



Memorandum

TO: Tony Lamb
FROM: Louis Saccoccio 
DATE: December 22, 1998
RE: Guidelines for Grassroots Contacts with
Medicare+Choice Enrollees

You have asked for guidance regarding the dissemination of grassroots information to Medicare beneficiaries enrolled in Medicare+Choice (M+C) organizations. The guidance set out below is based on (1) review of applicable Medicare regulations; (2) an earlier review of this issue by a law firm engaged by AAHP; and (3) a letter issued by the Health Care Financing Administration (HCFA) on July 10, 1997, signed by the Director of the Center for Health Plans and Providers (a copy of which is attached) that has been verified as still reflecting the views of HCFA on this issue.

1. The information provided to enrollees by the M+C organization must be political/grassroots in nature, i.e. it informs the enrollee of pending legislation or current issues being considered by Congress and exhorts the enrollee to express his or her opinion. The information should not contain marketing materials as defined in section 422.80(b) of the M+C regulations. Grassroots information that does not contain marketing materials as defined under section 422.80(b) would not require review by HCFA prior to release. The information should be reviewed carefully prior to release to ensure that it does not contain marketing materials.
2. The costs associated with providing the grassroots information to the enrollees should be accounted for in such a way as to ensure they are not reimbursed or paid for with Medicare program funds.
3. The following statement should accompany grassroots information provided to enrollees by the M+C organization in a font size of 12 point or larger: "Neither the Health Care Financing Administration nor the Medicare program has reviewed the statement below for accuracy or misrepresentation."
4. To account for the confidentiality protections in the M+C regulations, enrollee names and addresses should not be sold or circulated outside the M+C organization. The M+C organization may contract with a third party for administrative services with respect to mailing

the grassroots information. If used, the third party contractor must agree (1) not to share the names and addresses with any other parties; (2) not to use the names and addresses for any purposes other than those directed by the M+C organization; and (3) to comply with any other confidentiality restrictions deemed appropriate by the M+C organization.

5. The grassroots information may be released either under the name of the M+C organization or, if the M+C organization is a member of the Coalition for Medicare Choices, under the name of the Coalition. Regardless of the name used in the communication, the above guidelines must be followed.
6. The information sent to enrollees may be designed in such a way as to allow an enrollee to self-select and ask for additional information or become involved in grassroots activities by forwarding his or her name to the Coalition for Medicare Choices. If the enrollee self-selects, that name and address can then be used by the Coalition for other mailings and communications.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration *HW*

7500 SECURITY BOULEVARD
BALTIMORE MD 21244-1850

JUL 10 1997

Ms. Wendy Krasner
McDermott, Will & Emery
1850 K Street
Washington, D.C. 20006

Dear Ms. Krasner:

This is in response to your notification that an HMO would like to solicit its Medicare membership to become involved in lobbying activities and would like to fund lobbying activities, such as paying expenses for a trip to Washington, D.C. Specifically we have been asked about the provision in the Medicare contract, item D., Prohibition against use of HCFA funds to influence legislation or appropriations.

The anti-lobbying provision at section 503(b) of the HHS Appropriations Act for fiscal year 1997 prohibits the use of funds from this appropriation for any activity designed to influence legislation or appropriations before Congress or any State legislature. This provision does not apply to risk contracts under section 1876 of the Social Security Act (risk contracting HMOs and CMPs) because the focus of the law is on the final price, not the individual elements of a fixed price payment contract. However, this section is applicable to section 1876 contracts paid for under cost contracts. The statute expressly forbids HHS from reimbursing a cost contractor for salaries and expenses relating to lobbying activities.

A related question could be: "Do any other requirements, for example the prohibition against distributing marketing material that is inaccurate, misleading, or that misrepresents the HMO/CMP, its marketing representatives, or HCFA, prohibit an HMO from informing its members of proposed legislation and exhorting them to express their opinions?" While it may be difficult for a reviewer to ascertain whether or not the information about legislation, for example contained in a member's newsletter issued by an HMO, is accurate and without a slant or unrevealed self-interest, we believe that prohibiting such information would violate basic freedom of speech and other constitutional rights of the Medicare beneficiary as a citizen. As long as member materials that discuss the rights and responsibilities of the member and the HMO with regard to HMO membership are not misrepresented in the context of this article, we see no reason for prohibiting the distribution of information.

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However, any materials given to members which discuss proposed legislation or related lobbying materials must contain the following statement, printed in a font size of 12 point or larger:
"Neither the Health Care Financing Administration nor the Medicare program has reviewed the statement below for accuracy or misrepresentation."

A handwritten signature in black ink, appearing to read "Bruce Merlin Fried", with a large, stylized flourish at the end.

Bruce Merlin Fried

Director

Center for Health Plans and Providers