

Statement

of

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Good afternoon, Chairman Stupak, Ranking Member Whitfield and members of the Committee. I am Gary Bailey, Vice President, Medicare Operational Performance for WellCare Health Plans. In that role, I am responsible for monitoring and improving WellCare's operations and performance in our Medicare health plans, including both the Medicare Advantage ("MA") plans and Medicare Prescription Drug Benefit plans ("PDP"). Previously, I was Deputy Director for Plan Policy and Operations in the Center for Beneficiary Choices at the Centers for Medicare & Medicaid Services ("CMS"). During my tenure at CMS, I was responsible for the administration of Medicare Advantage plans and the Medicare Prescription Drug Benefit. I appreciate this opportunity to testify about sales practices in the Medicare Advantage program, what we at WellCare have done to contribute to industry improvement, and what more can be done to ensure the program works well for Medicare beneficiaries.

In my 32 years of Federal government service at CMS, I consistently focused on improving the Medicare program. During my tenure at WellCare, I have been extremely impressed with WellCare's commitment to serving the needs of Medicare beneficiaries, the organization's responsiveness to rapidly changing Medicare program dynamics, and our commitment to strong corporate compliance. WellCare is a company that prides itself on continuous improvement, and I have seen this improvement first hand in our approach to Medicare Advantage sales and oversight.

WellCare understands the challenges and the rules governing marketing practices in the Medicare Advantage program, particularly for new Private Fee for Service ("PFFS") products that have expanded so rapidly. Health plans and their independent sales agents must abide by appropriate marketing and sales practices for these products so that beneficiaries understand the important differences between PFFS and traditional Medicare or other options,

so they can select a plan that best fits their health care needs. At WellCare, we have a zero tolerance policy for non-compliance with our marketing guidelines. We will - and we have - promptly terminated contracts of non-compliant sales agents. It is our company's ethic to do more than merely "follow-the-rules" – we have NO tolerance for any unethical behavior.

In my testimony today, I will provide information about: WellCare's government-sponsored health care plans, specifically our Medicare Advantage PFFS plans; CMS's recent audit of WellCare's PFFS plans; our recently announced decision to join six other leading health plans in pledging to strengthen consumer protections for Medicare beneficiaries; and WellCare's zero-tolerance of inappropriate marketing. Finally, I will provide our recommendations about how further improvements can be made to marketing and oversight of Medicare Advantage plans.

## **I. About WellCare Health Plans**

WellCare is a leading provider of managed care services dedicated exclusively to government sponsored healthcare programs, such as Medicare and Medicaid. WellCare operates a variety of Medicaid and Medicare plans, including health plans for families, children, and the aged, blind, and disabled as well as prescription drug plans. Founded in 1985, our team of over 3,000 associates serves more than 2.2 million members nationwide. We currently operate networked managed care programs in eight states, and we are the fifth largest vendor to CMS for the nationwide PDP program.

In order to better serve the Medicare population, WellCare continues to expand its range of Medicare products. In 2006, WellCare laid the foundation for the January 2007 nationwide launch of our Medicare Advantage PFFS plans that feature an open network and additional benefits for members. We operate our open-network MA plans through three life

and health insurance subsidiaries under the WellCare name. We contract with licensed, independent sales agents across 39 states and offer these MA plans in 793 counties in 39 states and Washington, D.C. As of March 31, 2007, WellCare has enrolled over 32,000 members in our Medicare Advantage PFFS plans.

## **II. CMS Audit of WellCare**

As you may know, there was a report in the New York Times about a CMS audit conducted on WellCare's private fee-for-service operations. The routine audit consisted of documentation review, interviews with WellCare staff and sampling of various records. Preliminary findings were issued during the exit conference in mid-March and formal findings were subsequently delivered to WellCare.

As a result of the CMS audit, WellCare has improved several marketing processes, two of these, the "secret shopper" program and the telephonic enrollment system, will go a long way towards addressing the concerns put forth by CMS. In addition to those improvements, WellCare has implemented mandatory broker re-training and re-testing, the translation of additional materials into multiple languages, and additional outreach and coordination with advocacy groups and state agencies.

WellCare appreciated the opportunity to have CMS come on-site within the first 10 weeks of our launch of the Medicare Advantage private-fee-for-service program to provide early identification of concerns and improvement opportunities. We welcome input and communication from others on issues and concerns. We will investigate and take swift action when we suspect any abusive practices.

## **III. Our Decision to Join Six Other Leading Medicare Advantage Health Plans in Pledging to Strengthen Consumer Protections for Medicare Beneficiaries**

Based upon our concerns about misleading marketing practices by independent

agents, WellCare has helped lead the drive toward industry improvements. We are working with CMS, America's Health Insurance Plans ("AHIP"), the National Association of Insurance Commissioners ("NAIC") and other health plans to develop consistent compliance and oversight standards for independent sales agents.

On June 15, WellCare announced its decision to join six other leading Medicare Advantage health plans in pledging to strengthen consumer protections for Medicare beneficiaries. This pledge includes the accelerated implementation of the 2008 CMS Call Letter, the CMS marketing guidance provided to MA PFFS plans on May 25<sup>th</sup> as well as the development of best practices for compliance oversight of independent sales agents. To allow time for these activities, the pledge includes a temporary suspension of the marketing of our PFFS plans.

Under the voluntary pledge of compliance with CMS, a plan may not market PFFS plans until CMS certifies that the plan has the additional systems and management controls in place to meet all the additional requirements specified in the May 25, 2007 guidance and 2008 Call Letter issued by CMS. While the full range of updated requirements will be in effect for all sponsors of PFFS plans beginning October 1, 2007, WellCare and the six other MA health plans have agreed to accelerate the adoption of these new requirements. CMS will require the following protections before PFFS marketing can resume:

- All materials, including advertisements, enrollment materials, and materials used at sales presentations must include model disclaimer language provided by CMS in its guidance;
- All representatives selling the product must pass a written test that demonstrates their thorough familiarity with both the Medicare program and the product they are selling;

- A provider outreach and education program must be in place to ensure that providers have reasonable access to the plan terms and conditions of payment, and that provider relations staff are readily accessible to assist providers with questions concerning the plan;
- Outbound education and verification calls will be made to all beneficiaries requesting enrollment to ensure that they understand the plan rules;
- A list of planned marketing and sales events must be provided to CMS that includes events sponsored by delegated brokers and agents as well as those sponsored by the plan; and
- At CMS's request, plan sponsors must provide a complete list of all representatives marketing a PFFS product and authorize CMS to make that list available to State Insurance Departments upon request.

Even before these new CMS requirements, WellCare had previously announced enhancements to our compliance program for our PFFS products, including an inbound telephone enrollment and verification process and a “secret shopper” program using an independent organization to anonymously monitor field marketing activity. These enhancements are in addition to extensive compliance efforts that were already in place for our independent sales agents.

### **III. WellCare's Current Approach to the Marketing of Medicare Advantage Plans**

WellCare vigorously enforces a zero-tolerance policy for the violation of all laws, rules, and policies. I will address both the federal and WellCare controls in turn.

#### **A. Federal Controls on the Marketing of Medicare Advantage Plans**

As a rule, each WellCare employee is personally responsible for compliance with all federal, state, and local laws and regulations. All employees and representatives of WellCare must become and remain knowledgeable on the legal and regulatory requirements applicable to their respective positions, duties, and contractual requirements. Additionally, WellCare has created an environment enabling all people

who work and are under contract with WellCare to exercise this individual responsibility.

The marketing of Medicare Advantage plans is controlled by federal regulations and CMS guidance. Federal regulations prohibit the distribution of any marketing materials or election forms to prospective beneficiaries unless approved by CMS. In conducting marketing activities, MA organizations may not: (i) provide cash or other monetary rebates as an inducement for enrollment; (ii) engage in any discriminatory activity, including targeted marketing to Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas; (iii) solicit Medicare beneficiaries door-to-door; or, (iv) engage in activities that could mislead or confuse Medicare beneficiaries or misrepresent the MA organization. Importantly, federal rules also require an MA organization to establish and maintain a system for confirming that enrolled beneficiaries have in fact enrolled in the MA plan and that beneficiaries understand the rules applicable under the plan.

In addition to regulations, CMS has released numerous guidance documents that reflect CMS's current interpretation of the requirements and related provisions of the Medicare Advantage and Medicare Prescription Drug Plan rules. As I mentioned, on May 25, 2007, CMS issued additional guidance specifically to MA PFFS plans outlining CMS's new requirements for PFFS marketing. Finally, the CMS 2008 Call Letter outlines in detail the information that health plans need to ensure compliance with CMS policies and program requirements.

*B. WellCare Health Plans Compliance Programs for Medicare Advantage Plans*

In addition to the federal regulations and marketing guidance, WellCare Health Plans has implemented even stronger oversight policies. These are based upon our corporate ethics and compliance program, known as the Trust Program, that was

adopted in 2002. All people associated with WellCare must accept the individual responsibility and duty to conduct WellCare's business in an ethical and compliant manner, consistently adhering to the standards of conduct embodied in the Trust Program.

### 1. The Trust Program

The Trust Program is the foundation for WellCare's operations, unifying our long-standing corporate ethics and compliance policies under a comprehensive program with the goal of establishing a culture of integrity and trust within WellCare. The Trust Program promotes prevention, detection, and the resolution of conduct that does not conform to applicable federal or state laws or our high standards of business ethics. The Trust Program applies to WellCare, our Board of Directors, employees, and our business partners. The Trust Program provides guidance and oversight to ensure that all work at WellCare is performed in an ethical and legal manner.

The Trust Program, however, cannot substitute for an individual's personal sense of honesty, integrity and fairness. We strongly encourage all people within the WellCare community to rely on their common sense in recognizing right from wrong using the Trust Program to ensure that we observe high ethical standards.

### 2. Additional Compliance Measures

To augment the Trust Program, we recently announced enhanced compliance measures designed to protect the rights of Medicare beneficiaries. These enhancements will increase the oversight of independent sales agents who market the company's MA products. Our recent improvements include two new components for oversight of MA independent sales agents. Because independent sales agents market

more than health plans, WellCare firmly believes these improvements are necessary to ensure that the quality and professionalism of WellCare's sales practices remains best-in-class.

The first improvement is an inbound telephone enrollment and verification process. This system will allow prospective enrollees an additional opportunity to verify their understanding of plan benefits, acknowledge that they received all the information needed to make an informed decision before joining a Medicare Advantage program, and confirm their voluntary election to select the plan terms. The phone call verification will be digitally voice recorded at the point of enrollment for all Medicare Advantage beneficiaries. With this new enrollment process, WellCare will implement a real-time verification and quality assurance process. The inbound verification program will be in addition to the 100% outbound callback program already in place for new members.

The second new component is the launch of a "secret shopper" program where WellCare will use an independent organization to anonymously monitor the compliance of Medicare Advantage independent sales agents. This national program began its rollout just before the announced voluntary suspension of marketing. Once WellCare meets the benchmarks outlined in the agreement with CMS, and resumes marketing, the program will continue its phased nationwide rollout. All results of WellCare's secret shopper program will be reported directly by the independent organization to WellCare's Corporate Compliance department, generally on a same-day or next-day basis. Like our other compliance and consumer protection measures, the secret shopper program aims at ensuring seniors are fully informed about their PFFS benefits and treated appropriately by independent agents. It also will help us to identify inappropriate agent activity and aid in

our ongoing efforts in improving agent education.

In addition, WellCare is working with America's Health Insurance Plans ("AHIP") on new principles, standards and practices to further protect Medicare beneficiaries. In short, these new measures will tolerate nothing less than strict adherence to a code of conduct that appropriately educates and protects our members. We are confident that with these new enhancements, our overall compliance strategy will continue to be best-in-class.

Other enhancements to WellCare's compliance program will build upon the extensive activities already in place to oversee independent sales agents for Medicare Advantage private fee-for-service products, including:

- Confirmation of agent's state licensure;
- Extensive criminal background screening;
- Mandatory training and testing on product benefits and marketing guidelines;
- Mandatory contract terms, incorporating a sales agent code of conduct;
- On-site monitoring of agents by field sales management;
- Post-enrollment outreach calls to 100% of new members;
- Mandatory re-training and re-testing to refresh knowledge of plan terms and marketing guidelines;
- Secret Shopper program;
- Developing an inbound enrollment verification process;
- Rapid resolution of any identified compliance issues; and,
- Zero tolerance for verified infractions.

### 3. Sales Agent Code of Conduct

As a leading provider of Medicare products, WellCare has established a reputation for providing quality health plans at affordable rates for beneficiaries. In an effort to ensure all independent sales agents contracted with WellCare are representing our

plans with the highest degree of integrity, we also require every sales agent to abide by the “WellCare Sales Agent Code of Conduct.” This code of conduct requires the following:

- a. **Respect the beneficiary:** Agents must provide guidance with the beneficiary’s best interest in mind, be respectful of the beneficiaries’ wishes and understand their unique health care needs. Sales agents should be available for any questions or concerns before and after the sale.
- b. **Provide full disclosure:** Agents must present all plan options completely with full disclosure of any plan limitations and compare WellCare plans to the beneficiary’s current coverage to ensure they understand differences in features, benefits, costs, and access to providers.
- c. **Follow proper marketing guidelines:** Agents must follow approved marketing methods for setting appointments and conducting sales sessions as outlined by CMS regulations. Agents cannot solicit individuals via door-to-door sales, phone calls or unsolicited email and cannot solicit or enroll members where health care services are dispensed.
- d. **Use approved materials:** Agents must use only WellCare and CMS approved materials and agents must not alter the materials in any way. WellCare has developed all the sales and marketing material needed to present plan information to the beneficiary and makes these materials available in multiple languages.
- e. **Proper use of sales tactics:** Agents must never use high pressure sales tactics to influence a beneficiary’s decision to enroll. Agents must allow the beneficiary time to review and understand the information and offer them independent sources of information such as the CMS web site: [www.cms.hhs.gov](http://www.cms.hhs.gov).
- f. **Representation:** Agents must always represent themselves and WellCare appropriately to ensure that beneficiaries understand that they represent WellCare but are not an employee of WellCare, Medicare, Social Security, or any other government entity.
- g. **Use enrollment forms correctly:** Agents must not back-date, falsify, or alter any enrollment document or form, and applications must be submitted so that information on the original copy matches exactly with the copy that was left with the prospective member. Completed enrollment forms must be mailed or faxed to WellCare within 24 hours of the date the beneficiary signed the form.
- h. **Do not discriminate:** To ensure fairness, agents must not discriminate against potential enrollees on the basis of health status, ethnicity, or any other improper criteria. If an agent believes a beneficiary lacks understanding of the program or is of questionable competence, he or she must observe proper procedure by having the member’s authorized representative present at the time of enrollment and approve the member’s decision.

- i. **Comply with oversight standards:** WellCare has rigorous compliance standards for all independent sales agents. Agents must know and understand these standards.

#### 4. WellCare Oversight

To ensure compliance with all marketing guidelines and the Code of Conduct, all Sales Agents are informed and understand that WellCare undertakes the following initiatives:

- Deployment of a secret shopper service to pose as potential beneficiaries to experience the sales process/presentation;
- Revocation of selling privileges for sales agents who do not complete the mandatory training and score 100% on the required testing;
- Follow-up calls to all beneficiaries enrolled by any terminated sales agent to confirm the beneficiary's enrollment decision or to facilitate disenrollment;
- Monitoring of sales data for potential issues and to educate or even terminate agents based on the findings, with emphasis on proactive resolution of issues;
- Monitor a confidential compliance Hot Line where members, associates and government regulators can report concerns about potential marketing misconduct; and
- As our inbound enrollment verification process is implemented nationwide for PFFS, all agents will need to complete any sales activities through this process.

The focus of our oversight is to ensure that each Medicare beneficiary receives high quality, professional interaction in their sales experience. Medicare beneficiaries must fully understand their health plan benefits, coverage limitations, and policies to make an informed choice about the health care coverage that best suits their needs. Ensuring a positive sales experience is in everyone's best interest. If a product or service is not good for a beneficiary, then it is not good for WellCare, either.

C. Recent Examples of WellCare's Zero Tolerance Policy

Through WellCare's compliance programs, 18 independent sales agents have been terminated for marketing conduct violations across the country because WellCare has a zero-tolerance for agent misconduct. However, we are never satisfied with our past performance, and we continue to improve our internal compliance measures.

The New York Times report I mentioned was critical of WellCare's private fee-for-service operations, and I'd like to set the record straight. In January 2007, WellCare learned of improper marketing efforts by a California licensed, independent sales agent who was not an employee. This agent translated approved marketing materials into Chinese and aggressively distributed them to a group of Medicare beneficiaries who did not speak English. WellCare immediately analyzed the selling history of this agent to reveal that the agent used inappropriate sales tactics and that the materials he was using were not approved. As a result, WellCare immediately terminated its contract with the sales agent.

Because WellCare takes its responsibilities under the Medicare program seriously, we moved quickly and aggressively. First, WellCare staff commenced mandatory retraining for the insurance agency that contracted with the terminated agent to reinforce the agency's understanding of the Medicare marketing guidelines and WellCare's expectations. Second, WellCare initiated mandatory retraining and testing on a national basis for all licensed independent sales agents under contract with WellCare for its Medicare Advantage products. If sales agents do not complete this follow-on training and score 100% on the required retesting, their selling privileges with WellCare will be revoked. Third, WellCare initiated mandatory new member call-backs to 100% of new

Medicare Advantage enrollees to confirm that their sales experience was positive and that they understand their benefits. WellCare also placed follow-up calls to the beneficiaries enrolled by the terminated agent to confirm their enrollment decision or facilitate disenrollment.

Another recent action occurred with a sales agent in Georgia. In early December 2006, through our monitoring of enrollment applications, we learned that an agent submitted several Medicare Advantage applications for deceased persons. That day, an investigation was initiated and within two days, the agent in question was terminated. We conducted an analysis of and contacted all of the fired agent's enrollees. Through the investigation, we learned that the terminated agent participated in several prohibited marketing activities in violation of federal regulations, CMS guidelines, and WellCare policies. Accordingly, WellCare informed the Georgia Department of Insurance and federal authorities of the agent's actions, and we cooperated with them on their investigation. In the spring, the fired agent was escorted from his home in handcuffs by Georgia law enforcement authorities. He and his accomplice are now behind bars.

## **V. WellCare's Recommendations to Further Improve Marketing Practices**

WellCare is extremely proud of our Medicare Advantage offerings. The plans offer beneficiaries new choices to broaden the ways in which beneficiaries can receive high quality health care. We are confident that federal regulations combined with our vigilant internal compliance efforts and commitment by the industry will help ensure the highest standards of integrity. Nonetheless, through the operation of our zero-tolerance policy as well as our recent dialogue with CMS, as evidenced by our new compliance pledge to further strengthen consumer protections, we recognize there is room for improvement. We offer the following recommendations for your consideration:

1. Development of a mandatory national standardized Medicare training program for all agents selling Medicare products. While plans conduct such training and specific training will always be needed for company-specific benefits and products, consumer protection can be enhanced by ensuring all agents marketing PFFS products are trained with a uniform set of education materials and directed to cover with Medicare beneficiaries a set of mandatory topics and disclaimers. This will provide a platform for excellence in education of consumers and streamline investigation of any compliance issues with agents. This issue is currently under discussion with AHIP and CMS;
2. Use of an inbound telephone enrollment and verification process that would provide the opportunity to ensure that enrollees fully understand the benefits and features of the plan. Again, this proposal would serve to enhance consumer education and help plans to quickly identify any compliance or training issues with independent agents. It would ensure that no person who did not have an adequate understanding of the PFFS product would be enrolled in the program;
3. Creation of a national database to provide and share information about agents and brokers that have been sanctioned by a state or terminated by a health plan. While most agents are ethical and professional in their marketing of our products, a national database would allow plans to track and quickly report any issues with a small subset of roque agents – who sometimes seek to sell in other states when their bad behavior is discovered in one state. Again, this issue is currently under discussion with AHIP, NAIC and CMS;
4. Early implementation of the CMS 2008 Call Letter. This effort is now underway for those plans, like WellCare, taking the voluntary compliance pledge;
5. Additional provider outreach and education, including fixing the “Common Working File;” and
6. Industry-wide adoption of secret shopper programs.

While all of the issues mentioned above should be adopted, I want to stress the importance of two of them – inbound verification and a national database. As the Committee is aware, there was an independent agent whose license was suspended in Mississippi, but he continued selling MA plans in another state. WellCare was one of the plans who unwittingly had this agent selling our products in Alabama because Alabama was not aware the agent had been suspended in Mississippi, and he passed all other

background checks. We became aware of the Mississippi suspension only through word of mouth during our general outreach effort to the Mississippi Medicaid Agency and the Department of Insurance. When they identified this agent as a problem in Mississippi, we immediately sought to determine if he was selling our products in any other states. He was, we undertook an investigation, and within 72 hours had terminated our relationship with him. We began contacting the members in Alabama he had signed up and worked to disenroll those who were not satisfied with our product.

Luckily, we found this agent, but it was very much due to our aggressive oversight. It is our belief, though, that with inbound verification and a national database, this agent and others like him could be stopped much sooner. Inbound verification would have stopped this agent from enrolling individuals in the first place if they expressed concerns about the agent. We also could more quickly and proactively investigate such agents. And we could quickly report to the central database any termination of an agent to protect other Medicare beneficiaries who may be approached by the same agent marketing for a different company.

In conclusion, we believe the most effective action to undertake on behalf of Medicare beneficiaries is to improve communication channels and provide effective confirmation of allegations of abusive marketing practices. By fostering cooperation at the federal, state, health plan, and agent or agency levels in communicating and resolving complaints, we can take swift action against those who defraud Medicare beneficiaries.

WellCare is proud to be an industry leader in good compliance. We started with a best-in-class compliance program five years ago and have added enhancements along the

way as we continuously seek to improve the quality of our products, our operations, and the practices of the independent sales agents that market our products.

Thank you again for this opportunity to testify about our perspectives on these important issues. Please be assured that WellCare remains deeply committed to the long-term success of the Medicare Advantage program. We appreciate the critical oversight that the Committee provides over this valuable program and look forward to continuing to work with you to meet future challenges in the Medicare and Medicaid health programs.