



MEMORANDUM

To: Reporters and Editors  
From: Carol Guthrie for Senate Finance Committee Chairman Max Baucus (D-Mont.)  
Re: reports of unfair marketing practices for Medicare Advantage plans

Senate Finance Committee Chairman Max Baucus (D-Mont.) commented late today on new reports detailing illegal and unethical marketing practices surrounding the sale of some private health care coverage plans that are available to seniors through Medicare. Baucus legislation in the 109<sup>th</sup> Congress sought to strengthen protections for seniors with regard to private health plan marketing. Baucus's committee has jurisdiction over Medicare, including the private-coverage component known as Medicare Advantage.

**"I've long been concerned about the unscrupulous marketing of prescription drug and Medicare Advantage plans, and even introduced legislation last year based on my work in enacting Medigap legislation to strengthen protections for seniors," said Baucus. "It's abundantly clear today that seniors and taxpayers are vulnerable to inappropriate and fraudulent sales tactics from private plans participating in Medicare. As Chairman, I will work with my colleagues on the Finance Committee to enact measures that protect seniors against slimy sales tactics and preserve the integrity of this vital program."**

Baucus's Medicare Prescription Drug Simplification Act of 2006 (S. 2665) would have required the Secretary of Health and Human Services to adopt marketing standards developed by state insurance commissioners through the National Association of Insurance Commissioners. The bill also prohibited certain sales tactics, and allowed states to enforce NAIC guidelines under agreements with the Centers for Medicare and Medicaid Services. Below please find text of the relevant section.

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**SEC. 205. STANDARDIZED MARKETING AND LICENSING PROTECTIONS; STATE CERTIFICATION PRIOR TO WAIVER OF LICENSURE REQUIREMENTS.**

(a) Standardized Marketing Requirements-

(1) IN GENERAL- Section 1860D-1 of the Social Security Act (42 U.S.C. 1395w-101) is amended--

(A) in subsection (b)(1)(B)(vi), by striking 'Section' and inserting 'Subject to subsection (d), section'; and

(B) by adding at the end the following new subsection:

(d) Standardized Marketing Requirements-

(1) DEVELOPMENT BY THE NAIC-

(A) REQUIREMENTS- The Secretary shall request the National Association of Insurance Commissioners (in this subsection referred to as the 'NAIC') to—

(i) develop standardized marketing requirements for prescription drug plans and MA-PD plans; and

(ii) submit a report on such requirements to the Secretary by not later than April 1, 2007.

(B) PROHIBITED ACTIVITIES- Such requirements shall prohibit the following:

(i) Cross-selling of non-Medicare products or services with products or services offered by a prescription drug plan under this part or an MA-PD plan under part C.

(ii) Up-selling from prescription drug plans to MA-PD plans.

(iii) Telemarketing (including cold calling) conducted by a prescription drug plan or MA-PD plan (or agent of such plan).

(C) OTHER ACTIVITIES TO ADDRESS- Such requirements shall address the conduct of agents engaged in on-site promotion at a facility of an organization with which the PDP sponsor or Medicare Advantage organization has a cobranding relationship and any other marketing practices that are determined to be inappropriate for the eligible part D individual population.

^(2) IMPLEMENTATION OF REQUIREMENTS-

^(A) REQUIREMENTS BASED ON NAIC RECOMMENDATIONS- If the NAIC develops standardized marketing requirements and submits the report pursuant to paragraph (1), the Secretary shall promulgate regulations for standardized marketing requirements for prescription drug plans and MA-PD plans that are based on the NAIC recommendations contained in such report. The Secretary shall ensure that such regulations take effect not later than July 31, 2007.

^(B) REQUIREMENTS IF NAIC DOES NOT SUBMIT REPORT- If the NAIC does not develop standardized marketing requirements and submit the report pursuant to paragraph (1), the Secretary shall promulgate regulations for standardized marketing requirements for prescription drug plans and MA-PD plans. Such regulations shall prohibit the conduct described in paragraph (1)(B) and address the conduct described in paragraph (1)(C). The Secretary shall ensure that such regulations take effect not later than July 31, 2007.

^(3) STATE AUTHORITY TO ENFORCE STANDARDIZED MARKETING REQUIREMENTS-

^(A) STATE ENFORCEMENT AGAINST AGENTS OF PRESCRIPTION DRUG PLANS- Notwithstanding any other provision of law, if a State provides for the adoption of the standardized marketing requirements under the regulations under subparagraph (A) or (B) of paragraph (2), the State may provide for the enforcement of such requirements with respect to agents of prescription drug plans or MA-PD plans that are licensed within the State.

^(B) MEMORANDUM OF UNDERSTANDING PROVIDING ENFORCEMENT AGAINST PRESCRIPTION DRUG PLANS- Notwithstanding any other provision of law, the Secretary may enter into a memorandum of understanding with a State that provides for State enforcement of such standardized marketing requirements with respect to prescription drug plans and MA-PD plans that are licensed within the State.

`(C) STATE REPORTING OF VIOLATIONS OF STANDARDIZED MARKETING REQUIREMENTS- The Secretary shall request that States report any violations of such standardized marketing requirements to national and regional offices of the Centers for Medicare & Medicaid Services.

`(D) REPORT- The Secretary shall submit an annual report to Congress on the enforcement of such standardized marketing requirements, together with such recommendations as the Secretary determines appropriate. Such report shall include--

`(i) a list of any alleged violations of such requirements reported to the Secretary by a State, a PDP sponsor, or a Medicare Advantage organization; and

`(ii) the disposition of such reported violations.'.

(2) REQUIRED COMPLIANCE WITH STANDARDIZED MARKETING REQUIREMENTS FOR PRESCRIPTION DRUG PLANS AND MA-PD PLANS-

(A) PRESCRIPTION DRUG PLANS- Section 1860D-12(b) of the Social Security Act (42 U.S.C. 1395w-112(b)) is amended by adding at the end the following new paragraph:

`(4) STANDARDIZED MARKETING REQUIREMENTS- With respect to plan years beginning on or after January 1, 2008, each contract entered into with a PDP sponsor under this section with respect to a prescription drug plan offered by such sponsor shall provide that the plan (or agents of such plan) shall comply with the standardized marketing requirements under section 1860D-1(d)(2).'

(B) MA-PD PLANS- Section 1857(f) of the Social Security Act (42 U.S.C. 1395w-27) is amended by adding at the end the following new paragraph:

`(3) INCORPORATION OF PRESCRIPTION DRUG PLAN CONTRACT REQUIREMENT REGARDING MARKETING- The provisions of section 1860D-12(b)(4) shall apply to a contract with a Medicare Advantage organization offering an MA-PD plan in the same manner as they apply to a contract with a PDP sponsor offering a prescription drug plan under part D.'

(b) State Certification Prior to Waiver of Licensure Requirements-

(1) IN GENERAL- Section 1860D-12(c) of the Social Security Act (42 U.S.C. 1395w-112(c)) is amended--

- (A) in paragraph (1)(A), by striking 'In the case' and inserting 'Subject to paragraph (5), in the case'; and
- (B) by adding at the end the following new paragraph:

(5) STATE CERTIFICATION REQUIRED-

(A) IN GENERAL- The Secretary may only grant a waiver under paragraph (1)(A) if the Secretary has received a certification from the State insurance commissioner that the prescription drug plan has a substantially complete application pending in the State.

(B) REVOCATION OF WAIVER UPON FINDING OF FRAUD AND ABUSE- The Secretary shall revoke a waiver granted under paragraph (1)(A) if the State insurance commissioner submits a certification to the Secretary that the recipient of such a waiver has--

- (i) committed fraud or abuse with respect to such waiver;
- (ii) failed to make a good faith effort to satisfy State licensing requirements; or
- (iii) was determined ineligible for licensure by the State'.

(2) EFFECTIVE DATE- The amendments made by paragraph (1) shall apply with respect to plan years beginning on or after January 1, 2007.

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