

**MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP**

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**MEMORANDUM**

**DATE:** May 18, 2011

**TO:** All Medicare Advantage Organizations, Prescription Drug Plan Sponsors, and Section 1876 Cost Plans

**FROM:** Danielle R. Moon, J.D., M.P.A.  
Director

**SUBJECT:** Agent and Broker Compensation Rate Adjustments and Submissions for Contract Year 2012

This memorandum provides guidance regarding adjustments to compensation rate ceilings for contract year (CY) 2012 enrollments relative to the CY 2011 rate ceilings, as well as the process for submitting compensation rate information for CY 2012 enrollments.

**Compensation Rate Adjustment for 2012**

As provided in 42 CFR § 422.2274(a)(1)(ii)(A) and § 423.2274(a)(1)(ii)(A), the compensation amount paid to an independent agent or broker for an enrollment must be the prior year's paid compensation adjusted by the change in Medicare Advantage (MA) or Part D rates that CMS announces each year.

On April 4, 2011, CMS released the "Announcement of Calendar Year (CY) 2012 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter" (<http://www.cms.gov/MedicareAdvtgSpecRateStats/AD/list.asp>). As provided on pages 1 and 48 of the rate announcement, MA rates increased by **-0.16%**, and Part D rates increased by **3.34%**.

Compensation rates for CY 2012 must, therefore, be adjusted as follows:

CY 2012 compensation amount = CY 2011 compensation amount \* MA or Part D rate % change.

For example, if an MA or Medicare Advantage-Prescription Drug plan paid agents \$403 in CY 2011, it would pay **\$402** to agents in CY 2012:

$$\$403 + [\$403*(-0.0016)] = \$402.3552$$

Similarly, for a Prescription Drug Plan (PDP) sponsor that paid agents \$53 in CY 2011, it would pay **\$55** to its agents in CY 2012:

$$\$53 + [\$53*(0.0334)] = \$54.7702$$

When calculating the compensation rates for CY 2012, plan sponsors should round to the nearest dollar using the following convention: amounts of 50 cents or more should be rounded up to the nearest dollar, and amounts less than 50 cents should be rounded down to the nearest dollar.

Plan sponsors that did not use independent agents or brokers in CY 2011 but intend to use them in 2012 must choose an initial compensation amount that is at or below the CY 2012 Fair Market Value (FMV) cut-off amount.

The chart below summarizes the CY 2012 FMV cut-off amounts for all plan sponsors.

<b>MA and Section 1876 Cost Plans</b>				
	National	Connecticut, Pennsylvania, District of Columbia	California New Jersey	Puerto Rico, U.S. Virgin Islands
Initial	\$402	\$453	\$503	\$276
Renewal	\$201	\$227	\$252	\$138
<b>PDPs</b>				
Initial	\$55			
Renewal	\$28			

### **Compensation Rate Submission for 2012**

All plan sponsors, whether using independent agents or not, must notify CMS of their CY 2012 compensation status. Plan sponsors can submit compensation data into the Agent/Broker Compensation function within the HPMS Marketing Module beginning June 3, 2011, through July 25, 2011. Please note that the submission process is not complete until the designated plan official has completed the attestation in HPMS. Any plan not submitting or attesting to agent/broker compensation data by July 25, 2011, will be out of compliance.

We expect plan sponsors to keep detailed records demonstrating that compensation schedules are updated and agents/brokers are being paid in a manner consistent with CMS guidance.

Please note that the CY 2012 compensation information submitted will be made available for beneficiaries to view on [www.cms.gov](http://www.cms.gov) and [www.medicare.gov](http://www.medicare.gov), prior to the annual election period for CY 2012.

If your organization requires technical assistance, you may contact the HPMS Helpdesk at [hpms@cms.hhs.gov](mailto:hpms@cms.hhs.gov), or 1-800-220-2028.

## APPENDIX A – Instructions for Updating Existing and Creating New Agent/Broker Compensation Schedules for 2012

### **I. 2012 Updates to Existing Schedules (used in 2011)**

Plan sponsors intending to continue to use agents to sell plans in 2012 that had compensation schedules in 2011 must adjust their 2011 compensation schedules according to the guidance outlined in the May 18, 2011, memorandum, “Agent and Broker Compensation Rate Adjustment and Submission for 2012.”

Plan sponsors offering plans for which 2011 compensation schedules were submitted may only adjust existing 2011 compensation schedules; they may not create any new compensation schedules for those plans.

### **II. New Schedules (no schedules existed in CY 2011)**

Plan sponsors may create new compensation schedules for plans that did not exist in CY 2011 by selecting a compensation amount that is at or below the fair market value.

Plan sponsors may create new compensation schedules for plans that existed in CY 2011 but did not have an associated compensation schedule (i.e., the plan chose to compensate \$0 for enrollments in that particular product) by selecting a compensation amount that is at or below the fair market value.

### **III. Plan Consolidations**

Where a plan sponsor is consolidating plans, it may associate with the consolidated plan all, or a subset, of the 2011 schedules associated with the set of plans being consolidated. These schedules must be adjusted relative to the previous year’s schedules according to the guidance outlined in the May 18, 2011 memorandum.

Plan sponsors consolidating plans for which 2011 compensation schedules existed can only adjust all or a subset of the existing 2011 compensation schedules; they may not create any new compensation schedules for those plans.

### **IV. Service Area Expansions/Reductions**

Where a plan sponsor is reducing an existing service area, it must adjust the 2011 schedules associated with the reduced service area according to the guidance outlined in the May 18, 2011 memorandum. Plan sponsors cannot create new compensation schedules.

Where a plan sponsor is expanding an existing service area, it must adjust its 2011 schedules according to the guidance outlined in the May 18, 2011 memorandum. In the event that a service area expansion crosses State boundaries, the plan may create new schedules by selecting a compensation amount that is at or below the fair market value and can only associate them with the new portion of the service area.

## Attachment 1 - Revised Compensation Guidance Qs & As

### 1. Are all plans required to submit compensation information for 2012?

Except for sponsors of employer plans, all plan sponsors are required to submit 2012 compensation information, even if they are not using independent agents or brokers. Plan sponsors that are using – and intend only to use – employed sales staff, may submit \$0 compensation amounts.

### 2. How do new plans calculate their 2012 compensation amounts? What about plans that decide mid-year to use independent agents?

On April 4, 2011, CMS released the “Announcement of Calendar Year (CY) 2012 Medicare Advantage Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call Letter” (<http://www.cms.gov/MedicareAdvtgSpecRateStats/AD/list.asp>). As provided on pages 1 and 48 of the rate announcement, MA rates increased by **-0.16%**, and Part D rates increased by **3.34%**.

For example, if an MA or MA-PD plan paid agents \$403 in 2011, it would pay **\$402** to agents in 2012:

$$\$403 + [\$403*(-0.0016)] = \$402.3552$$

Similarly, for a PDP that paid agents \$53 in 2011, it would pay **\$55** to its agents in 2012:

$$\$53 + [\$53*(0.0334)] = \$54.7702$$

When calculating the compensation rates for 2012, plan sponsors should round to the nearest dollar using the following convention: amounts of 50 cents or more should be rounded up to the nearest dollar and amounts less than 50 cents should be rounded down to the nearest dollar.

All plan sponsors using independent agents **at any time** during the 2012 plan year must submit their compensation information by **July 25, 2011**. If a plan sponsor thinks it is possible that it would use independent agents during the 2012 plan year, it should file the anticipated compensation amount. If compensation information is not submitted by July 25, 2011, independent agents or brokers cannot be used for the 2012 plan year. Mid-year submissions are not allowed.

New plan sponsors and plan sponsors that did not use independent agents during 2011, but intend to use them in 2012, must select a compensation amount that is no more than the 2012 fair market value (FMV) cut-off amount (See Appendix A).

### 3. What do we do if we do not use independent agents, but use contracted agents who receive a base salary and sell exclusively for our plan, or are employer plans?

Employed or contracted agents who sell exclusively for a single plan sponsor (including captive agents) and receive a fixed amount (sometimes called a “base salary”), and agents selling employer plans are exempt from CMS’ independent agent and broker compensation requirements. Plans using employed agents must still submit compensation information to CMS (see Question #1).