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DATE: February 24, 2015

TO: Medicare Advantage-Prescription Drug Plans, Prescription Drug Plan Sponsors, Medicare-Medicaid Plans, and Section 1876 Cost Plans

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SUBJECT: Inappropriate Third Party Marketing and Enrollment Websites

The Centers for Medicare & Medicaid Services (CMS) recently has been made aware of numerous 3rd party websites that market Medicare Advantage and Prescription Drug Plans in violation of CMS' Medicare managed care regulations and Medicare Marketing Guidelines (MMG).

Third-party websites that market MA and Part D sponsors' products are expected to meet applicable CMS marketing requirements. We have recently found numerous and troubling violations on 3rd party websites, such as:

- Inappropriate requests for health status information such as pre-existing conditions, weight, and whether the beneficiary smokes. See 42 C.F.R. §422.110(a), which prohibits discrimination on the basis of medical conditions or medical history. See also 42 C.F.R. §422.2268(c) and 423.2268(c), which prohibit discriminatory marketing practices.
- Misleading information, such as identifying a Medicare Supplement plan as a Medicare Advantage plan. See 42 C.F.R. §§422.2268(e) and 423.2268(e).
- Use of prohibited terminology, including unsubstantiated absolute superlatives. See section 40.4 of the MMG.
- Absence of required disclaimers. See section 50 of the MMG.

In accordance with 42 C.F.R. §§422.504(i) and 423.505(i), Plans/Part D Sponsors are responsible for ensuring that all materials, including websites created by subcontractors, are compliant with CMS requirements. Third-party websites that provide Plan/Part D Sponsor contracted agents with beneficiary leads are considered to be downstream entities of the Plan/Part D Sponsor. CMS expects Plans/Part D Sponsors to monitor 3rd party websites that market on their behalf and to take appropriate and immediate action if the website is found to be non-compliant.

If a Plan/Part D Sponsor's subcontractor, such as an agent/broker, is using a 3rd party website to market or obtain beneficiary information for the purposes of marketing and/or enrollment into a Medicare Advantage or Prescription Drug Plan, the Plan/Part D Sponsor will be held responsible for the content of the website, as well as any agent/broker activity associated with the use of the inappropriate or misleading information, and will be subject to compliance actions.

Plans/Part D Sponsors are required to begin submitting all 3rd party websites that market their MA/Part D products into HPMS under Additional Websites beginning March 11, 2015. CMS requests that Plans/Part D Sponsors use the multi-plan submission process when possible.

Please contact Kerry Casey at kerry.casey@cms.hhs.gov with any questions.