Testimony of
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On
Medicare Advantage Sales and Marketing Oversight
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Good afternoon Chairman Kohl, Senator Smith and distinguished members of the Committee. I am pleased to be here today to discuss the oversight of sales and marketing by Medicare health plans – Medicare Advantage (MA) organizations and Medicare Part D prescription drug plan sponsors.

Building on lessons learned and information gathered during 2006, the Centers for Medicare & Medicaid Services (CMS) has strengthened its oversight of MA organizations and Part D sponsors this year. For example, CMS has improved its method for identifying companies for compliance audits, making more efficient use of the resources available for ensuring compliance, and developing a closer relationship with State regulators.

CMS has developed a contractor risk assessment methodology that identifies organizations and program areas representing the greatest compliance risks to Medicare beneficiaries and the government. CMS will direct its resources to those high risk contracts. We envision that this approach to oversight will include a mostly centralized data-driven program, fueled by data provided by contractors and beneficiaries. While receipt and analysis of data is central to this oversight strategy, regularly scheduled and

focused/targeted program compliance and program integrity audits will be necessary to ensure program compliance and document the Agency's program oversight responsibilities. CMS anticipates the risk assessment tool to be ready for implementation and use in January 2008.

Further, CMS is now working with a contractor to augment the internal agency resources available for health plan compliance audits. Among other things, the contractor is conducting "secret shopping" of sales events across the country. Such information enables CMS to learn firsthand what is happening in the sales marketplace and to identify organizations for compliance intervention that are not meeting CMS marketing and enrollment requirements.

CMS also has strengthened relationships with State regulators that oversee the market conduct of health insurers, including MA organizations and Part D sponsors. Specifically, CMS worked cooperatively with the National Association of Insurance Commissioners (NAIC) and State Departments of Insurance to develop a model Compliance and Enforcement Memorandum of Understanding (MOU). This MOU enables CMS and State Departments of Insurance to freely share compliance and enforcement information, to better oversee the operations and market conduct of companies we jointly regulate and to facilitate the sharing of specific information about marketing agent conduct. To date, nineteen states and Puerto Rico have signed the MOU. The nineteen states are: Arkansas, Indiana, Florida, Kentucky, Maryland, Montana, Minnesota, Missouri, Nebraska, New Jersey, North Dakota, North Carolina,

Oklahoma, South Dakota, Utah, Virginia, Washington State, Wisconsin and West Virginia.

More fundamentally, before a plan sponsor is allowed to even participate in Medicare Advantage or the Part D program, it must submit an application and secure CMS approval. CMS performs a comprehensive review of the application to determine if the plan meets program requirements. Annually, plans also must submit formulary and benefit information for CMS review prior to being accepted for the following contract year. For each plan sponsor, CMS establishes a single point of contact (Account Manager) for all communications with the plan. The Account Managers work with plans to resolve any plan problems, including compliance issues.

CMS continually collects and analyzes performance data submitted by plans, internal systems, and beneficiaries. CMS has established baseline measures for the performance data and has been tracking results over time. Plans not meeting the baseline measures are contacted by CMS and compliance actions are initiated. Actions range from warning letters all the way through civil monetary penalties and removal from the program, depending on the extent to which plans have violated program requirements. All violations are taken very seriously by CMS, with beneficiary protection the foremost concern.

The recently-released 2008 Plan Call Letter highlights CMS' ongoing commitment to strong oversight, announcing new policies and procedures to improve compliance with

critical program requirements. Oversight of MA marketing activities is a major theme in the Call Letter, as described in detail below.

CMS uses several mechanisms to ensure that MA organizations conduct marketing activities that are compliant with the regulations and marketing guidelines. Organizations are responsible for the actions of sales agents and brokers whether they are employed or contracted. They must ensure that agents/brokers are properly trained in both Medicare requirements and the details of the products being offered. Part D sponsors also must provide strong oversight and training for marketing activities. Employees of an organization or independent agents or brokers acting on behalf of an organization may not solicit Medicare beneficiaries door-to-door for health-related or non-health-related services or benefits. Employees, brokers and independent agents must first ask for a beneficiary's permission before providing assistance in the beneficiary's residence, prior to conducting any sales presentations or accepting an enrollment form in person.

CMS continues to make significant progress in overseeing MA organizations and Part D plan sponsors. With ongoing effort and vigilance, I am confident we will see continued high levels of plan compliance with program requirements, along with significant improvements where necessary on this critical front. Thank you again for the opportunity to speak with you today. I look forward to answering your questions.