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CONGRESS OF THE UNITED STATES
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January 26, 2005

The Honorable Mark McClellan, M.D., Ph.D.
Administrator
Centers for Medicare and Medicaid Services
200 Independence Ave, SW
Washington, DC 20201

Daniel R. Levinson
Inspector General
Health and Human Services
330 Independence Avenue
Washington, DC 20201

Dear Dr. McClellan and Mr. Levinson:

I am writing to bring your attention to a very disturbing article that appears in *BusinessWeek* online (see enclosure). According to this article, Humana is violating CMS regulations by paying higher commissions to sales representatives enrolling people in Medicare Advantage (MA) plans rather than stand alone Prescription Drug Plans (PDP). An article in yesterday's *Wall Street Journal* (also enclosed) also references Humana's strategy on enrollment and implies that it may be widespread among organizations that offer both MA and PDP plans.

Coercing beneficiaries to join the Medicare Advantage plan when they attempt to join a stand-alone drug plan is a direct violation of the Medicare Marketing Guidelines issued August 15, 2005: "*The commission rate (i.e., the percentage per enrollment) should not vary based on the value of the business generated for the Plan Sponsor paying the commission (e.g., profitability of the book of business).*" (page 131)

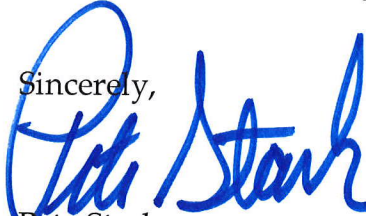
Given the overpayments to MA plans, it is clear from these articles that Humana and perhaps other plans are steering plan enrollees into MA products to further their financial interests. I request the Inspector General open an immediate investigation into the marketing practices of Humana and all contractors who offer both stand-alone PDPs and MA-PDs to identify which plans are using these illegal marketing schemes.

Furthermore, CMS must immediately direct plans to cease and desist this deceptive marketing, and impose appropriate sanctions for breaking the marketing guidelines. Plans that continue to violate the guidelines should have their contracts terminated.

Beneficiaries are already overwhelmed trying to navigate the new law. They should not be subject to bait-and-switch tactics or other misleading marketing ploys once they have made a decision to enroll in a plan. Beneficiaries who express interest in MA offerings should be mailed information so that they have time to make an informed choice by evaluating the new plan and checking whether their providers are in its network. They are unable to make a properly informed choice when presented with the option over the phone.

It is imperative that CMS and the Office of Inspector General hold Part D plans accountable for their misdeeds. If the law does not grant sufficient authority to allow the Administration to protect Medicare beneficiaries from these predatory practices, I ask that you work with me as soon as possible to enhance your enforcement capabilities under the statute.

Sincerely,

A handwritten signature in blue ink that reads "Pete Stark". The signature is written in a cursive, flowing style with a large initial "P".

Pete Stark
Ranking Member
Ways and Means Subcommittee on Health

Enc: