

**TESTIMONY**  
**OF THE**  
**NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS**

**BEFORE THE**  
**House Ways and Means Committee**

on

**Medicare Part D Implementation**

**Presented by:**

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## **Introduction**

Good morning Mister Chairman and members of the Committee. My name is Jorge Gomez, Commissioner of the Wisconsin Office of the Commissioner of Insurance. I am testifying today as chairman of the Senior Issues Task Force of the National Association of Insurance Commissioners (NAIC). The NAIC represents the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. The primary objective of insurance regulation is to protect consumers and promote healthy insurance markets, and it is with these goals in mind that I comment today on the implementation of the Medicare Part D program.

To begin, I would like to note that the Medicare Part D program has extended much-needed prescription drug coverage to millions of Medicare beneficiaries. I would like to applaud the staff of the Centers for Medicare and Medicaid Services (CMS) for its tremendous effort to implement this program in such a short time. The State Health Insurance Assistance Program (SHIP) counselors and other consumer advocates must also be acknowledged for their hard work in helping Medicare recipients understand their options.

While for many Medicare beneficiaries the transition to the new program has been relatively smooth, several problems have arisen during the roll out of the program, and they continue to this day. As I will discuss, there are several critical issues that must be addressed and corrected. State regulators, who are on the front lines of consumer protection, are receiving complaints every day from consumers and we urge Congress and the Administration to work with us to resolve the lingering problems.

## **Waivers from State Licensure**

One of the more troubling implementation decisions by CMS was to ignore its own regulations regarding granting of special waivers. According to the final rule, issued by CMS January 28, 2005, a special three-year waiver from state licensure may be granted to a Prescription Drug Plan (PDP) sponsor only “upon demonstration that an applicant to become a PDP sponsor has submitted a fully completed [emphasis added] application for licensure to the state.” *70 Fed. Reg. 4551, sec. 423.410(d)*

Instead, CMS has decided to grant waivers to PDP sponsors, two of which are selling products nationwide, which have not submitted a fully completed application in any state. In fact, one of those PDP sponsors recently sent a letter to several states notifying them that they would not submit an application for licensure until the end of 2007. This means there are PDP sponsors selling products to Medicare beneficiaries and the states, along with CMS, have little, if any, information about their financial condition, the background of their owners, or their operations.

The NAIC has been informed that applications for such a waiver have been received from three more PDP sponsors for 2007. We urge Congress and the Administration to ensure that PDP sponsors have a fully completed application for licensure submitted before a waiver can be granted, as required by federal regulation.

## **Marketing Practices**

The aggressive, unethical and even fraudulent marketing practices of certain brokers and agents and PDP sponsors have harmed many Medicare beneficiaries to date.

There are brokers and agents using Medicare Part D as a pretext to inappropriately get in the doors of Medicare-eligible consumers, then selling them a variety of unrelated and sometimes unsuitable insurance products. There are Medicare beneficiaries who have been placed in a Medicare Advantage policy without their knowledge, or at least their understanding, when they thought they were signing up for a PDP. There are PDP sponsors selling policies from kiosks near pharmacies in large retail stores. State regulators are very concerned about the aggressive marketing practices of certain PDP sponsors. Consumers are not receiving adequate protection and we urge Congress and the Administration to be more aggressive in their oversight.

We also urge more operational oversight by PDP sponsors of the brokers and agents that sell their products. Recent reports of stolen applications for coverage under Medicare Part D and computer leaks that have exposed thousands of Medicare Part D beneficiaries to the threat of identity fraud are very troubling and raise serious concerns about the carriers' lack of control over their Part D processes and procedures. PDP sponsors must be required to dedicate sufficient resources to ensuring compliance with applicable federal and state law and company rules.

Unfortunately, CMS, the agency responsible for protecting Medicare-eligible Part D consumers, has placed hurdles to state efforts to assist in the protection of these same consumers. State regulators have attempted to clamp down on cross-selling of non-Medicare products, but CMS marketing guidelines explicitly allow such advertising and sales activity. Many state regulators have required agents and brokers to be appointed by an insurance company – thus requiring more oversight and responsibility by the carrier – but CMS has challenged state authority to require agents who sell PDP products to be

appointed by the PDP sponsor. This weakens the ability of regulators to hold the PDP sponsor accountable for the actions of its agents and brokers selling their products.

Fundamentally, state regulators have the expertise and experience necessary to protect consumers from aggressive or unethical marketing and sales practices, but state authority has been limited or preempted by the federal government. The states and the federal government need to work together to end these questionable and harmful sales practices, thus securing confidence in a valuable program and providing the proper protections for our Medicare-eligible consumers.

### **Complaints and Consumer Assistance**

One of the most frustrating elements of the Medicare Part D program is the limited ability state regulators have to directly assist consumers. The preemption of state authority over the operations of PDP sponsors – except licensure and solvency – means consumers must go to CMS for assistance. However, state regulators have a closer connection to their citizens, more dedicated resources, and greater expertise in dealing with consumer complaints than CMS. For example, states have received complaints concerning Part D reimbursement to pharmacies, non-payment of claims due to plan confusion, premiums being withdrawn from bank accounts long after requests by beneficiaries for disenrollment, and delays in enrollment. States have received, and continue to receive, questions about drug formularies and cost-sharing provisions of plans. States address these kinds of issues on a daily basis with other types of health insurance and could do the same for Part D beneficiaries if allowed and if provided with adequate resources.

To enhance the ability of the states to assist their citizens, the NAIC is working with CMS to develop a formal process for sharing complaint information regarding the activities of PDP sponsors, agents and brokers. We are hopeful this will improve our ability to protect and assist consumers in our individual markets. We urge Congress and the Administration to work closely with the states to ensure the highest level of protections and consumer assistance for Medicare Part D beneficiaries.

### **Consumer Choice and Education**

There is equal concern among many state regulators about the large number of plans, which have different formularies, cost sharing provisions, and premiums, that are available in the Medicare Part D program. While choice is an important element in the market, too much choice can lead to confusion and possible consumer harm. The value of any health insurance product is maximized when the purchaser understands what the policy covers and does not cover. As the program evolves, we encourage Congress and the Administration to consider opportunities to simplify the process of selecting a plan, while maintaining adequate consumer choice.

To mitigate problems beneficiaries may have in selecting an appropriate Part D plan, the NAIC supports the extension of the initial enrollment period through the end of 2006. This will provide Medicare beneficiaries sufficient time to consider their options and make the right enrollment choice without penalty. This extension would also allow beneficiaries who have mistakenly enrolled in one plan to switch to an appropriate plan without penalty. As the NAIC recently wrote to the Senate, "It is imperative that as many people sign up as possible to spread the risk as broadly as possible and ensure the success

of the program.” Extending the deadline will “grant consumers sufficient time to be educated and choose the coverage that is right for them.”

Finally, the NAIC also encourages Congress to increase funding for the State Health Insurance Assistance Programs (SHIPs) to \$43 million per year. SHIPs provide crucial education, counseling and outreach services to Medicare beneficiaries throughout the country. These services are particularly needed now as the Medicare Part D roll out continues.

## **Conclusion**

In conclusion, I would like to reiterate that the Medicare Part D program has provided much-needed prescription drug coverage to millions of Medicare beneficiaries. However, we must acknowledge, as with any new program of this magnitude, that problems do exist. To address these problems, the NAIC recommends the following:

- Require a PDP sponsor to submit a fully completed application to be filed in a state before a special waiver can be provided;
- Support the state view that the appointment of agents can be required in order to retain a PDP license and to increase oversight of the marketing practices of PDP sponsors;
- Develop specific guidelines limiting the cross-selling of products at the time of a Part D sale to Medicare Supplemental and Medicare Advantage policies;
- Ensure complaints and questions are answered in a timely manner;
- Consider dialogue on simplification of the Part D program;

- Extend the initial open enrollment period of the program through 2006, and thereby eliminate the penalty; and
- Increase funding for SHIPs.

Thank you for this opportunity to address the Committee. The members of the NAIC look forward to our continued dialogue with Congress and the Administration as the Part D program is implemented.