



**Statement of  
Kirsten Sloan  
National Coordinator  
Health and Long-Term Care Issues  
AARP  
on the  
Regulation of Medicare Private Plans**

**Before the  
Medicare Private Plans SubGroup  
Senior Issues Task Force  
National Association of Insurance Commissioners**

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For further information, contact:  
Nora Super  
Federal Affairs Department  
(202) 434-3770

Good afternoon. My name is Kirsten Sloan. I am the national coordinator of health and long-term care issues for AARP. On behalf of AARP's 39 million members, we thank you for holding this hearing on the regulation of Medicare private plans.

### **Medicare Advantage and Consumer Choice**

Private plans have been available in Medicare almost since its inception. In authorizing private health plans in Medicare, Congress sought to limit growth in Medicare spending, improve the payment method for certain providers, and give beneficiaries (including those residing in rural areas) more coverage choices.

Today, more than 80 percent of Medicare beneficiaries still receive services through the traditional Medicare program, although nearly all beneficiaries (99 percent) also have access to Medicare Advantage (MA) plan options. MA options include health maintenance organizations (HMOs), local and regional preferred provider organizations (PPOs), special needs plans, and private fee-for-service (PFFS) plans. Although the vast majority of beneficiaries are enrolled in HMOs (about 5.5 million), PFFS is the fastest growing option among private plans and now has over 1.5 million enrollees. Fifty-two percent of all beneficiaries had PFFS options available from six or more sponsors in 2007, compared with 34 percent of beneficiaries who had a coordinated care (i.e., HMO, PPO) option.<sup>1</sup> Many beneficiaries have more than 30 PFFS options to choose from.

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<sup>1</sup> Gold, M. Presentation at National Health Policy Forum panel on "Medicare Advantage in 2007, What are the Choices?" June 22, 2007.

AARP supports a genuine choice of health plan options for Medicare beneficiaries. We believe the traditional Medicare plan should remain a viable and affordable option and that a range of private plan options can make even more choices available to beneficiaries.

But in order to make informed choices about the best coverage option, consumers must be able to tell the differences between options. The AARP Public Policy Institute has conducted two comprehensive studies over the past ten years to assess beneficiary knowledge of the difference between Medicare coverage options. Unfortunately, both the 1998 study and the 2006 study indicate that knowledge of the differences between plan types is low.<sup>2</sup>

As the Medicare program has become increasingly complex, the choices have become more difficult for beneficiaries to understand. The upcoming October issue of the *AARP Bulletin* will be highlighting the ongoing confusion among some people on Medicare. That is why good consumer education, good consumer protections, and strong enforcements of those protections are so important for older consumers. The complexities of today's insurance markets present challenges for all consumers, but may be particularly challenging for older consumers for whom health coverage is key to health and financial security.

There are steps that can be taken to help ensure that Medicare beneficiaries are provided with clear and accurate information that will help to make their decision-making process easier. My testimony today focuses on some of these specific steps.

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<sup>2</sup> Hibbard, J.H. et al, An assessment of beneficiary knowledge of Medicare coverage options and the prescription drug benefit, Washington, DC: AARP Public Policy Institute, May 2006; Hibbard, J.H., and Jewett, J. An assessment of Medicare beneficiaries' understanding of the differences between the traditional Medicare program and HMOs. Washington, DC: AARP Public Policy Institute, June 1998.

## **Medicare Advantage Marketing**

AARP shares the concerns raised by numerous insurance commissioners and consumer organizations regarding marketing misconduct within the MA program. We believe it is imperative that CMS and the states use their powers to protect consumers from inappropriate, misleading, or illegal marketing practices. We encourage all plans to focus more energy on outreach and accurate education during the sales process so consumers can make informed choices about their Medicare coverage options. Because of the vital importance of health care in later years, older consumers need to understand their purchase and the trade-offs between different options. As a result, education and counseling services provided by independent entities not selling insurance, such as the State Health Insurance Assistance Programs (SHIPs), have become even more important.

## **Private Fee-For-Service Plans**

PFFS plans were authorized by the Balanced Budget Act of 1997, but it has only been recently that these plans have seen tremendous growth. According to the Medicare Payment Advisory Commission, in December 2005, there were about 200,000 PFFS enrollees. As of February 2007, there were 1.3 million enrollees – an over 600 percent increase. The Congressional Budget Office projects that enrollment in PFFS plans will reach 5 million members by 2017, accounting for one-third of all MA enrollment.

State insurance commissioners and consumer advocates have noted that many of the most egregious marketing abuses have occurred within the PFFS plan environment. The fact that PFFS plans can enroll members outside of the annual election period – conducted in the late fall each year for all every other MA plans – may encourage marketing abuses and give them an unfair advantage in the marketplace. PFFS plans can expose beneficiaries to less financial protection than the traditional HMO or Medigap plans in terms of cost-

sharing structure. For example, out-of-pocket limits over \$2500 and \$25 copayments for specialists are common. AARP believes these inequitable rules have led to confusion for beneficiaries

CMS released new guidelines in May for PFFS plans designed to protect beneficiaries from inappropriate sales tactics. AARP strongly agrees that adherence to the guidelines should be a prerequisite for plan participation in the MA program. We also believe the guidelines should be extended to all MA plans and not limited only to PFFS plans. For example, outbound education and verification calls should be required to new MA enrollees to ensure that they understand the rules that would apply if they get care from any type of MA plan. Similarly, we believe that agents should be trained for all MA products, not just PFFS.

We agree with the CMS decision to require plans to include a disclaimer that more accurately describes how PFFS plans work, including disclosure that physicians are free to decline to accept the terms and conditions of a given PFFS plan at the point of service. In fact, AARP questions why this practice is allowed in the Medicare program in the first place. Beneficiaries should have the peace of mind to know that their Medicare card means their services will be covered at the point of service. Under PFFS plans, providers are not required to do so, even if they participate in Medicare and they receive the same rate Medicare would pay. Provider participation rules for PFFS plans need to be made clear to ensure beneficiary access to services. In addition, we believe that agents should not accept an application until and unless the beneficiary has confirmed that his or her providers will accept the plan.

## **AARP MedicareComplete**

AARP Services, Inc., a wholly owned subsidiary of AARP, oversees and monitors the wide range of products and services that are offered through third party services. Beginning in 2008, UnitedHealth Group will offer an MA product carrying the AARP name – AARP MedicareComplete provided through SecureHorizons. UnitedHealth Group will offer HMOs, PPOs, and one Regional PPO under this arrangement. AARP has no current plans to license its name to a PFFS plan.

The products and services that our members have access to reflect our social mission, and fulfill a demonstrated need of our members. We want to influence the market in positive ways. To that end, AARP Services, has worked with the providers of products and services to AARP members to adopt measures that we hope will become the norm in the industry:

- ***Agent adherence to higher standards for ethical and moral conduct –***  
Our research has shown that face-to-face contact is a preferred channel for accessing insurance products for the 50+ market. Consumers prefer to have their options explained to them in person and these one-on-one encounters can increase flexibility and choice of access and products, and increase the likelihood that consumers more fully understand their options and make better and more informed choices.

However, to help ensure that agents put the interest of consumers first, we require our providers to ensure that any agents who are authorized to sell the United MA plans that carry the AARP mark adhere to high standards. These agents must be free of past customer complaints and have clean disciplinary records. They must agree to comply with a code of ethics that requires them to put the interests of their customers' first and to make sure that customers have the opportunity to buy the product that is right for

them. We have also required that agents who are authorized to sell products that use the AARP mark must be trained on what it means to put customers' needs first.

- **Consumer Satisfaction** – In order to ensure that AARP members understand the health plan enrollment choices they have made and that they are satisfied with them, follow up calls to new enrollees will be made. In addition, an ongoing “secret shopper” program will be instituted where United’s AARP Medicare Complete plan is sold to ascertain whether agents are abiding by these standards governing their sales practices.
- **Plan Stability** — Many Medicare beneficiaries have experienced disruption when private plans withdrew from the program in the past. With Congress actively considering reductions in payments to MA plans, there has been concern about the impact on beneficiaries currently enrolled in these plans.

In the United MA product, we are seeking to protect our members by requiring United’s commitment to remain in service areas for an initial two-year period. Incidentally, AARP believes Medicare payments should be neutral with respect to coverage options, therefore, AARP supports proposals to restore balance between MA and the traditional Medicare program. However, we believe these payment reductions should be phased in to minimize disruption for beneficiaries.

## Recommendations

As the NAIC considers ways to improve the consumer protections in the MA market, AARP offers several recommendations:

- Outbound education and verification calls should be made to all new enrollees in Medicare private plans to ensure that they understand plan rules. These rules should apply to all Medicare private plans, not just PFFS plans.
- CMS should develop a mandatory national standardized Medicare training program for all agents selling Medicare products. All representatives selling Medicare products should pass a written test that demonstrates their thorough familiarity with Medicare and Medicare products (MA, PDP, Medigap) and how Medicare interacts with other coverage such as Medicaid, retiree health, VA, etc.
- NAIC should develop model regulations, setting standards for agent conduct, and defining prohibited activities with respect to the sales and marketing of MA plans. CMS and the states should adopt these regulations, which would allow both the state and federal governments to enforce them. The guidelines should include standard timelines for CMS and the states to render decisions.
- CMS and/or NAIC should implement “secret shopper” programs to determine whether their rules are followed by agents and plans.
- CMS, together with the states and the NAIC, should create a national database to provide and share information about agents and brokers who have been sanctioned or terminated by a health plan.

- The financial incentives or commissions that individual brokers receive based on the type of product they sell (e.g., MA versus PDP) should be publicly disclosed on the CMS website and presented to a beneficiary before enrollment. A beneficiary should have the right to know if an agent has a financial incentive to recommend one product over another
- The same marketing and enrollment requirements should apply to all MA plans. PFFS should not have an unfair advantage in the marketplace, for example, by having an extended open enrollment period.
- Special consideration should be given to the marketing of PFFS plans to dual eligibles. There have been widespread reports of dual eligibles who did not understand the consequences of their decision to join a PFFS plan and have lost important Medicaid benefits. Because of the special enrollment rules for dual eligibles (i.e., they can enroll on a monthly basis), they have been targets of abuse.
- AARP believes the Medigap guaranteed issue protections that apply when agents misrepresent MA plans are there to protect individuals who have been subject to marketing abuses. CMS and the states should vigorously enforce these protections so that consumers who disenroll from an MA plan have the opportunity to purchase Medigap if they return to traditional Medicare. In this event, if someone had a Medigap policy other than one of the guarantee issue plans, they should be allowed to return to it, as someone returning to former Medigap coverage and retroactively pay premiums for the elapsed period with no break in coverage.
- AARP believes that if all Medicare options are to be on a level playing field, there should be a uniform annual, open-enrollment period that makes all Medigap products available to Medicare beneficiaries without regard to health status.

## **Conclusion**

MA plans remain an important alternative for many Medicare beneficiaries.

AARP strongly urges CMS and the NAIC to protect beneficiaries from the unscrupulous behavior of a few carriers and agents that could put the whole program in jeopardy for millions who depend upon it for their health care.

AARP believes much can be done to improve the current marketplace in training agents and strengthening the rules. We look forward to working with you and your colleagues to address these critical issues.