



Testimony on
Medicare Advantage Marketing and Sales

by

Fran Soistman
Executive Vice President
Coventry Health Care, Inc.

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

June 26, 2007

Introduction

Chairman Stupak, Ranking Member Whitfield, and members of the Subcommittee, thank you for inviting me here today. I am Fran Soistman, executive vice president of Coventry Health Care. I have responsibility for Coventry's Medicare, Medicaid, and individual insurance operations. Coventry has more than a decade of experience in delivering excellent service to hundreds of thousands of Medicare recipients across the country. We are committed to the long-term success of the Medicare Advantage and Part D programs.

Coventry Health Care is a national health insurance company headquartered in Bethesda, Maryland. We operate health plans and insurance companies and offer a full range of risk and fee-based managed care products to individuals, employers, and government entities, including Medicare, Medicaid, and the Federal Employees Health Benefits Program (FEHBP). We are proud to provide high quality health benefits to more than 4 million people through our commercial products and our participation in government programs. In the Medicare program, we offer Part D Prescription Drug Plans that currently cover 700,000 beneficiaries and Medicare Advantage plans that provide 123,000 beneficiaries with Private Fee-For-Service (PFFS) coverage and 88,000 with Coordinated Care HMO/PPO coverage.

We share the legitimate concerns that have been raised about the sale and marketing of Medicare Advantage PFFS plans and, in particular, the conduct of certain independent brokers and agents. We take these concerns seriously. The vast majority of our members are very satisfied with our plans, but, from our perspective, any situation involving unscrupulous marketing practices is one too many. That is why Coventry has

no tolerance for inappropriate marketing practices by brokers and agents, and we are committed to enforcing that policy with vigilance. This approach is good for our members, good for health care providers, good for our distribution partners, and it's good for us. Improper marketing activities by independent agents and brokers undermine our mission and harm every participant in the health care system – from the beneficiaries who do not receive a health care plan that meets their needs; to the health care providers who shoulder extra burdens when a patient's plan does not cover expenses that otherwise would have been covered under traditional Medicare and Medicaid; to the tens of thousands of agents and brokers who do act professionally and ethically in advising people about the vast array of available insurance products.

Coventry has taken a leading role in identifying challenges and developing solutions to ensure that Medicare beneficiaries are getting access to appropriate health plans as well as the information they need to make the best decisions for their individual circumstances. This is a top priority, and we work with Congress, state and federal regulators, our industry association, and others to protect Medicare beneficiaries.

Coventry's Participation in Medicare

Through more than twelve years of serving Medicare beneficiaries, we have learned a great deal about how to reach consumers who could benefit from our products and give them the information they need to pick a plan that is right for them. As we have expanded the choices we are able to offer, we have adjusted the ways we make products available. The health care system is dynamic, and we are continually looking for ways to improve.

Prior to the launch of PFFS plans and Part D prescription drug coverage in the past two years, Coventry's participation in Medicare was limited to HMO and PPO coverage in five markets. Because of the limited geographical area in which these programs were offered, Coventry was able to rely primarily on our internal sales force to inform beneficiaries about our products and assist them with the application process. With implementation of the lock-in requirement in 2005, we discovered that we needed to add a limited number of independent agents in these markets to reach beneficiaries in a timely manner. We have served nearly 100,000 Medicare beneficiaries successfully under these programs, with few complaints about broker-agent marketing practices.

Having built a solid foundation with the HMO and PPO programs, in 2006, we began to offer a Medicare Part D prescription drug program to Medicare beneficiaries as well. Given the national scope of Part D, we realized that our own sales force was not intended to market a product for national distribution and that we needed a more effective way to reach people across the country, so we partnered with nationally recognized distribution organizations. We had great success with our entry into the Part D field, becoming the sixth largest PDP in the nation. And again, there were few complaints about broker-agent marketing practices.

PFFS Plans

More recently, we decided to begin offering PFFS plans. Although these plans are not right for everyone, we think they offer a valuable health care choice for many. First, they make health care more accessible to beneficiaries in rural and other underserved areas where Medicare health plans were not available in the past. Second,

PFFS plans improve patient care by offering care coordination and disease management services for conditions that commonly affect the elderly or the disabled. Third, like other types of Medicare Advantage plans, our PFFS plans provide many extra benefits that are not available in the Medicare fee-for-service program, including, for example, dental, hearing and vision benefits. According to CMS, Medicare Advantage plans are providing enrollees with, on average, savings of \$1,032 annually – through improved benefits and lower out-of-pocket costs – compared to what they would pay in the Medicare fee-for-service program.

In evaluating how we could make the new PFFS plans available nationally, we concluded that we again needed to use multiple distribution partners, but we knew that several of our Part D partners were not available. The need for a national distribution system was particularly acute because the limited sales period in the Medicare Advantage program has created a compressed window in which beneficiaries are required to make decisions. Most PFFS products are sold during an intensive six-week Annual Election Period, from November 15 through December 31, each year, with an additional opportunity to switch to a different plan from January 1 through March 31. This short sales window creates a need for a national distribution capacity using agents and brokers.

In modifying the distribution model from the Part D program to include new relationships with other distribution partners, we encountered unexpected challenges in ensuring that independent brokers and agents met our stringent marketing standards.

One striking example of that kind of misconduct is a subject of today's hearing. It involved an independent agent, who in February 2007 marketed our PFFS policies to

beneficiaries at Judiciary House in Washington, D.C. by misrepresenting himself and misrepresenting our product. This was a deplorable situation.

Let me be very clear: We abhor the actions that the independent agent took at Judiciary House, and I want to extend my personal, as well as Coventry's, deepest apologies to Mr. Grady Hammonds, Ms. Mary Royal, and Ms. Edith Williams. This never should have happened. It is unacceptable. And we do not tolerate this kind of conduct.

We have terminated the agent and the agency with which he was affiliated. That agency was in fact already the subject of internal investigations begun this spring by our Special Investigations Unit regarding separate improper agent conduct.

Our Response to Sales and Marketing Issues

Over the course of the rollout of our new PFFS product over the past eight months, we realized that issues were developing with regard to agent-related marketing practices, and we took a number of steps to address the situation.

First, within a month after the first enrollment effective date, we sent two field communications (attached to my testimony) to the independent brokers and agents marketing and selling our plans to underscore key guidelines for marketing to beneficiaries who are dually eligible for Medicare and Medicaid and to beneficiaries in institutionalized settings – populations where we saw greater risk for agent misconduct. The first sales communication plainly stated our belief that our PFFS plans may not be suitable for dual eligibles. The second sales communication acknowledged the even “greater responsibility” to ensure appropriate marketing practices in institutionalized

settings and reiterated specific instructions, such as forbidding door-to-door marketing. These memos are examples of our practice of communicating directly to agents to reinforce our policies and CMS' guidelines.

Second, we have taken additional proactive measures to address concerns about the marketing of PFFS plans to dual eligibles. We know that our PFFS plans are not best suited for this population, so we requested permission from CMS to eliminate or substantially reduce the commissions we pay to agents who sell PFFS plans to dual eligibles. CMS shared our concern but felt constrained to not grant this request because of its nondiscrimination rules. On our own initiative, we did eliminate up front commission payments for sales of PFFS to dual eligibles and now pay for these sales only on the back-end, which can be up to a year later. This change has already made an important difference, significantly reducing the number of PFFS plans our agents sell to dual eligibles.

Third, in collaboration with the state Department of Insurance and Medicare Patrol, we instituted a program in Mississippi to call enrollees and verify their intent to sign up for our PFFS plan. After a beneficiary decides to enroll in a PFFS plan, we call to make sure the beneficiary is aware that he or she has signed up to enroll in one of our PFFS plans, is educated about the plan, and is familiar with the benefit structure. As a result of this verification program, dual eligibles often have chosen to disenroll from our PFFS program, after concluding that it was not right for them. We are now starting to extend this verification program across the country.

Fourth, we have other proactive policies to communicate individually with enrollees. For example, when Coventry terminates an agent for cause, we follow up with every member that the terminated agent was responsible for enrolling and give them the option of disenrolling.

Fifth, we have increased the rigor of the process for contracting with new independent agents. Originally, we required attestation that an agent had read our online training materials. In February, we strengthened the requirement to include passing a test to prove understanding of our products and the dos and don'ts of marketing for Coventry.

Sixth, we are committed to continually improving our programs and policies for training brokers and agents and certifying that they are qualified to market our products. Prior to selling Coventry's Medicare plans, we require that each agent must:

- (1) be licensed in the state where selling;
- (2) execute the appropriate agent contract with Coventry;
- (3) complete the online training and written exam with a passing grade; and
- (4) not be excluded from any federal or state program, including the Medicare and

Medicaid programs. (Coventry checks the exclusion lists of the Office of Inspector General for Health and Human Services and the Government Services Administration prior to contracting with any agent.)

Each agent is required to re-train and re-test prior to selling products for the 2008 enrollment season. In addition, any broker or agent who has not completed a sale within the past 60-90 days is required to complete a re-training program.

Seventh, in response to the issues identified at Judiciary House, we are developing and implementing new marketing guidelines that provide strict standards for conducting marketing activities in subsidized housing facilities.

Eighth, we monitor the ongoing performance of those who market our plans not only through direct contact with agents, but also through contact with Field Management Organizations, which recruit agents. We conduct quarterly meetings and weekly calls with the Field Management Organizations to keep regular tabs on broker-agent conduct, complaints, and other business issues.

Ninth, Coventry has established a dedicated broker services unit, as well as a Broker Quality Management Program, which is under our Medicare Compliance Department. Key components of these programs are data analysis and feedback into agent training, a special investigations unit for complaint management, and proactive outreach to state agencies.

Tenth, in situations where all of these training and oversight mechanisms have not ensured appropriate agent conduct, we do not hesitate to terminate independent agents or agencies.

Working With CMS, State Regulators, and the Industry

In addition to these unilateral actions, we are also working with CMS, the states, and our industry association, AHIP, to develop additional solutions.

To protect the best interests of beneficiaries and safeguard against future agent-related problems, Coventry, together with six other leading Medicare Advantage plans and CMS, announced that we are temporarily suspending marketing of our PFFS plans to individuals and, at the same time, strengthening consumer protections by expediting the early implementation of CMS' new marketing guidelines for 2008. This action will facilitate the immediate implementation of additional safeguards to protect Medicare beneficiaries. CMS set forth a number of steps that all seven companies must take – several of which we had already started doing (discussed above), and the rest of which we will promptly undertake.

In fact, Coventry has a solid history of working with CMS to provide beneficiaries with high quality, affordable health care choices that best meet their needs. We are proud of our track record in serving hundreds of thousands of Medicare beneficiaries across the nation. We have played a leadership role in addressing these issues since they first came to light in January, and we remain committed to fixing any lingering problems so beneficiaries can continue to enjoy a wide range of choices in Medicare to meet their health care needs.

We have also worked constructively with regulators in a number of states, including Oklahoma, Mississippi, North Dakota and Georgia, among others. In Mississippi, for example – the state in which we have enrolled the largest number of beneficiaries in our PFFS plans – once we identified issues regarding agent practices I

personally reached out to Insurance Commissioner George Dale; we worked with his staff to address problems; and, within the past three weeks, I have met with Commissioner Dale to review our progress in resolving issues in Mississippi to his satisfaction. And in Oklahoma, we received a commendation for our efforts, which I have attached to my written statement.

Finally, Coventry is working with AHIP to identify industry-level measures – consistent with a set of principles adopted by AHIP in May 2007 – that are designed to protect beneficiaries and to ensure that brokers, agents, and plan marketing staff meet new qualifications and requirements. For example, Coventry supports efforts currently underway to prevent problem agents from simply transferring from plan to plan by establishing a national registry of sanctioned brokers, with appropriate safeguards and appeals to protect against unfair accusations.

Conclusion

Thank you for this opportunity to testify. We do not tolerate improper conduct, and we are committed to do whatever it takes to ensure sound and appropriate marketing practices by anyone who markets or sells a Coventry product. This is good for our customers, and it is good for us. We have an excellent reputation in this industry as a responsible and upright company, we value that reputation enormously, and we intend to keep it.

Exhibit 1



Memo

To: Distribution Partners
From: Mike Burke
CC: J. Stelben
Date: January 19, 2007
Re: Private Fee For Service Dual Eligible Enrollment

As discussed on Thursday January 18th, Coventry Health Care believes that our Private Fee For Service Advantra Freedom products may not be the best health care coverage solution for Medicare beneficiaries who have both Medicare and Medicaid coverage (dual eligible.)

There are several reasons that have contributed to our conclusion:

- Most dual eligibles will have limited financial exposure when enrolling in plans designed specifically for their situations. Our Advantra Freedom products will in many cases increase their financial exposure for covered services in the form of increased co-pays or coinsurance.
- Coordination of benefits with most states is often arduous and in some cases, state Medicaid departments prohibit coordination of benefits with Medicare Advantage Plans, thereby further increasing a dual eligible's potential financial exposure as referenced above.
- Dual eligible residents of nursing homes are especially challenged in that they may not be able to properly evaluate the positive or negative impacts to their coverage when enrolling in Advantra Freedom.
- Our analysis of Advantra Freedom's benefit structure to that of a dual eligible's needs has concluded that in most cases we will be increasing their out of pocket cost for covered health care services (i.e. co-pays and coinsurance).

Coventry believes that we have designed and introduced PFFS products that are a good fit and value for the majority of Medicare beneficiaries. We all must work together to ensure that we do everything possible to educate Medicare beneficiaries on their choices and enroll them in products that best fit their individual needs. Agents should not sign up dual eligible individuals unless the dual eligible has verified with their local SHIP (State Health Insurance Assistance Program) or Medicaid office that the plan is beneficial to the dual eligible.

Coventry's primary interest is in providing Medicare beneficiaries with the appropriate products that meet their health care benefit needs. We expect you to represent our company consistent with these values and in accordance with all CMS requirements. We thank you in advance for your support and cooperation.

Attached you will find additional information regarding enrolling members in a nursing home or institutional setting.

Exhibit 2



Field Communication

To: All Distribution Partners
From: Mike Burke, Vice President of Medicare
Date: 01/17/07
Category: New Business
Field Communication FC 24

Subject: Enrolling members in a Nursing Home or Institutional setting

Institutionalized beneficiaries or beneficiaries in long term care or assisted living facilities have equal rights to enroll in a Medicare Advantage PFFS plan. However, with their enrollment comes greater responsibility to ensure the application was appropriately and legally sold in accordance with CMS marketing requirements.

All Marketing and Enrollment rules apply, as discussed in the Coventry Agent Training Material, when marketing to this population. In addition to the training, please be aware of the following:

- Marketing should occur only in common areas of the Nursing facility and not in areas where care is being rendered.
- Door to door solicitation is not allowed in any circumstance in any setting.
- An agent should never meet with a beneficiary in their room, home, or apartment unless the beneficiary has previously agreed to meet with the agent in one of these settings.
- It is required that paperwork for Legal Guardianship or Legal Power of Attorney be provided when signing up members who are not competent to make their own decisions. In most instances it is not the social worker that has Legal Guardianship or Power of Attorney but a family member. It is the agent's responsibility to ensure that the agent doesn't sign up members that are not competent to make their decisions without obtaining permission and signature of the Legal Guardian or legal POA.
- Ensure appropriate education occurs with each beneficiary. Education cannot occur through the social worker or any other employee at the facility. Materials and copies of the applications need to be left behind with each beneficiary or their POA or legal guardian. Under no circumstance is a Medicare beneficiary required to sign any document to obtain marketing materials.
- In most instances it is not beneficial to a dual eligible beneficiary to sign up for Coventry's PFFS product. Agents should not sign up dual eligibles if the dual eligible beneficiary has not verified with their local SHIP or Medicaid office that the plan is beneficial to the dual eligible beneficiary.

Coventry's primary interest is in providing Medicare beneficiaries with the appropriate products that meet their health care benefit needs. We expect you to represent our company consistent with these values and in accordance with all CMS requirements. We thank you in advance for your support and cooperation.

Exhibit 3

GOVERNOR
BRAD HENRY



INSURANCE COMMISSIONER
KIM HOLLAND

June 1, 2007

OKLAHOMA INSURANCE DEPARTMENT
STATE OF OKLAHOMA

Coventry Health & Lie Insurance Company
Attn: Michael Dobson
4300 Cox Road
Glen Allen, Virginia 23060

JUN 07 2007

IN RE: ADVANTRA FREEDOM
 HOWARD COOKSEY; INQUIRER
 OID FILE NUMBER: 200000147

Dear Mr. Dobson:

Thank you for your response of May 25, 2007 regarding the above inquiry.

We felt you and your company needed to be congratulated. Coventry Health is the very first company advising of seeing a need for additional and/or retraining of agents regarding the Medicare Marketing Standards of Conduct and emphasis on the Medicare regulations governing a company. We can only hope that other companies will see that additional training/retraining might possibly be necessary for their agents in field considering the amount of confusion that has occurred since the new drug plans were made available.

It is this department's main concern to take care of all consumers in our state. However, Commissioner Holland is very concerned with the welfare of our senior citizens and makes every effort to ensure they are not taken advantage of in any way.

Again, you are to be commended for this step forward in an effort to keep abreast of the availability of health and supplement plans and the requirements needed to follow rules and regulations.

Sincerely,

MARTHA HALL
Analyst
Consumer Assistance/Claims Division
(405) 521-2991

MH/