

**Testimony of Lee Harrell
Deputy Commissioner of Insurance
State of Mississippi**

**Before the
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations**

“Predatory Sales Practices in Medicare Advantage”

**June 26, 2007
10:00 a.m.
Rayburn House Office Building
Room 2123**

SUMMARY OF TESTIMONY

- States have very limited enforcement authority over companies selling Medicare Advantage Plans. Except for licensing and solvency issues, states are preempted from regulating MA Plan Sponsors.
- No necessity for “certificates of authority” which ordinarily serve to confirm that an agent is authorized to act for a particular company and that the company is responsible for both the product and the means by which the product is marketed by its agents.
- Agents are often hired on a part-time and/or time-limited basis, garnering no loyalty to the company or the product. **Inadequate training of agents is a major problem.**
- Some question as to whether states have jurisdiction over an agent selling a product over which the state has no regulatory authority.
- Problems with both investigating and proving cases of fraud and abuse because the recipients are often elderly persons who, because of age or physical condition, may become easily confused, or cannot remember the sequence of events, and there is sometimes a deterioration of the recipient’s memory or health between the time of investigation and the subsequent hearing. Many recipient’s are not willing or able to testify, and some are simply too embarrassed to even admit they have been a victim. The usual way to handle cases where we see patterns of abuse is to notice the companies to appear before the Department. Since we have very limited authority over MA Plan Sponsors, this option is unavailable.
- Despite limited jurisdiction, Mississippi has been as proactive as possible by educating recipients and helping victims get disenrolled from MA Plans and re-enrolled in Medicare Parts A and B.
- Our proposed solution would be to adopt a regulatory model such as that implemented for the regulation of Medigap insurance, where the states enforce federal minimum standards.

**TESTIMONY OF LEE HARRELL, DEPUTY COMMISSIONER OF INSURANCE,
STATE OF MISSISSIPPI, PRESENTED TO UNITED STATES HOUSE OF
REPRESENTATIVES, COMMITTEE ON ENERGY AND COMMERCE**

**PREDATORY MARKETING PRACTICES AND ENFORCEMENT ISSUES RELATED
TO MEDICARE ADVANTAGE PLANS**

My name is Lee Harrell, Deputy Commissioner of Insurance for the State of Mississippi, and on behalf of Commissioner George Dale and myself, we appreciate the opportunity to share with you the experiences we have had related to Medicare Advantage Plans in Mississippi.

Typically, an insurance company wishing to do business in Mississippi will apply for a Mississippi license. This requires the submission of various information related to the financial condition of the company; approval of the products to be sold and the forms to be used related to said products, including advertising materials; and the approval of the rates to be charged for such products. After a company is licensed, the Department of Insurance (hereinafter “Department”), continues to monitor the company’s financial and market conduct activities, including a company’s marketing practices, through examinations, the filing of various required reports, investigation of complaints, and the like.

Additionally, the company is required to file for a “certificate of authority” for each agent hired to sell any of the company’s products. This lets the Department know which agents are selling for what company, serving the twofold purpose of: 1) confirming that the agent is actually authorized to act for a given company; and 2) confirming that the company is responsible for both the product sold and the means by which such product is marketed by its agents. It has always been this Department’s position that the company is responsible for its agents through these certificates of authority, and that the companies can therefore be held accountable for the actions of its agents.

In the case of Medicare Advantage Plans, the regulation of the companies selling such plans is left primarily to CMS, and the states are preempted, except in the areas of licensing and solvency, from regulating Medicare Advantage products. Further, the companies are not required to file for certificates of authority for the agents selling these plans, so the Department has no idea which agents are selling for any given company unless or until a complaint is filed against one of those agents.

Aside from the specific unfair, misleading, and/or fraudulent marketing practices which will be discussed below, we have seen many general problems with the agents who sell these plans, including, but not limited to:

- 1) Agents being hired to sell only during the “open enrollment” periods. These agents get licensed around the first of October, sell through December, then let their licenses lapse until the following year. In other words, the equivalent of “seasonal help.”
- 2) As a result of the above practice, there is little loyalty to the company or the product. Agents can, and frequently do, move from company to company, with little or no oversight; e.g., they may be fired by a company, or think they can get a better deal, so they move to another company. Similarly, if too many complaints are registered in a given geographic area, these agents simply concentrate their efforts elsewhere.
- 3) By far the biggest problem is lack of sufficient training of agents. The company who touts the “best” training of its agents gives 10 hours of instruction – all in one sitting. Some agents in the “zero premium” counties (areas for which no additional premium, beyond the existing Part B premium, is charged) believe

that all they are selling is an add-on to a person's existing Medicare coverage, giving them dental and vision care. There is no appreciation or understanding of the fact that the person will no longer be enrolled in traditional Medicare Parts A and B, but that the coverage provided, while generally the same as that provided by Medicare, will now be provided through a private insurer. Some agents also do not understand that there may be co-pays required where there were none before. Many insureds who are accustomed to going to the doctor, showing their Medicare card, getting their treatment, then going about their business, are surprised to learn that either their doctor does not accept the particular Medicare Advantage Plan, or that they will have to pay out-of-pocket for the co-pay before they can be treated.

Even though the states have very limited jurisdiction over the companies selling Medicare Advantage products, most, including Mississippi, have taken the position that they do have jurisdiction over the agents themselves. This position is not without its limitations. First, there is a potential legal question as to whether or not a state has jurisdiction over an agent's conduct in relation to an underlying product over which that state has no jurisdiction whatsoever. While Mississippi's position is that it does have authority over a licensed agent selling any type of insurance in our state, there remains at least the hint of uncertainty as to our enforcement ability.

The biggest problem in making a case against the agent alone is the fact that the primary witnesses are often elderly persons who, because of their age or physical condition, may become easily confused, or simply cannot accurately remember the sequence of events. Even if they are able to provide the Department with clear and adequate information about the tactics used by an

agent, by the time the matter gets to hearing their memories may not be as clear. Also, many elderly victims are unable or unwilling to attend a hearing, and sometimes they are simply too embarrassed to even report that they have been a victim.

In a usual case, if the Department saw a pattern of agent misconduct such as we have seen in the Medicare Advantage market, not only would the agent(s) be subjected to disciplinary action, but the companies themselves would be noticed to appear before the Department. This leads back to the original assertion that the company is responsible for the acts of its agents. As alluded to above, many of these agents have no real stake in the products they are selling. It may simply be a part-time, time-limited job for them, or they know they can go elsewhere should trouble arise. On the other hand, the companies who have contracted to sell Medicare Advantage products do have a very real interest in complying with CMS's marketing standards, and they are usually willing to correct any problems on a more or less voluntary basis.

The specific types of complaints we have received include:

1. Door-to-door solicitation (or "cold calls") by agents without having been invited by a Medicare recipient to do so.
2. Agents claiming to be from Medicare and sometimes presenting a red, white, and blue card designed to look like a Medicare card.
3. The agent has the recipient complete a "request for more information" form, which turns out to be an application for a Medicare Advantage Plan.
4. The agent asks the recipient to sign a form "just to show my boss that I have contacted you," which, again, turns out to be an application form.
5. The agent assures the recipient that enrollment in his Plan will not affect the recipient's Medicare coverage, without mentioning that the recipient may not be able to

go to his same health care provider/facility and/or that he may now be required to pay a co-pay.

6. Recipients being enrolled without their knowledge and without having had any contact with an agent. It is believed that the recipients' personal information was fraudulently obtained and used without their knowledge.

7. Recipients who have been improperly enrolled in a Plan find it very difficult to become disenrolled from the Medicare Advantage Plan and re-enrolled into Parts A and B. If premiums were deducted from the recipient's Social Security check, there is an extremely long delay in having those payments stopped, with payments sometimes continuing to be deducted after the recipient has been disenrolled from a given Plan.

I have attached a copy of a letter from Commissioner Dale to Senator Thad Cochran, and which was sent to the entire Mississippi delegation, which sets out the above scenarios, as well as others, in more detail.

To date, Mississippi has obtained the licenses of two agents in relation to Medicare Advantage sales. The first license was revoked upon a finding that the agent had obtained recipients' personal information from a home health agency. These recipients were enrolled in a Medicare Advantage Plan without their knowledge or consent. In this case, the Department was able to garner the testimony of a participant in the scheme. There was also evidence from a mother whose daughter was bedridden and unable to write or communicate, but yet who was enrolled in a Medicare Advantage Plan. The agent has also been indicted for these actions.

The second agent was charged with door-to-door solicitation of a Medicare Advantage Plan in two low-income housing projects for senior citizens. This case highlights the evidentiary problems inherent in these cases. As part of the investigation, lawyers and an investigator from

the Department interviewed numerous residents of the complexes (though some were afraid to talk to us because they did not know whom they could trust). We were able to obtain approximately 21 affidavits, including two from family members who stated their relatives were not competent enough to understand what they had done. Several affidavits were not taken, because of the mental state, or memory, of the recipient. At the eleventh hour, the attorney for the agent sought to subpoena all 21 affiants and force them to travel 150 miles to Jackson, Mississippi to testify. Further, several affiants, who were competent at the time their affidavits were taken, had deteriorated to the point that their testimony would have been essentially ineffective.

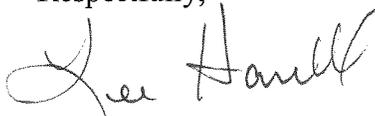
We were in the process of investigating a third agent for similar door-to-door solicitation, when that agent surrendered his license on other grounds.

From 2006 through the present, we have received over 1,000 complaints on Medicare Advantage Plans, alone, in part, because we are who the people know. They are not familiar with CMS, and are generally not going to call a stranger in Atlanta, Georgia, when their Insurance Commissioner is right here at home. These complaints represent at least twice as many complaints as we normally receive on all other topics combined. To the best of our ability, we investigate the complaints received, and bring charges in those cases where we have enough solid evidence. We work closely with our Mississippi Department of Human Services, who helps recipients disenroll from plans into which they were improperly enrolled, and helps them re-enroll into Parts A and B. We have issued several press releases warning recipients of the various scenarios used by these agents (copies attached), and we speak to senior groups across the state about these practices and how they can avoid problems. We are developing a brochure

with tips about questions to ask, what to watch out for, and the like, that will be made available to consumers in the near future.

Mississippi takes seriously its duty to protect its consumers, while promoting a healthy insurance market, but the way the current Medicare Advantage system is designed, we are precluded from fully meeting that duty. Clearly, the piecemeal approach to enforcement is not working, nor is it realistic to expect that it will. We suggest as a regulatory model the current system for regulating Medigap insurance, in which the states enforce federal minimum standards. This system has virtually eliminated the abusive Medigap sales and marketing practices that were rampant in the nineteen eighties and early nineteen nineties. As noted in the attached letter to Mississippi's congressional delegation, we stand ready and willing to lend support to Congress as you consider these critical issues facing our senior citizens.

Respectfully,

A handwritten signature in black ink that reads "Lee Harrell". The signature is written in a cursive, flowing style.

Lee Harrell
Deputy Commissioner of Insurance
State of Mississippi



GEORGE DALE
Commissioner of Insurance
State Fire Marshal

LEE HARRELL
Deputy Commissioner of Insurance

STATE OF MISSISSIPPI
Mississippi Insurance Department

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May 11, 2007

ALSO VIA FACSIMILE: 202.224.9450

Honorable Thad Cochran
United States Senate
113 Dirksen Senate Office Building
Washington, D.C. 20510-2402

Re: Abusive Medicare Practices

Dear Thad:

As you may know, the Mississippi Department of Insurance ("Department") has been inundated with complaints from senior citizens and their family members concerning Medicare-related Part C and D Plans. These Plans have been marketed to seniors in Mississippi during designated open enrollment periods for approximately two years. I would estimate that the Department has received approximately 1000 complaint calls from seniors expressing confusion and serious concerns regarding these Plans.

Some complain that they have been enrolled in a Part C and/or D Plan without fully understanding the particular Plan's terms, while others assert they were enrolled without their knowledge or consent. Many complaints deal specifically with improper marketing practices by producers. We have also received complaints regarding a lack of access to care and the failure of medical providers to recognize or accept Part C Plans.

Particular scenarios actually encountered by the Department include the following:

- (1) The producer engages in door-to-door solicitations or outreach prior to being invited by a Medicare recipient, which is directly prohibited under federal Medicare rules.
- (2) The producer actually claims to be a representative from Medicare, and presents a red, white and blue card to the Medicare recipient that looks like a recipient's card.
- (3) The producer has the agent complete a "request for more information" form, when in fact, the form is an enrollment form for whatever Part C or D plan the producer is selling.
- (4) The producer asks the Medicare recipient to sign a form "just to show my boss that I have contacted you."

Honorable Thad Cochran

May 11, 2007

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- (5) The producer assures the Medicare recipient that enrollment in a Part C Plan will not affect his/her Medicare coverage. While this may be true of some portion of Medicare plans, the Department has found that the recipient no longer receives benefits under the traditional Medicare Part A and B framework, which is extremely confusing to recipients.
- (6) In a particularly serious case, the Department found that several recipients had no knowledge of being enrolled in a Medicare Part C Plan, and had never had any contact at all with the producers responsible for enrolling them. It is believed that the recipients' personal information was obtained fraudulently, and was used on the plan enrollment forms.
- (7) Having enrolled in a Part C Private Fee For Service Plan, the Medicare recipient receives medical care from his/her treating physician, but is told that the physician does not accept assignment from Part C Plans. The recipient is then required to pay the bill up front, and otherwise has difficulty in locating alternative providers who will recognize Part C Plans.
- (8) Having been improperly enrolled in a Medicare Part C Plan, many Medicare recipients have found it extremely difficult to get disenrolled from the Part C Plan and re-enrolled in Medicare Parts A and B. This can be even more treacherous where the recipient's part C premiums were being deducted from his/her social security check. In such cases, we have seen instances where the recipient was disenrolled from Part C, has not been re-enrolled in parts A and B, but is still having Part C premiums deducted from the social security check.

Members of my staff have worked diligently with the Centers For Medicare & Medicaid Services and with Colonel Don Taylor, Executive Director of the Mississippi Department of Human Services, to assist Seniors and educate them regarding these problems, but as you know, state regulators have very limited jurisdiction over the Medicare Program in general, and over Part C and D Plans specifically. Primary jurisdiction over all facets of the Medicare Program rests primarily with the federal government. While I and my staff want to continue doing all we can to be of assistance, given the current regulatory structure for Medicare, we must look to our Congressional leaders for an effective and comprehensive solution to the problems outlined above.

I stand ready and willing to lend support to you and members of your staff as you consider these critical issues facing our senior citizens.

Sincerely,



George Dale
Commissioner of Insurance

GEORGE DALE
Commissioner of Insurance
State Fire Marshal

LEE HARNELL
Deputy Commissioner



STATE OF MISSISSIPPI
Mississippi Insurance Department

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FOR IMMEDIATE RELEASE

George Dale, Commissioner of Insurance/State Fire Marshal
Mississippi Insurance Department
Jackson, Mississippi
Wednesday, April 11, 2007
For additional information, please contact
Donna J. Cromeans, Public Relations Director 601-359-3569

**ABUSIVE MEDICARE INSURANCE SALES PRACTICES
SPREADING THROUGHOUT STATE
Seniors Urged to be Vigilant in Selecting Program**

(Jackson)-Commissioner George Dale today announced that the Mississippi Insurance Department (MID) is joining State Senator Terry Burton (Lauderdale, Newton, Scott Counties) and Colonel Don Taylor and the Mississippi Department of Human Services (MDHS) in alerting Mississippi's senior citizens to be aware that abusive sales practices relating to Medicare Insurance, first reported late last year, are spreading rapidly throughout the state.

According to complaints, some Medicare recipients are being enrolled in these plans without fully understanding their terms, and in some cases, without even knowing they have been enrolled. All Medicare recipients and their family members are urged to be vigilant when selecting a Medicare Part C or Part D plan, and if an agent uses abusive sales practices, to contact the MID immediately.

"My office is receiving calls daily from seniors who have been victims. It is unacceptable to have these individuals preying on some of the most vulnerable citizens in the state. I want people to know that the exploitation of our senior citizens by these unscrupulous sales people and the companies that condone such exploitation will not be tolerated. Every effort will be made to stop those practices and protect our seniors," said Senator Burton.

Although the Medicare Program is under federal regulation, Commissioner Dale is concerned with reports that some agents are continuing to use a variety of confusing and deceptive sales practices to sell Medicare-related Part C and D Plans.

"From the calls we continue to receive we're learning that the problem we first recognized in the northern part of the state is now spreading further and further south. We are finding that some individuals preying on our state's seniors and senior oriented communities are using tactics that are confusing and downright deceptive and it must be stopped. Abusive sales practices will not be tolerated by this department. Anyone engaging in such practices will be subject to severe regulatory action by the MID, such as suspension or revocation of a license and/or a fine," said Commissioner Dale.

The Commissioner is quick to point out that these plans could be beneficial to some people and not all agents are engaging in these deceptive practices. However, he did note that the MID, working with state and local law enforcement, has successfully revoked the license of one agent and have a number of others under investigation.

Companies offering Medicare plans are subject, under federal regulation, to strict marketing guidelines for such plans, which include prior approval of marketing material. MID will consider any deviation from or violation of federal Medicare Marketing Guidelines to also be a violation of the Mississippi Insurance Code.

Among the abusive Medicare Part C and D practices being reported are door-to-door solicitations. Conducting a door-to-door solicitation or outreach prior to being invited by a Medicare recipient is prohibited. If someone comes to your door without you having invited them, do not let them into your home. Also, do not give that person any information about yourself or let him or her see any of your personal documents. Especially do not sign anything for that person.

“The Mississippi Insurance Counseling and Assistance Program (MICAP) of MDHS’s Division of Aging and Adult Services, is designed to answer seniors’ questions about health insurance. Our volunteers are trained to answer questions, compare policies, organize paperwork, help with claims and filing appeals on Medicare, Medicaid, supplemental insurance and other coverage. I would strongly encourage any senior with questions to contact one of the 10 Area Agencies on Aging offices throughout the state,” said Colonel Don Taylor, Executive Director of MDHS.

Anyone who suspects they have been the victim of abusive Medicare Insurance sales practices is urged to contact MID as soon as possible at 1-800-562-2957. For any other questions regarding Medicare Part C and D policies, they should contact MDHS at 1-800-948-3090.

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SCENARIOS USED IN ABUSIVE MEDICARE PART C AND D SALES PRACTICES

A number of scenarios are currently being reported to the Mississippi Insurance Department (MID) as being in use by these agents. Commissioner George Dale urges all Medicare recipients that if you find yourself in a similar scenario, such as the ones described below, a red flag should go up and you should contact the MID immediately. Scenarios that are proving to be of particular favorites to the agents using abusive sales practices include:

- 1). The agent will actually claim to be from Medicare. In many instances, the agent will present a red, white, and blue card that looks like a Medicare recipient’s card.
- 2). The agent will have the Medicare recipient fill out a “request for more information,” form, when in fact the “request” form is actually an enrollment form for whatever Part C or D plan the agent is selling.
- 3). The agent will ask the Medicare recipient to sign a form “just to show [my] boss” the agent contacted the recipient.

4). The agent assures the Medicare recipient that enrollment will not affect his/her Medicare coverage. While this may be true of some portion of Medicare plans, MID is finding that the recipient no longer receives benefits under traditional Medicare Part A and B policies. Often the recipient discovers this fact when a health care provider informs them that Medicare has declined to pay a charge.

5). The agent tells the Medicare recipient that enrollment in the plan he or she is selling will not cost anything. Nothing is free. The agent receives a commission from the sale and premiums will be collected from policyholders.

6). In a particularly serious case, MID found that several recipients had no knowledge of being enrolled in a Medicare Part C plan, and had never had any contact at all with the agent responsible for enrolling them. It is believed that the recipient's personal information was obtained fraudulently, and was used on the plan enrollment forms.

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FOR IMMEDIATE RELEASE

George Dale, Commissioner of Insurance/State Fire Marshal
Mississippi Insurance Department
Jackson, Mississippi
Tuesday, December 19, 2006
For additional information, please contact
Donna J. Cromeans, Public Relations Director 601-359-3569

DALE ALERTS MISSISSIPPI SENIORS OF MEDICARE SCAMS

(Jackson)-Commissioner of Insurance George Dale today cautioned Mississippi senior citizens that, according to complaints received by the Mississippi Insurance Department (MID), some agents are using a variety of confusing and deceptive sales practices to sell Medicare-related Part C and D plans. According to the complaints, some Medicare recipients are being enrolled in these plans without fully understanding their terms, and in some cases, without even knowing they have been enrolled.

Dale urged all Medicare recipients and their family members to be vigilant when selecting a Medicare Part C or Part D plan and if an agent uses abusive sales practices, to contact the Mississippi Insurance Department immediately. He also reassured all Medicare recipients that the MID is working closely with state and local law enforcement agencies to identify and locate agents and companies using abusive sales practices. The investigations have already resulted in the revocation of the license of one agent, while a number of other investigations are on-going.

“While there are many good agents who provide a valuable service, some are taking advantage of our seniors and other Medicare recipients, preying on some of the most vulnerable citizens in our state. These citizens are particularly susceptible to abusive sales practices. This Department is mindful of how confusing and difficult it must be for the many Mississippi Medicare Part C and D recipients trying to select a plan from the various coverages that are offered. Abusive sales practices will not be tolerated by this department. Anyone engaging in such practices will be subject to severe regulatory action by the MID, such as suspension or revocation of a license and/or a fine,” said Dale.

Companies offering Medicare plans are subject primarily to federal regulation. In particular, there are strict marketing guidelines for such plans, which include prior approval of marketing material. MID will consider any deviation from or violation of federal Medicare Marketing Guidelines to also be a violation of the Mississippi Insurance code.

Among the abusive Medicare Part C and D practices being reported to the MID are door-to-door solicitations. Conducting a door-to-door solicitation or outreach prior to being invited by a Medicare recipient is prohibited. If someone comes to your door without you having invited them, do not let them into your home. Also, do not give that person any information about

yourself or let him or her see any of your personal documents. Especially do not sign anything for that person. Contact MID immediately or have a family member do so.

“The number of calls we receive is growing daily. We are finding that some individuals preying on our state’s seniors and senior oriented communities are using tactics that are confusing and downright deceptive and it must be stopped,” Dale said. Dale is quick to point out, however, that these plans could be beneficial to some people, and not all agents are engaging in these deceptive practices.

Anyone who suspects they have been the victim of one of these Medicare scams is urged to contact MID as soon as possible at 1-800-562-2957.

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