS-approved compensation payments. Including the flat administrative fees, a sales agent's compensation would total \$250 per enrollee, exceeding the plan sponsor's renewal year compensation rate of \$200.

CMS allows plan sponsors to pay fees, in addition to CMS-approved compensation, if these fees are for actual costs related to sales appointments. However, the plan sponsors' flat administrative fees do not appear to reflect payments for actual costs because these payments never varied; the plan sponsor always paid sales agents \$50. In addition, the plan sponsor stated that these fees were payments for

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costs related to enrollments rather than costs related to sales appointments.

Since implementing its practice of paying additional flat administrative fees, this plan sponsor experienced enrollment growth that exceeded overall MA enrollment growth throughout its region. Between November 1, 2008, and June 1, 2009, this plan sponsor's enrollment increased nearly 47 percent. During the same period for the same region, MA enrollment grew by 8 percent, excluding this plan sponsor's enrollment.

*Payments of excessive compensation rates.* One selected plan sponsor paid sampled sales agents in excess of its CMS-approved compensation schedule by paying the initial-year compensation rate, which is twice the renewal-year compensation rate, for enrollees it believed to be new to MA. The regulations are clear that for 2009, plan sponsors may pay the initial-year compensation rate only for enrollees new to Medicare. For all other Medicare beneficiaries, including beneficiaries new to MA, plan sponsors must pay sales agents the renewal-year compensation rate until CMS notifies them otherwise.

This plan sponsor may have gained a competitive advantage over plan sponsors that followed CMS's regulations. Even if sales agents would have eventually received the full initial-year compensation rate, they received payment of the full initial-year compensation rate as much as 5 months earlier than they otherwise would have.

Plan sponsor representatives stated that they paid the initial-year compensation rate for Medicare beneficiaries new to MA to remain competitive with other plan sponsors in their area. According to plan sponsor representatives, they hired a contractor to determine whether each new enrollee was new to MA after learning that other MA plan sponsors in their area were paying the initial-year compensation rate for new MA enrollees. Compensation data from two selected plan sponsors that marketed in the same area show that these plan sponsors paid the renewal-year compensation rate. These data do not support the claim that competitors paid the initial-year compensation rate. Regardless of its competitors' compensation practices, this plan sponsor should have followed CMS's compensation regulations for 2009.

A second selected plan sponsor paid in excess of its CMS-approved compensation schedule by paying a sales agent an additional payment, on top of his compensation rate, that it would have otherwise paid to the

FMO. This sales agent's compensation totaled as much as \$375 per enrollment, exceeding the plan sponsor's CMS-approved renewal-year compensation rate of \$200. A plan sponsor representative stated that in 2006, the FMO requested that the plan sponsor pay the sales agent the additional amount because this sales agent was a top seller.

*Payment of finders' fees in excess of compensation.* One plan sponsor exceeded its CMS-approved compensation rate by paying finders' fees. This same plan sponsor also paid sales agents initial-year compensation rates as described previously. The plan sponsor paid a \$25 finders' fee for referrals in addition to the sales agents' compensation. CMS specifically noted that such fees must be deducted from the sales agents' compensation.<sup>41</sup> The total compensation for an enrollment, including finders' fees, may not exceed the plan sponsor's approved compensation rate. Plan sponsor representatives reported that they intend to expand this practice.

**Three of the selected plan sponsors' payments to FMOs may have created inappropriate financial incentives to market their MA plans**

Variations among plan sponsors' payment to FMOs raised concerns about inappropriate financial incentives.<sup>42</sup> Three plan sponsors' payment practices may have created inappropriate financial incentives for FMOs to market their MA plans. Three of the five selected plan sponsors paid what they deemed to be an "initial-year compensation rate" to FMOs for 2009 enrollments, whereas two of the five selected plan sponsors paid what they deemed to be a "renewal-year compensation rate." The compensation regulations intend that Medicare beneficiaries be enrolled in MA plans that best meet their health care needs.<sup>43</sup> If some plan sponsors paid an "initial-year compensation rate" for 2009 enrollments and others did not, FMOs had a financial incentive to encourage their sales agents to enroll Medicare beneficiaries in plans that paid more rather than those that met Medicare beneficiaries' health care needs.

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<sup>41</sup> CMS, *Memorandum: Payment of Referral Fees*, February 24, 2009.

<sup>42</sup> As previously stated, we did not determine whether these payments comply with CMS regulations about FMO payments or the antikickback statute. Therefore, it is possible for there to be additional issues associated with these payments that are not explored in this study.

<sup>43</sup> 73 Fed. Reg. 54226, 54237 (Sept. 18, 2008).

The three selected plan sponsors’ compensation practices also may have the potential for plan sponsors to gain a competitive advantage through FMO compensation after 2009. If the three plan sponsors continue to pay FMOs an “initial-year compensation rate” for each year of a 6-year compensation cycle while the other two pay a “renewal-year compensation rate,” the former will continue to have a competitive advantage over the latter. Paying FMOs an “initial year compensation rate” for each year of a 6-year compensation cycle would significantly increase the total payment an FMO would receive. For example, if one of these plan sponsors paid its “initial year compensation rate” during the 5 renewal years, the plan sponsor would pay the FMO \$1,050 over the course of 6 years as compared to a plan sponsor that paid its “renewal-year compensation rate” during the 5 renewal years for a total of \$615 over the 6 years.

**Five of the six selected plan sponsors did not ensure that all sales agents were qualified under CMS’s regulations**

Five of the six selected plan sponsors used sales agents who were unqualified under CMS regulations because they either had not passed the marketing test

for 2009 or were not licensed at the time they took Medicare beneficiaries’ enrollment applications. Two of the five selected plan sponsors used sales agents who had not passed the marketing test and who were unlicensed. In our random sample of 30 sales agents per plan sponsor, there were 12 unqualified sales agents. While unqualified, these 12 sales agents took 44 enrollment applications from Medicare beneficiaries. Because we assessed only the qualifications of a sample of sales agents, the 12 sales agents represent the minimum number of unqualified sales agents from the 6 selected plan sponsors.

Four selected plan sponsors used sales agents who took enrollment applications from Medicare beneficiaries before passing the marketing test for 2009. These 4 plan sponsors had 10 sales agents submit 38 enrollment applications for Medicare beneficiaries before passing the marketing test for 2009. On average, the 10 sales agents took enrollment applications 17 days before passing the marketing test for 2009. These sales agents took enrollment applications as little as 1 day, and as many as 63 days, before passing the marketing test for 2009.

In addition, three selected plan sponsors used unlicensed sales agents. These plans sponsors used at least three sampled sales agents who generated enrollments while unlicensed. One unlicensed sales agent

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also took enrollment applications before passing the marketing test for 2009. These unlicensed sales agents took six enrollment applications from Medicare beneficiaries. One of the sales agents took an enrollment application 1 year and 8 months after his license had expired. Another sales agent took four enrollment applications, on average, 25 days after his license had expired. The other sales agent took one enrollment application in a State for which we found no evidence that he had ever been licensed.

### **In spite of their application review processes, four selected plan sponsors did not identify enrollment applications taken by unqualified sales agents**

Our selected plan sponsors all used an application review process to ensure that only qualified sales agents submitted enrollment applications. Under the application review process, plan sponsors review each enrollment application to determine that a sales agent has passed the annual marketing test and is licensed, among other things.

In spite of their application review processes, four plan sponsors did not detect enrollment applications taken by unqualified sales agents. Four selected plan sponsors did not detect 37 out of 43 enrollment applications taken by unqualified sales agents in our sample. In these cases, plan sponsors paid the sales agents for the enrollments. The fifth plan sponsor detected the only enrollment application submitted by an unqualified sales agent to the plan.

### **Two selected plan sponsors could not always identify the sales agent responsible for enrollment applications**

A plan sponsor's application review processes cannot determine whether sales agents are unqualified under CMS regulations if the plan sponsor cannot identify the responsible sales agent. Two selected plan sponsors could not identify the sales agents responsible for more than 6,000 enrollment applications out of approximately 112,000 enrollment applications submitted for the 2009 annual enrollment periods.

One of these plan sponsors kept a record only of the responsible FMO when they could not identify the responsible sales agent. Thus, when we sampled sales agents, 6 of the 30 sales agents we selected were actually FMOs. Because the plan sponsor could not identify the sales agents for these enrollment applications, the plan sponsor could not verify during its application review process that the sales agent was tested or licensed.

**None of the selected plan sponsors contacted Medicare beneficiaries enrolled by unqualified sales agents**

Plan sponsors detected at least seven enrollment applications taken by sales agents who either had not passed the marketing test for 2009 or were not State licensed. In these cases, plan sponsors reported that they did not pay the sales agents their compensation, but still processed the Medicare beneficiaries’ enrollments.

Plan sponsors are required to have processes to confirm that Medicare beneficiaries are aware of their enrollment in MA plans and that they understand the MA plans’ rules.<sup>44</sup> Plan sponsors have discretion as to the process or mechanism they put into place. For example, plan sponsors may call new members or conduct marketing audits to ensure that Medicare beneficiaries’ enrollments were based on complete and accurate information and that MA plan rules were completely explained. By calling to confirm whether Medicare beneficiaries’ enrollments were based on complete and accurate information, plan sponsors could correct any incorrect or misleading information given to Medicare beneficiaries by unqualified sales agents.

No plan sponsor that we reviewed had a policy to contact Medicare beneficiaries enrolled by an unqualified sales agent to ensure that those Medicare beneficiaries were aware of their enrollment or that they understood the MA plan’s rules. During interviews, representatives from several selected plan sponsors stated that they must enroll an applicant unless the Medicare beneficiary is not eligible or the enrollment application is incomplete. They stated that they do not have enough time to follow up with Medicare beneficiaries whose enrollment applications had been taken by unqualified sales agents because they must submit the enrollment applications to CMS within 7 days of receipt.<sup>45</sup>

**The number and topics of sales agent marketing complaints remained unchanged after implementation of sales agent marketing regulations**

During the 2009 annual enrollment periods, which began after CMS implemented the sales agent marketing regulations, approximately 13,000 sales agent marketing complaints were reported to CMS. Similarly, approximately

<sup>44</sup> 42 CFR § 422.2272(b).

<sup>45</sup> MMCM, ch. 2, § 40.3.

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13,000 sales agent marketing complaints were reported to CMS during the 2008 annual enrollment periods, before implementation of the sales agent marketing regulations. For both years' annual enrollment periods, sales agent marketing complaints represented less than 10 percent of all complaints reported to CMS.

### **For both 2008 and 2009, sales agent marketing complaints referenced the same three broad topics**

Sales agent marketing complaints from the Complaint Tracking Module's "marketing misrepresentation" subcategory for both 2008 and 2009 referenced one or more of the same three broad topics:

(1) providing misleading information about plan benefits, (2) enrolling Medicare beneficiaries without their consent, and (3) engaging in aggressive sales tactics. Complaints reported to the Departments of Insurance, MEDICs, and the six selected plan sponsors for the 2009 annual enrollment period also referenced these same three broad topics.

*Misleading information about plan benefits.* For both the 2008 and 2009 annual enrollment periods, the majority of sales agent marketing complaints reported to CMS referenced sales agents providing misleading information. A typical complaint regarding a sales agent providing misleading information alleged that the sales agent told the Medicare beneficiary that an MA plan supplemented traditional Medicare or otherwise misled the Medicare beneficiary about an MA plan's benefits. For example, one complaint in the Complaint Tracking Module alleged that a sales agent was to enroll a Medicare beneficiary in a plan that would supplement her health care coverage. The sales agent stated that the new plan would not include prescription drug coverage because the Medicare beneficiary already had prescription drug coverage. After enrolling, the Medicare beneficiary learned that the MA plan supplanted rather than supplemented her previous health care and prescription drug coverage and did not cover the prescription drugs she was taking.

Although the three broad topics did not change between 2008 and 2009, the proportion of complaints to CMS alleging sales agents provided

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misleading information decreased from 85 percent to 64 percent. This difference is statistically significant at the 95-percent confidence level.<sup>46</sup>

*Enrolled without consent.* Typically, complaints alleging that Medicare beneficiaries were enrolled without their consent stated that the Medicare beneficiaries were unaware of how they had been enrolled. For example, one complaint in the Complaint Tracking Module stated that a Medicare beneficiary asked the sales agent to return with more information on the MA plan before submitting his enrollment application. The sales agent did not return but the Medicare beneficiary was enrolled in the MA plan.

*Aggressive sales tactics.* Generally, complaints of sales agents using aggressive sales tactics alleged that sales agents inappropriately and inaccurately discussed the Medicare beneficiaries' current plans or contacted Medicare beneficiaries at their residences. For example, one complaint in the Complaint Tracking Module alleged that a sales agent called the Medicare beneficiary claiming to be from Medicare. The sales agent stated that the Medicare beneficiary's current plan would no longer provide Medicare coverage and that he would need to enroll in a new plan. The Medicare beneficiary enrolled but called the 1-800-MEDICARE hotline to disenroll upon learning that this information was false.

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<sup>46</sup> There was no statistically significant change between the 2008 and 2009 annual enrollment periods for complaints of sales agents enrolling Medicare beneficiaries without their consent and using aggressive sales tactics. Because Medicare beneficiaries could reference one or more of the three broad topics in each complaint, a decrease in the proportion of complaints referencing misleading information is independent of any change in the proportion of complaints referencing the other two topics.



## R E C O M M E N D A T I O N S

We reviewed six plan sponsors to determine whether MA plan sponsors complied with regulations concerning the compensation and qualifications of sales agents during the first plan year after these regulations were implemented. Each of the six selected plan sponsors did not follow at least one of the marketing regulations concerning sales agent compensation and qualifications. Five selected plan sponsors' compensation practices resulted in inappropriate financial incentives for sales agents or may have created inappropriate financial incentives for FMOs to market their MA plans. In addition, five of the six selected plan sponsors did not ensure that all sales agents were qualified. Finally, the number and topics of complaints regarding sales agents reported to CMS did not change after CMS implemented the sales agent marketing regulations.

Although, in some cases, the instances of plan sponsors' noncompliance may not have involved large numbers of sales agents or Medicare beneficiaries, in other cases the vulnerabilities were systemic. In particular, some of the compensation practices were standard operating procedures for plan sponsors, although they did not follow CMS's compensation regulations. Any instances of noncompliance with sales agent marketing regulations represent gaps in plan sponsor's oversight and a failure to fully implement the sales agent regulations.

While this study was limited to six plan sponsors, compliance with sales agent marketing regulations is a larger concern. During the course of CMS's oversight activities, it identified 84 plan sponsors, including 5 of the 6 plan sponsors in this review, as either having deficiencies in their implementation of sales agent marketing regulations or noncompliance with a sales agent marketing regulation.

In light of these concerns, we recommend that CMS:

**Take appropriate actions regarding the specific instances of noncompliance documented in this report**

Each of the six selected plan sponsors made payments in excess of their CMS-approved compensation schedules or enrolled beneficiaries through unqualified sales agents. We have forwarded the specific instances of noncompliance documented in this report to CMS for followup.

**Audit plan sponsors and include an assessment of the vulnerabilities identified in this report**

In addition to following up on specific instances of noncompliance identified in this report, CMS should oversee plan sponsors' compliance with sales agent marketing regulations through onsite compliance audits. CMS staff conducted a compliance audit of one plan sponsor during the summer of 2009 and indicated that they plan to conduct more audits to ensure compliance with sales agent marketing regulations. We encourage CMS to expand its oversight efforts through compliance audits. We suggest that CMS incorporate an assessment of the specific vulnerabilities identified in this report into its audit protocol, such as the inappropriate payment of administrative fees and finders' fees. In addition, we encourage CMS to consider using complaint rates from the Complaint Tracking Module to focus audits or select plan sponsors for audits in future years.

CMS staff also indicated that as part of these audits, CMS will assess plan sponsors' oversight of sales agents. Our review indicates that plan sponsors are not always able to identify enrollment applications from unqualified sales agents. For this reason, we encourage CMS to review the systems plan sponsors have in place to review enrollment applications from sales agents.

**Issue additional regulations concerning FMO payments**

CMS regulations lack specificity concerning payments to FMOs. As a result, plan sponsors may have created financial incentives that could lead FMOs to encourage sales agents to enroll Medicare beneficiaries in plans that do not meet their health care needs. Because FMOs, like sales agents, may influence Medicare beneficiaries' enrollment in MA plans, CMS should issue additional regulations more clearly defining how and how much FMOs should be paid for their services. In the meantime, CMS should issue guidance to plan sponsors clarifying appropriate payments to FMOs.

**Issue regulations requiring plan sponsors to contact all new enrollees to ensure that they understand plan rules**

CMS regulations require sales agents to pass a marketing test on Medicare regulations annually and be State licensed. Requiring sales agents to pass the annual marketing test and to be State licensed supports an environment where sales agents have the knowledge necessary to help Medicare beneficiaries enroll in MA plans that meet

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their health care needs. Yet, no plan sponsor had a policy to contact Medicare beneficiaries enrolled through unqualified sales agents.

In August 2009, CMS issued revised marketing guidance instructing plan sponsors to contact all new enrollees to ensure that Medicare beneficiaries understand plan rules. To protect Medicare beneficiaries and ensure that they understand their new plans' rules, we recommend that CMS codify this guidance in regulations.

In addition, if a Medicare beneficiary's enrollment is discovered to have been inappropriate, the plan sponsor should also be required to alert CMS. If necessary, CMS should grant a special enrollment period to Medicare beneficiaries enrolled in plans that do not best meet their health care needs.

### **Issue guidance clarifying that plan sponsors should terminate unlicensed sales agents immediately upon discovery**

Sales agent marketing regulations stipulate that plan sponsors must employ licensed sales agents. Yet, we found instances in which unlicensed sales agents enrolled Medicare beneficiaries in plans offered by three of the six plan sponsors. CMS should issue guidance clarifying that plan sponsors should immediately terminate any sales agent found to be unlicensed while conducting marketing activities. In addition, CMS should collect reports of terminated sales agents during its audits of plan sponsors. Pursuant to its Memorandums of Understanding with State Departments of Insurance, CMS should then notify the applicable States of instances in which plan sponsors terminated unlicensed sales agents.

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## **AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE**

CMS concurred with our first recommendation. CMS concurred in part with the second recommendation, stating that it would conduct audits or our oversight activities of plan sponsors posing the greatest risk to Medicare beneficiaries. We agree with this approach and we have amended the wording of the recommendation in the report. CMS did not concur with our final three recommendations.

Specifically, CMS did not concur with our recommendation for more specific regulations concerning FMO compensation payments. CMS stated that regulations at 42 CFR § 422.2274(a)(1)(iv) apply to FMO payments and therefore it is unnecessary to issue regulations

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concerning FMO payments. However, we found that the lack of specificity in the compensation regulations allowed plan sponsors to create financial incentives that may lead FMOs to encourage sales agents to enroll Medicare beneficiaries in plans that pay more. We continue to think that CMS should clearly define how and how much FMOs should be paid for their services. However, we have broadened our original recommendation to allow CMS latitude in designing the best approach in regulating FMO payments.

CMS also did not concur with our recommendation to issue regulations requiring plan sponsors to contact all new enrollees to ensure that they understand plan rules. CMS responded that new regulations are unnecessary because CMS has already used existing regulations as the basis for new guidance which requires outbound enrollment verification calls to make sure that newly enrolled Medicare beneficiaries understand plan rules. If CMS guidance is sufficient to ensure that plan sponsors conduct outbound enrollment verification calls, we agree that it has met the intent of our recommendation.

However, we are concerned that guidance may not be sufficient to hold plan sponsors accountable. CMS should reconsider formalizing the guidance as regulations after monitoring plan sponsors' implementation of outbound enrollment verification calls. If CMS determines that stronger oversight authority is necessary to ensure that outbound enrollment verification calls are occurring, it should formalize the guidance in regulations.

Finally, CMS did not concur with our recommendation to issue regulations requiring plan sponsors to report unlicensed sales agents to State Departments of Insurance. CMS responded that it does not have the authority to require that plan sponsors report unlicensed sales agents to State Departments of Insurance. CMS stated that the statute gives CMS the authority to require plan sponsors to report only terminations of licensed sales agents to States. We agree that the statute mentions plan sponsors only reporting terminated sales agents. However, we do not think that the statute limits CMS's authority to require the reporting of all terminated sales agents, both licensed and unlicensed.

In light of CMS's comments, we have modified our original recommendation to reflect an alternative approach for ensuring that plan sponsors report unlicensed sales agents to State Departments of Insurance. We now recommend that CMS issue guidance requiring

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plan sponsors to terminate all unlicensed sales agents immediately upon discovery. During its audits of plan sponsors, CMS should collect reports of terminated sales agents and then make the names of terminated unlicensed sales agents available to the appropriate States pursuant to its Memorandums of Understanding with State Departments of Insurance.

For the full text of CMS's comments, see Appendix D.

➤ **A P P E N D I X ~ A**

**Medicare Improvements for Patients and Providers Act of 2008  
Provisions Concerning Sales Agents**

**Table A-1: MIPPA\* Provisions Concerning Sales Agent Marketing**

<b>MIPPA Provisions</b>	<b>Associated Centers for Medicare &amp; Medicaid Services** Guidance for Implementing the MIPPA Provisions</b>	<b>Addressed in 2006 CMS Guidance</b>
Compensation of sales agents	Plan sponsors should pay sales agents an initial-year compensation rate for a sale and a renewal-year compensation rate for 5 subsequent years of enrollment. Compensation includes payments such as commissions, bonuses, gifts, prizes, awards, and finders' fees.	x
Annual training and testing of sales agents	Plan sponsors must ensure that sales agents are trained and tested annually on Medicare rules and on plan details. Sales agents must receive a score of at least 85 percent after September 18, 2008.	
Use of State-licensed sales agents	Plan sponsors must use State-licensed sales agents. Plan sponsors also must comply with State laws requiring plans to give States information about sales agents marketing their Medicare Advantage (MA) plans.	x
Reporting terminated sales agents to States	Effective January 1, 2009, plan sponsors must report terminated sales agents, and the reasons for termination, to the States in which the sales agents were contracted to sell insurance.	x
Unsolicited direct contacts with Medicare beneficiaries	Sales agents may not conduct certain types of solicitation, such as initiating marketing activities with potential plan enrollees; calls to former enrollees; and approaching Medicare beneficiaries in common areas, unless requested.	x
Scope of appointment agreements with Medicare beneficiaries	Sales agents must document, either in writing or recorded by phone, the scope of their appointments with Medicare beneficiaries prior to the appointments.	
Cross-selling non-health-care-related products	Sales agents may not market any non-health-care-related products during an MA sales activity.	
Sales and marketing in health care settings and educational events	Sales agents may not conduct sales activities in health care settings except in common areas. Sales agents may not conduct sales activities, such as the distribution of marketing materials or plan enrollment applications, at educational events.	x
Nominal value of gifts to Medicare beneficiaries	The nominal value of gifts is defined as an item worth \$15 or less, based on the retail purchase price of the item.	x
Providing meals to Medicare beneficiaries	Sales agents may not provide or subsidize meals. Sales agents are allowed to provide light snacks and refreshments.	

Sources: Office of Inspector General analysis of: (1) MIPPA; (2) CMS marketing guidance issued on September 15, 2008; and (3) Medicare Marketing Guidelines for MA Plans, Medicare Advantage Prescription Drug Plans, Prescription Drug Plans, and 1876 Cost Plans revised on July 25, 2006.

\*Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).

\*\*Centers for Medicare & Medicaid Services (CMS).



**DETAILED METHODOLOGY**

**Examining Sales Agents’ Compensation and Qualifications**

To select a purposive sample of plan sponsors, we first created a sampling frame targeting Medicare Advantage (MA) plan sponsors that used sales agents to market to Medicare beneficiaries. First, we identified all plan sponsors offering plans for 2009 using 2009 plan-level enrollment data from the Centers for Medicare & Medicaid Services (CMS). Next, we identified those plan sponsors that offered MA plans. From these plan sponsors, we selected those that CMS identified as using sales agents. We then selected only plan sponsors with more than 100 enrollees.

Finally, we selected plan sponsors that received at least one complaint in the Complaint Tracking Module “marketing” category between October 1, 2008, and February 28, 2009. We selected plan sponsors with high rates of marketing complaints to test whether they may have also had underlying marketing issues. We identified 73 plan sponsors for our sampling frame. Table B-1 provides the number of plan sponsors that met each step of our sampling frame criteria.

**Table B-1: Sampling Frame of MA Plan Sponsors for 2009**

Sampling Criteria for Plan Sponsors	Number of Plan Sponsors
Plan sponsor for Medicare	281
Offered MA plans	266
Marketed through sales agents	109
Had more than 100 enrollees	106
Had at least one complaint in Complaint Tracking Module	73

Source: Office of Inspector General (OIG) analysis of CMS plan-level enrollment data and Complaint Tracking Module data, 2009.

Purposive sample of plan sponsors. For each of the 73 plan sponsors, we calculated the complaint rate using complaints in the Complaint Tracking Module’s “marketing” category between October 1, 2008, and February 28, 2009. We used the broader “marketing” category because we found sales agent marketing complaints in the “marketing” category

and not only in the “marketing misrepresentation” subcategory. We found 6,498 marketing complaints in the “marketing” category during this period, only some of which identified plans or plan sponsors. Of these complaints, 2,781 were associated with the 73 plan sponsors from our sampling frame. Using the 2,781 complaints, we then calculated the complaint rates per 1,000 Medicare enrollees for the 73 plan sponsors within our sampling frame.

To ensure the representation of different-sized plan sponsors in our selection, we stratified the 73 plan sponsors by small, medium, and large enrollment. We determined the total enrollment for each plan sponsor using 2009 CMS plan-level enrollment data available on CMS’s Web site. From each of the three strata, we selected the plan sponsors with the highest complaint rates. We selected one plan sponsor from a stratum of plan sponsors with small enrollment, two from a stratum with medium enrollment, and three from a stratum with large enrollment.<sup>47</sup> Table B-2 provides the number of plan sponsors selected for each of the three strata as well as enrollment ranges.

**Table B-2: Strata of Plan Sponsors**

Plan Sponsor Size	Number of Selected Plan Sponsors per Stratum	Overall Number of Plan Sponsors per Stratum	Range of Enrollment per Stratum
Small enrollment	1	24	1,500–15,999
Medium enrollment	2	25	16,000–63,999
Large enrollment	3	24	64,000–6,000,000

Source: OIG analysis of CMS plan-level enrollment data and Complaint Tracking Module data, 2009.

Random sample of sales agents. For each selected plan sponsor, we requested a list of sales agents who enrolled at least one Medicare

<sup>47</sup> We excluded the two plan sponsors with the highest complaint rates in the stratum of small plan sponsors. The plan sponsor with the highest complaint rate in this stratum did not receive applications for enrollment from any of its sales agents for the 2009 plan year enrollment period. The second plan sponsor was owned by another plan sponsor in our sample. In addition, we excluded one plan sponsor with the second highest complaint rate from the large enrollment strata because it was under Federal investigation at the time of our data collection.

beneficiary in an MA plan for 2009. From this list, we selected a random sample of 30 sales agents for that plan sponsor.

Two of the selected plan sponsors could identify only the field marketing organization (FMO), rather than the sales agent, in some instances. When we requested a list of sales agents who enrolled at least one Medicare beneficiary, the lists included FMOs as well as individual sales agents. As a result, for 1 selected plan sponsor, our random sample resulted in a selection of 6 FMOs and 24 sales agents. We identified 14 sales agents for the 6 FMOs from enrollment applications and obtained compensation, testing, and licensure data for the 14 sales agents. This resulted in a sample of 38 sales agents for this plan sponsor.

*Data collection.* To gather data, we conducted site visits to each selected plan sponsor. From each selected plan sponsor, we requested the following information 48 or 72 hours before the site visit: (1) copies of all 2009 MA enrollment applications generated by the sampled sales agents; (2) documentation of payments made to the sampled sales agents and to other individuals or entities associated with enrollments generated by the sampled sales agents (i.e., commissions, bonuses, gifts, prizes, awards, and finders' fees) from January 1, 2009, through our site visits in April 2009; and (3) testing dates and test scores for the sampled sales agents for 2009.

*Data verification.* During the site visits, we verified the accuracy and completeness of all requested data. To validate the data for each of the sampled sales agents, we compared the data the plan sponsors provided us to those data in their data systems.

We were able to validate the compensation data we collected for five of the six selected plan sponsors. For one plan sponsor, compensation data were unverifiable because its systems for collecting compensation data had no search function across the various systems that could link all payments for a particular enrollment application. Our analysis for this plan sponsor is based on the unverified data provided by the plan sponsor.

*Structured interviews.* In addition to collecting and verifying data, we conducted structured interviews with each of the six selected plan sponsors. We asked plan sponsor representatives about their oversight activities concerning sales agent marketing. We also asked how they had implemented the sales agent marketing provisions detailed in the

Medicare Improvements for Patients and Providers Act of 2008. We collected documentation, such as policies, procedures, and communications with sales agents, to verify their statements.

**Medicare Beneficiary Complaints Regarding Sales Agent Marketing**

The Complaint Tracking Module is a central repository of complaints related to MA and prescription drug coverage received in the CMS regional office or central office or through 1-800-MEDICARE. For the 2008 and 2009 annual enrollment periods, we analyzed complaints concerning MA plan sponsors that CMS received from October through April of the next year. We chose these periods because they capture complaints when marketing for the annual enrollment periods begins in October through 1 month after the marketing period ends in March. Our collection period extends 1 month beyond the end of the annual enrollment periods because Medicare beneficiaries may not realize that they are enrolled in inappropriate plans until after they have attempted to access benefits. According to our analysis of Complaint Tracking Module data since 2005, the majority of marketing complaints were reported to CMS between October and April of the next year.

*Number of sales agent marketing complaints.* To identify the number of sales agents marketing complaints to CMS for the 2008 and 2009 annual enrollment periods, we selected 2 stratified random samples of 400 complaint records from the Complaint Tracking Module. We stratified the complaint records by those that are categorized as “marketing misrepresentation” and those that are not. We selected 100 complaint records from the “marketing misrepresentation” stratum and 300 complaints from the other stratum for each period. We sampled complaints from two strata because CMS staff expressed concerns that not all sales agent complaints were correctly categorized. Our sampling strategy enabled us to estimate the percentage of sales agent complaints for each time period with expected absolute precision of +/- 6 percent at the 95-percent confidence level.

To verify whether a complaint in the Complaint Tracking Module was a sales agent marketing complaint, we reviewed all sampled complaints. If a complaint was placed in the “marketing misrepresentation” subcategory, we considered it a sales agent marketing complaint as long as there was not information to the contrary. If the complaint was not categorized as “marketing misrepresentation” by CMS, we considered it a sales agent marketing complaint if the complaint summary included a direct or indirect reference to certain keywords and there was no

contradictory evidence. The keywords we used included “agent”, “broker”, “mislead”, or “misrepresent”. We had three separate reviewers confirm and agree that a complaint should be categorized as sales agent marketing. Some complaints lacked enough detail to understand the situation being reported. When this was the case, we relied on CMS’s classification of each complaint. Table B-3 provides for each stratum the overall number of complaints in the Complaint Tracking Module, the number of complaints sampled, and the number of verified sales agent complaints.

**Table B-3: Strata of Complaints**

Year	Complaint Tracking Module Subcategory	Overall Number of Complaints	Number of Sampled Complaints	Number of Verified Complaints
2008	Marketing misrepresentation	7,219	100	85
	Other	183,226	300	11
2009	Marketing misrepresentation	11,146	100	89
	Other	152,193	300	6

Source: OIG analysis of CMS plan-level enrollment data and Complaint Tracking Module data, 2009.

*Nature of sales agent marketing complaints.* To determine the nature of complaints, we read each verified complaint in the “marketing misrepresentation” category for common topics. We then organized the common topics into broader themes that were apparent in their complaint descriptions. We also read complaints related to each broader theme to determine what these complaints typically alleged. Finally, we selected examples of complaints to provide insight into the details of sales agent marketing. We compared the proportion of complaints for each theme between the 2008 and 2009 annual enrollment periods. We were able to produce yearly estimates of proportions of complaints for the different complaint types with absolute precisions of +/- 6 percent at the 95-percent confidence level.

We also collected complaint data from Medicare Drug Integrity Contractors (MEDIC), the Departments of Insurance, and the six selected plan sponsors to understand how the nature of complaints they received compared to those CMS received. From the two MEDICs, we requested complaints related to sales agents received between

October 1, 2008, and March 31, 2009. We chose these periods to match the periods from our analysis of Complaint Tracking Module complaints as closely as possible while remaining timely with our analysis. To avoid duplication of complaints that MEDICs entered in the Complaint Tracking Module, we requested only complaints that were not entered in the Complaint Tracking Module.

In addition to collecting data from MEDICs, we surveyed the Departments of Insurance for each State and U.S. territory to determine the types of sales agents marketing complaints they received. Fifty-one of the fifty-six Departments of Insurance surveyed responded. We had identified complaint themes from our Complaint Tracking Module analysis and asked whether the Departments of Insurance had received these types of complaints. We also gave the Departments of Insurance the opportunity to comment on other types of complaints they had received.

Finally, we requested a record of all complaints received by the selected plan sponsors. We requested complaints related to sales agents received between October 1, 2008, and February 28, 2009, shortly before we contacted the plan sponsors. We read each complaint to determine whether it concerned sales agent marketing and common topics. We then organized the common topics into broader themes.

**Estimates and Confidence Intervals for Samples From the Centers for Medicare & Medicaid Services' Complaint Tracking Module**

**Table C-1: Estimates of the Number of Sales Agent Marketing Complaints Reported in the Complaint Tracking Module for the 2008 and 2009 Annual Enrollment Periods**

Enrollment Period	Sample Size	Number of Projected Sales Agent Marketing Complaints	95-Percent Confidence Interval
2008	400	12,854	8,910–16,799
2009	400	12,964	10,448–15,479

Source: Office of Inspector General (OIG) analysis of Complaint Tracking Module, 2009.

**Table C-2: Types of Sales Agent Marketing Complaints Categorized as “Marketing Misrepresentation” for the 2008 and 2009 Annual Enrollment Periods**

Types of Sales Agent Marketing Complaints	Sample Size for 2008 Enrollment Periods*	Sample Size for 2009 Enrollment Periods*	Point Estimate for 2008 Enrollment Periods	95-Percent Confidence Interval for 2008 Enrollment Periods	Point Estimate for 2009 Enrollment Periods	95-Percent Confidence Interval for 2009 Enrollment Periods
Providing misleading information	85	89	84.7%	75.4%–90.9%	64.0%	53.5%–73.4%
Enrolling without consent	85	89	14.1%	8.2%–23.3%	24.7%	16.8%–34.8%
Engaging in aggressive tactics	85	89	14.1%	8.2%–23.3%	21.3%	14.0%–31.1%

Source: OIG analysis of Complaint Tracking Module, 2009.

\*Sample sizes are based on the number of verified sales agent marketing complaints within the “marketing misrepresentation” strata only.

**Table C-3: Estimates for Comparisons of Types of Sales Agent Marketing Complaints Categorized as “Marketing Misrepresentation” for the 2008 and 2009 Annual Enrollment Periods**

Types of Sales Agent Marketing Complaints	Sample Size for 2008 and 2009 Enrollment Periods	Point Estimate For Difference Between 2008 and 2009 Enrollment Periods	95-Percent Confidence Interval	P-Value
Providing misleading information	174	20.7%	8.0%–33.3%	.0015*
Enrolling without consent	174	10.6%	-1.1%–22.3%	.0752
Engaging in aggressive tactics	174	7.2%	-4.1%–18.6%	.2103

Source: OIG analysis of Complaint Tracking Module, 2009.

\*Statistically significant at the 95-percent confidence level.

▶ A P P E N D I X ~ D

**Agency Comments**

	DEPARTMENT OF HEALTH & HUMAN SERVICES	Centers for Medicare & Medicaid Services
	<b>RECEIVED</b> 2009 DEC 18 PM 3:18 OFFICE OF INSPECTOR GENERAL	
<b>DATE:</b>	DEC 17 2009	
<b>TO:</b>	Daniel R. Levinson Inspector General	
<b>FROM:</b>	Charlene Frizzera <i>/S/</i> Acting Administrator	
<b>SUBJECT:</b>	Office of Inspector General (OIG) Draft Report: "Beneficiaries Remain Vulnerable to Sales Agents' Marketing of Medicare Advantage Plans," (OEI-05-09-00070)	
<p>Thank you for the opportunity to comment on the OIG Report: "Beneficiaries Remain Vulnerable to Sales Agents' Marketing of Medicare Advantage Plans." The Centers for Medicare &amp; Medicaid Services (CMS) recognizes the importance of taking the appropriate compliance and enforcement actions against Medicare Advantage (MA) sales agents who inappropriately market to Medicare beneficiaries.</p> <p>The CMS has continued to take steps to ensure that beneficiaries are protected from deceptive and inappropriate actions taken by sales agents and brokers who sell MA plans. CMS takes immediate action when complaints of inappropriate marketing are reported. We have effectuated a comprehensive marketing surveillance initiative designed to detect and respond to incidents of inappropriate marketing. This includes secret shopping of public sales events and individual sales appointments conducted by MA organizations, review of marketing advertisements for inappropriate content and other surveillance activities. CMS takes immediate action when marketing violations are uncovered, including issuance of compliance letters requiring MA organizations and Prescription Drug Plan sponsors to implement corrective measures, which has the direct impact of protecting Medicare beneficiaries.</p> <p>In addition, CMS issued regulations in late 2008 to establish limits on commission rates paid to agents selling both MA and Prescription Drug plans in order to prevent beneficiaries moving inappropriately between plans. Earlier this year, we issued additional guidance to strengthen those rules that established fair market value limits for initial and renewal compensation and provided further guidance on payment of referral fees to ensure that compensation amounts paid to agents do not exceed the fair market value limits identified by CMS. Given the new MIPPA marketing requirements were released late in the contract year CMS expects to see improvements as organizations implement additional internal controls and improve oversight to ensure compliance with these requirements.</p>		

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Lastly, CMS would like to highlight the statistically significant decrease in the “misleading complaints” category in their comparisons of complaints during the 2008 annual election period and the 2009 annual election period. CMS believes that this is an important improvement and relevant to this study.

Below is our response to the OIG recommendations.

**OIG Recommendation:**

The OIG recommends CMS take appropriate actions regarding the specific instances of noncompliance documented in this report.

**CMS Response:**

The CMS concurs with this recommendation and will take appropriate compliance actions regarding the specific instances of noncompliance mentioned in the report.

**OIG Recommendation:**

The OIG recommends CMS audit all plan sponsors and include an assessment of the vulnerabilities identified in this report.

**CMS Response:**

The CMS concurs with this recommendation in part. CMS plans to conduct a risk assessment of all plan sponsors related to agent/broker compensation and the vulnerabilities identified in this report. We will conduct audits or other oversight activities of those entities that present the greatest risk to beneficiaries and the agency, and then proceed with additional audits of plan sponsors subject to resource constraints.

**OIG Recommendation:**

The OIG recommends CMS issue regulations concerning field marketing organization (FMO) compensation payments.

**CMS Response:**

The CMS non-concurs with this recommendation. The CMS agent/broker compensation regulations were issued as an interim final rule with comment period and those rules are in effect today. As written, in addition to limiting compensation to agents and brokers, these regulations at (see 42 CFR 422.2274(a)(1)(iv) and 423.2274(a)(1)(iv) apply to FMOs and require that for organizations that contract with FMOs or pay other similar type entities, any amount paid to such a third party must be fair-market value and must not exceed an amount that is commensurate with the amount that organization paid to a third party for similar services in each of the prior two years. Given these rules already apply to FMOs it is unnecessary for CMS to issue regulations concerning FMO compensation payments.

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With regard to the OIG's finding that several plans' compensation payments to FMOs may have been inappropriate and out of compliance with our compensation requirements CMS will follow-up with the plans in question.

**OIG Recommendation:**

The OIG recommends CMS issue regulations requiring plan sponsors to contact all new enrollees to ensure that they understand plan rules.

**CMS Response:**

The CMS non-concurs with this recommendation. Issuing regulations on this topic is unnecessary as new outbound verification requirements stemming from existing regulatory authority to verify new enrollee enrollment choices have been implemented.

**OIG Recommendation:**

The OIG recommends CMS issue regulations requiring plan sponsors to report unlicensed sales agents to state Department of Insurance.

**CMS Response:**

The CMS non-concurs with the recommendation. The statute only gave CMS authority to require plans to report licensed agents to State Departments of Insurance. Under current authority, plans must use licensed agents and report terminations of licensed agents to the state. CMS does have processes in place to impose compliance actions against plans that are found to be out of compliance with the state licensure requirements. In addition, CMS will work closely with State Departments of Insurance and exchange information according to the terms of our Memorandums of Understanding as well as encourage plan sponsors to work closely with the state on matters related to the activity and conduct of agents. This later statement would include notification to the state in instances where, under audit or other surveillance-based activity, CMS has identified agents operating without a license.

Thank you again for the opportunity to comment on this report.



## A C K N O W L E D G M E N T S

This report was prepared under the direction of Ann Maxwell, Regional Inspector General for Evaluation and Inspections in the Chicago regional office, and Thomas Komaniecki, Deputy Regional Inspector General.

Mark Stiglitz served as the team leader for this study. Other principal Office of Evaluation and Inspections staff from the Chicago regional office who contributed include Mara Werner, Margarita Rodriguez, Erica Fleischer, Brooke Isham, Melissa Baker, Laura Kordish, and Beth McDowell; central office staff who contributed include Rita Wurm and Kevin Farber.

# *Office of Inspector General*

<http://oig.hhs.gov>

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