



BETTER BENEFITS – MORE CHOICES

PROTECTING THE DRUG CARD PROGRAM FROM FRAUD

CMS Released the Following Information in a Press Release Today

- ❖ Mark B. McClellan, M.D., Ph.D., administrator of the Centers for Medicare & Medicaid Services (CMS), said today government and public partners are taking further steps to protect the new Medicare-approved Discount Drug Card Program from any possible fraudulent activities.
- ❖ An interim final rule providing civil monetary penalties that may be imposed against endorsed drug card sponsors was placed on public display in the Office of the Federal Register today by the Department of Health and Human Services Office of Inspector General and is scheduled for publication on Wednesday. The interim final rule contains a 60-day public comment period.
- ❖ “As we implement new assistance programs for Medicare beneficiaries who have no prescription drug insurance coverage, we intend to take proactive steps to assure that they are free of fraud and deliver on their promises to our beneficiaries,” Health and Human Services Secretary Tommy G. Thompson said. “We will be watching closely with the Inspector General to make sure that consumers are protected.”
- ❖ “Today’s action adds to the protections and the close monitoring of the Medicare-endorsed discount cards, to assure that beneficiaries who have waited too long for help will now begin to get overdue relief – not just more promises,” said CMS Administrator Mark B. McClellan, M.D., Ph.D. “Although CMS has investigated some isolated cases of individuals attempting to sell fake discount cards, no well-organized operations have been identified, and individual reports are being referred to law enforcement authorities for further investigation.”
- ❖ "This regulation puts into force our authority to impose civil money penalties against sponsors of the Medicare prescription discount drug cards that engage in fraudulent conduct to the detriment of our beneficiaries," said Acting Principal Deputy Inspector General Dara Corrigan. "Under the new rule, we can impose penalties up to \$10,000 per violation against any sponsor that engages in prohibited marketing practices or misuses federal funds made available to needy discount drug card enrollees. In addition, the OIG will actively monitor drug prices under the discount card program to assure that Medicare beneficiaries are fully protected under the plan in which they have enrolled."

- ❖ The Medicare Modernization Act of 2003 (MMA) created the drug card program to make prescription drugs affordable for Medicare beneficiaries, most of whom lack insurance coverage for medication. The new law authorized the imposition of civil monetary fines against endorsed card sponsors that knowingly engage in conduct that violates the conditions of their endorsement agreements with CMS or that constitutes false or misleading marketing practices.
- ❖ The MMA sanction authorities have been divided between CMS and the OIG, with CMS having the authority to impose penalties in those instances where the endorsed sponsor's conduct constitutes non-compliance with an operational requirement not directly related to beneficiary protection.
- ❖ The OIG rulemaking announced today sets forth the OIG's new authority for imposing civil monetary penalties against endorsed sponsors that knowingly engage in false or misleading market practices; including "bait and switch" activities; overcharge program enrollees in violation of the terms of endorsed marketing practices; or misuses transitional assistance funds.
- ❖ On December 15, 2003, CMS issued an interim final rule announcing similar authority to impose civil and monetary penalties for oversight and monitoring drug card sponsors pricing, marketing and enrollment activities. CMS may also terminate the contract of any card sponsor upon a determination that a sponsor no longer meets the requirements of the program or has engaged in false or misleading marketing.
- ❖ McClellan said CMS:
 - Is conducting weekly updates on the covered drugs and drug prices provided by the card sponsors to ensure there is no "bait and switch." CMS also is monitoring changes in overall drug price and identifying programs that stray from the expected changes in prices. Drug card sponsors have to report to CMS if prices increase in an amount that exceeds the corresponding increase in AWP and such increases must be based on a change in the sponsor's costs, such as changes in the discounts, rebates or other price concessions received from a drug maker or pharmacy.
 - Medicare also is logging and responding to beneficiary complaints against card sponsors received at 1-800-MEDICARE, www.medicare.gov, from state health insurance assistance programs (SHIPS), CMS's regional offices, state agencies or other partners. Consistent patterns of beneficiary complaints may lead to sanctions or further penalties against a drug sponsor.
 - CMS will undertake other activities to make sure that card sponsors are charging beneficiaries the advertised enrollment fees and following other federal guidelines.

- ❖ “We know that the vast majority of card sponsors try to do the right thing and help make medicine affordable to Medicare beneficiaries,” McClellan said. “So, we are focusing our efforts on making our rules as clear as possible and on enforcing our consumer protections against those who intentionally seek to commit fraud. As we improve Medicare and expand its benefits, we must also protect both Medicare beneficiaries and the Medicare trust fund from unscrupulous individuals.”

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