

Statement  
of  
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Before the  
United States Senate  
Special Committee on Aging  
Hearing on  
Medicare Advantage Marketing and Sales  
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Good afternoon, Chairman Kohl, Ranking Member Smith 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 its Medicare health plans, including both its 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") in Baltimore, Maryland. During my tenure at CMS, the Center for Beneficiary Choices was responsible for the administration of the Medicare Advantage plans and the Medicare Prescription Drug Benefit. I appreciate this opportunity to testify about sales and marketing oversight in the Medicare Advantage program.

In my testimony today, I will provide information on: (I) WellCare's government-sponsored health care plans, specifically its Medicare Advantage plans; (II) WellCare's zero-tolerance approach to the marketing of Medicare Advantage plans; (III) CMS's audit of WellCare; and, (IV) recommendations to improve the marketing of Medicare Advantage plans.

First, I would like to offer some thoughts on WellCare's role in delivering government-sponsored health care plans. In my 32 years of Federal government service in Medicare, I helped improve the operations of the Medicare program to serve the needs of Medicare beneficiaries. During my tenure at WellCare, I have been extremely impressed with the company's commitment to serving the needs of Medicare beneficiaries, its responsiveness to rapidly changing Medicare program dynamics, and above all else, its 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. This approach is not only good business, but it is the right thing to do.

WellCare understands the challenges and the rules governing the marketing practices in the Medicare Advantage program. We have a zero tolerance policy for non-compliance with our marketing guidelines and will promptly terminate any contracts of non-compliant sales agents or sales management personnel. It is our company's ethic to do more than merely "follow-the-rules" – we have NO tolerance for any unethical behavior.

#### **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, including both Medicare and Medicaid programs, and we are currently 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 its Medicare Advantage plans that feature an open provider network and other additional benefits for members. As of March 31, 2007, WellCare has enrolled over 32,000 members in its Medicare Advantage private fee-for-service plans and

contracts with over 8,000 licensed, independent sales agents across 39 states. We operate our open-network MA plans through three life and health insurance subsidiaries under the WellCare name. We currently offer these MA plans in 793 counties in 39 states and Washington, D.C.

WellCare's objective is to be the leading provider of managed care services for government-sponsored healthcare programs. To accomplish this mission, we work with members, providers, governments, and the communities we serve. If a product or service is not good for a beneficiary, then it is not good for WellCare.

## **II. WellCare's 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, WellCare employees are 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 or making such materials or forms available 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 a 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. 42 C.F.R. § 422.80.

In addition to regulations, CMS has implemented marketing guidelines that reflect CMS's current interpretation of the marketing requirements and related provisions of the Medicare Advantage and Medicare Prescription Drug Plan rules. These guidelines were developed after careful evaluation by CMS of current industry marketing practices, recent advancements in communication technology, and how best to protect the interests of Medicare beneficiaries.

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

While we believe the federal regulations and guidance on marketing are robust, WellCare Health Plans has implemented even stronger internal 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 by consistently adhering to the standards of conduct embodied in the Trust Program.

## 1. The Trust Program

The Trust Program is the foundation and guide of WellCare's operations. Due to the increasingly complex legal and ethical questions facing all participants in the health care industry, WellCare has unified its long-standing corporate ethics and compliance policies by implementing this comprehensive program. The goal of the Trust Program is to establish 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, its Board of Directors, employees, and its business partners. The Trust Program provides guidance and oversight to ensure that work 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 our people within the WellCare community to rely on their common sense in recognizing right from wrong and to use the Trust Program to ensure that we adhere to high ethical standards.

## 2. Additional Compliance Measures

To augment the Trust Program, we recently announced additional compliance measures designed to protect the rights of Medicare beneficiaries. These new 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 WellCare's compliance program remains the 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 that they were treated appropriately by the sales agent. 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 eliminate most paper applications for private fee-for-service enrollments in favor of a real-time verification and quality assurance process. The inbound verification program will be in addition to the 100 percent outbound callback program already in place for new members.

The second new component is the launch of a “secret shopper” program. Here, WellCare will use an independent organization to anonymously monitor the compliance of Medicare Advantage independent sales agents. This program is being rolled out nationally, but in its initial phase will cover five states with high enrollment in WellCare’s private fee-for-service plans. 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 basis.

In addition, more protections are in the pipeline. Right now, WellCare is working with America’s Health Insurance Plans (“AHIP”) on new principles 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.

The focus of our oversight is to ensure that each Medicare beneficiary receives high quality, professional interaction in their service experience. Medicare beneficiaries must fully understand their health plan benefits, coverage limitations, and policies to make an informed choice about their health care coverage. Ensuring a positive sales experience is in everyone's best interest. 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. Among others, these include:

- Confirmation of 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;
- Mandatory re-training and re-testing to refresh knowledge of plan terms and marketing guidelines;
- 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 producers and 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 at all times. It is important to be respectful of the beneficiaries’ wishes and to 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. Agents must always 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. Also, agents 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. WellCare also 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. Agents must ensure that beneficiaries understand 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. 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.

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

- Deployment of a secret shopper service to pose as potential beneficiaries to experience the sales process/presentation;
- Completion of mandatory training and testing for all sales agents;
- Revocation of selling privileges for sales agents who do not complete the 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;
- Monitor sales data for potential issues and to educate or even terminate agents based on the findings, with emphasis on proactive resolution of issues; and
- Monitor a confidential compliance Hot Line where members, associates and government regulators can report concerns about potential marketing misconduct.

*C. Recent Examples of WellCare's Zero Tolerance Policy*

Through WellCare's compliance programs, 16 independent sales agents have been terminated for marketing conduct violations across the country. As WellCare employs over 8,000 sales agents, we do have a high degree of confidence that federal

laws and our internal controls are working. However, as WellCare has a zero-tolerance for agent misconduct, we are not satisfied with our past performance. As we continue to improve our internal compliance measures, I would like to share some recent experiences.

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. 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 at sunrise from his home in handcuffs by Georgia law enforcement authorities. He and his accomplice are now behind bars.

### **III. CMS Audit of WellCare**

As you may know, there was a recent report in the New York Times about a CMS audit conducted on WellCare's private fee-for-service operations. The review 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 of Medicare Advantage plans. Two of these in particular, 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 is implementing mandatory broker re-training and re-testing, 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 its 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 find any abusive practices.

#### **IV. Recommendations to Improve Medicare Advantage Marketing Practices**

WellCare is extremely proud of its Medicare Advantage offerings. The plans offer beneficiaries new choices to broaden the ways in which they can receive high quality health care. We are confident that existing federal regulations combined with our robust internal compliance efforts will help ensure that beneficiaries are treated with the highest standards of integrity. Nonetheless, through the operation of our zero-tolerance policy as well as our recent dialogue with CMS, we do believe there is room for improvement in the marketing of Medicare Advantage products.

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 abuses. Thus, we believe it is critically important to foster cooperation at the federal, state, health plan, and agent or agency levels in communicating and resolving complaints and taking swift action against those who defraud Medicare beneficiaries. We strongly support AHIPs draft principles on the actions Medicare

Advantage plans should undertake to enhance oversight of sales and marketing efforts. We believe all private MA plans should adhere to these principles. At WellCare, we are going above and beyond these principles.

In addition to these recommendations, WellCare strongly supports the creation of a federal database where information can be shared about those agents and brokers who have been sanctioned by a state or terminated by a health plan. We do not want to be associated with an agent or broker who has been terminated by another plan because of their non-compliance with state or federal rules. This is an action that can be undertaken immediately and will improve our current efforts.

## **CONCLUSION**

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 will not accept behavior that results in a Medicare beneficiary being inappropriately coerced or enrolled in a product that they did not want or need. We are continuing to work with our colleagues at AHIP to support the new principles on what all Medicare Advantage plans should do regarding marketing. While all MA sponsors should implement a vigorous internal compliance program like WellCare's, we believe all plans should adhere to these principles -- at a minimum. We appreciate the support the Committee has demonstrated for this valuable program and look forward to continuing to work with you to meet future challenges in Medicare and throughout the U.S. health care system.