Testimony of Jonathan M. Smith
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Before the Senior Issues Task Force
Medicare Private Plans Subgroup

Public Hearing on Regulation of Medicare Private Plans

September 11, 2007

Introduction

Dishonest and deceptive marketing practices have enticed senior citizens and persons with disabilities to inappropriately enroll in Medicare Advantage plans. Of particular concern, plan providers have targeted seniors and others who are dually eligible for Medicaid and Medicare for which Medicare Advantage plans are rarely a good choice. As a result, seniors and person with disabilities made vulnerable by poverty have been placed at great risk of harm including: loss of long term health care providers, limited options of in-plan physicians and potentially disadvantageous changes in drug benefit coverage. To compound matters, dual eligibles enrolled in Medicare Advantage plans often only learn that their medical or drug benefits have changed when they seek to access services or are in a crisis.

The statutory and regulatory scheme which created Advantage plans sidelined state regulators and private parties in favor of the federal bureaucracy for protection of consumers against improper marketing practices. Sadly, the regulations provide only for a weak complaint process and are dependant on overwhelmed federal regulators who are no match for the well funded insurance industry.

Robust protections are needed. We are grateful for the work of the National Association of Insurance Commissioners to strengthen consumer protections. The Legal Aid Society endorses statutory changes that would allow:

- state insurance commissioners and attorneys general to regulate Advantage plans as well as marketing practices; and

- victims of deceptive marketing practices to use state consumer protection remedies.

[1]The Legal Aid Society was formed in 1932 to "provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs." Over the last 75 years, tens of thousands District residents have been served by Legal Aid staff and volunteers. Legal Aid provides assistance in public benefits, housing, domestic violence and family law matters.

Abuses in the District of Columbia

The Legal Aid Society has an active public benefits practice. As part of our work to help District residents living in poverty, beginning in December 2005 we established a project specifically designed to help individuals dually eligible for Medicaid and Medicare resolve Medicare Part D related problems. We worked closely with the George Washington University Health Insurance Counseling Program (the District's SHIP program) and recruited volunteers from area law firms. Through this effort we have assisted approximately 500 Medicare recipients with Part D issues.

Early in 2007, Legal Aid attorneys began to hear from clients we had represented on Part D issues about problems with Part C. We learned that brokers selling Medicare Private Fee for Service plans were seeking out dual eligibles. These brokers were well prepared and targeted senior public housing complexes, physicians' offices and clinics. Among the strategies they employed included:

- the use of misleading marketing materials that suggested the brokers were employed by Medicare;
- promoting the plans as a "free" way to "add on" dental or eye glasses coverage without disclosing that the plan would effect medical and drug benefits;
- signing up persons who are elderly or disabled and lacking the capacity to understand the plan; and
- staking out a medical clinic and offering clinic staff a gift card for every patient they persuaded to enroll.

Legal Aid's Clients Were Harmed

Most of the clients Legal Aid has assisted with Part C related problems live in public housing set aside for seniors and persons with disabilities. This is particularly disturbing in light of broad recognition that low-income dual eligble participants are not well served by private fee for service plans. Fran Soistman, Executive Vice President for Coventry Health Care testified before Congress in June: "We know that our PFFS [private fee for service] plans are not best suited for [dual eligibles]." In a corporate memorandum attached to his testimony, he explained further: "[PFFS] products may not be the best health care coverage solution for Medicare beneficiaries who have both Medicare and Medicaid coverage . . . [These] products will in many cases increase their financial exposure for covered services."[2]

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[2] Testimony on Medicare Advantage Marketing and Sales by Fran Soistman, Executive Vice President, Coventry Health Care, Inc., before the U.S. House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, June 26, 2007.

We know of at least three public housing complexes that were systematically targeted. While the pattern might vary slightly from one complex to the next, we believe that Judiciary House, a housing project in the District's Chinatown neighborhood, is typical.

At Judiciary House, brokers representing Coventry Insurance contacted the head of the residents' council, led her to believe he was from Medicare and asked to provide an "information session" on free dental, eye care and hearing to the residents.[3] Only at the time of the information session, did the brokers disclose that they were selling insurance. Based on the presentation and one-on-one discussions with residents, the brokers led the residents to believe that the Advantra Freedom Private Fee for Service plan was an "add on" and that their coverage would not otherwise be effected. At least one resident reported that she was told that she would no longer need Medicaid or Medicare once she signed up for this plan. A number of residents signed up.

These residents quickly learned that the decision to join a Private Fee for Service plan had more significant, often harmful, consequences. Their experiences included:

Losing choice in doctors: Under original fee for service Medicare, individuals can see any doctor or go to any hospital that accepts Medicare. If an individual is a "dual eligible," they are required to get care from a health care provider that accepts both of Medicaid and Medicare.

The brokers did not inform Judiciary House residents that once they joined an Advantage plan only those providers that agreed to accept the plan payments could provide services. We have heard that many providers have not heard of Private Fee for Service plans and are less likely to accept the payments. As a result, several of our clients could no longer continue to receive care from their long standing physicians.

Changes in prescription drug coverage: While many seniors have stand alone drug coverage that is not affected by enrollment in an Advantage plan, a small group of poor seniors are already in managed care with a drug benefit linked to health coverage. Changes in drug benefits can be devastating. We represented one client with a chronic degenerative neurological disease who had unknowingly enrolled in a Medicare HMO plan in January 2006. In March 2007, she enrolled in the Advantra Freedom plan as a result of the Coventry information session at Judiciary House. This plan did not have drug coverage. Therefore, by switching to the Advantra Freedom plan, she lost her drug coverage – a fact that was never explained to her by the Coventry representative. Our client then experienced a crisis and was admitted to the hospital through the emergency room. Upon discharge, she was given prescriptions for medication to help stabilize her condition and to alleviate pain. Upon presenting these prescriptions to the pharmacy, she found that she did not have any drug coverage. The medications cost almost $100 and it took her many days to scrape together the funds to purchase the drugs. We were eventually able to help her to dis-enroll from Advantra Freedom, get her into original fee for service Medicare and a stand alone drug plan, but not before she had experienced

[3] See attached flyer.

extreme suffering. Months later, the client still cannot talk about what happened to her without breaking down in tears. We do not know whether dozens, hundreds or even thousands of other seniors have had similar experiences and without help from legal counsel continue to suffer.

Unexpected costs: In some cases, an enrollee in a Part C plan unwittingly continued to accesses services from an out-of-plan provider. As a result, they incurred large medical bills. The bill, even if eventually forgiven, is terrifying to a very low income senior who is already struggling to survive on limited public benefits.

The Need for Additional Remedies

As we identified clients who were victims of deceptive marketing practices, we contacted the Centers for Medicare and Medicaid Services (CMS) and they were promptly disenrolled. Our CMS regional office contact was effective and efficient once a client was identified by an advocate and a request to be removed from the plan was made.

However, there is no effective means to assist the hundreds of dual eligibles that do not have access to an advocate or do not know that they can withdraw from an Advantage plan retroactively. While we know that some participants call 1-800 Medicare on their own, in many cases they are unable to get results. We worked with one client who requested to 1-800 Medicare that she be dis-enrolled. Her request was not honored. The client was not retroactively disenrolled until we requested that the regional office make this change. We are particularly concerned about the ability of individuals who, as a result of disability or age have difficulty reading or are cognitively impaired to advocate on their own behalf with 1-800 Medicare.[4]

While CMS has the responsibility to regulate marketing practices, they have exercised it with a very light touch. For a brief period, they entered into an agreement with several insurance companies to voluntarily cease to market Advantage plans to dual eligibiles, but after having received assurances that brokers will be better trained and monitored, the ban has been lifted for many of the plan sponsors.

Federal pre-emption precludes state officials or private individuals from pursuing traditional enforcement of consumer protection laws. In the District, we evaluated these practices against our consumer protection act. But for pre-emption, we would have had a strong claim to stop deceptive marketing and to make victims whole.

Had state law remedies been available, the abusive practices which subsequently came to light in media reports and Congressional hearings could and would have been

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[4] This summer, the House Energy and Commerce Oversight and Investigations Subcommittee conducted a hearing on Advantage plans which included testimony on abuses in the District of Columbia. In the wake of the hearing, at least one plan provided a list of dual eligibles to the George Washington University Health Insurance Counseling Program. They sent a letter to each person who had been enrolled and, we believe that approximately 185 individuals responded to the letter requesting that they be removed from the plan. Legal Aid has also conducted outreach to senior public housing complexes and identified additional persons who sought to be dis-enrolled.

stopped earlier and thousands of ill, vulnerable and elderly citizens would have avoided unnecessary suffering.

We encourage the NAIC to continue to pursue changes to federal law that with strengthen local regulation and oversight as well as provide real and meaningful remedies to individuals who have been harmed by fraudulent or deceptive practices.

IMPORTANT INFORMATION
Medicare Has approved the following:

Dental, Hearing, and Vision Benefits

Are entitled to you if you have

Medicare Part A and Part B

Representatives will be in the Community Room with information and refreshments.

Date: Wednesday , February 7th, 2007 at 11:30am

ATTENTION:

Please bring your medicare card with you for verification

MEDICARE HEALTH INSURANCE
1-800-MEDICARE (1-800-633-4227)
JANE DOE
000-00-0000-A FEMALE
HOSPITAL (PART A) 07-01-1986
HOSPITAL (PART B) 07-01-1986
SAMPLE
DO NOT SEND CLAIMS FOR PAYMENT OF MEDICARE BENEFITS TO THIS (A) ADDRESS

If you can't attend please call Mr. Key or TC at

301-442-8301 or 202-468-4192