Testimony of Jim Poolman
Insurance Commissioner
State of North Dakota

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

on

Predatory Sales Practices in Medicare Advantage

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

House Energy and Commerce Subcommittee on Oversight for 06/26/07
Commissioner Jim Poolman

Good afternoon Mr. Chairman and members of the Committee. I am pleased to appear before you today and truly appreciate the opportunity to articulate my concerns about the marketing of Medicare Advantage (MA) plans. Thanks also for your interest in taking action to address the marketing abuses that we are currently seeing. I am Jim Poolman and am the elected insurance commissioner for North Dakota. I took office in January 2000 and given the length of my tenure in office, I have seen firsthand the ramifications of the implementation of the Medicare Modernization Act (MMA). I sit before you today to urge you to restore state regulatory authority over these programs and consider using the current Medigap insurance as a regulatory model.

As early as January 2006, I called for changes to simplify the Medicare Part D program.[1] I also addressed these concerns in letters to Centers for Medicare and Medicaid Services (CMS) and Congressman Pomeroy and Senators Conrad and Dorgan.[2] We are now into the second year of the implementation of the MMA of 2003, and I continue to see significant problems causing us grave concern.

From the earliest days of the rollout, we saw widespread confusion and frustration on the part of seniors in North Dakota. As the rollout progressed, it became increasingly clear that the Centers for Medicare and Medicaid Services (CMS) was ill-equipped to adequately address the conflicts that arose for this vulnerable population. For example, our contact with customer service staff at Medicare is typically unproductive. Not only do they lack the answers or information we need, but they also are inadequately trained. On occasion, CMS staff members have simply hung up the phone.

Companies and agents have capitalized on the confusion associated with the new products by using aggressive sales practices that in my estimation are misleading at best and at

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[1] Exhibit 1 - North Dakota Insurance Department press release, "Poolman: Changes Needed to Simplify Medicare Part D Program" – 01/27/06
[2] Exhibit 2 – Commissioner Poolman: Correspondence—CMS, Rep. Pomeroy, Sen. Conrad, Sen. Dorgan – 01/27/06

worst, fraudulent. I have examples of tactics ranging from agents refusing to leave someone's home or giving misleading information to actually sending money to an insurance company on behalf of the potential policyholder. We even have seniors who were switched from traditional Medicare to an MA plan simply because they signed their name at a mass enrollment event.[3]

We have experienced many administrative delays at CMS and the Social Security Administration (SSA). I surmise this is because of inadequate data systems. The result is inaccurate records regarding the product a person is enrolled in or regarding the premiums being deducted from their accounts. We have examples of people where premiums are being withdrawn from their account for plans they are not even enrolled in.

In addition, we have an example of a woman who was switched from one plan to another without consent only to find that not only does she lack coverage, but the company she was switched to had no record of her enrollment. The back story is incredible - CMS confused her with another person with the same name, who may have switched plans. This woman has made multiple complaints to CMS and the company and still her situation is not resolved. She is paying for her drugs out-of-pocket on a very limited Social Security check.

Even though CMS has long been aware of the conflicts and "bugs" in their system, they have not been resolved—they are worse. Instead of becoming more responsive, CMS has adopted a "Don't call us" attitude [4] that requires us to spend countless hours on the telephone with them only to be referred to the company for help.

Working with the various insurance companies does not seem to be any easier and the same characteristics plague our communications with them as well: long wait times on the phone, multiple transfers from person to person, no accountability and a "pass the buck" attitude that is forcing many seniors in my state to go without coverage because of administrative inefficiencies and errors. Often, company customer service staff are hesitant to allow our staff to talk to

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[3] Exhibit 3 – Examples of abusive, aggressive, and misleading sales tactics experienced in North Dakota
[4] Exhibit 4 – Memo from CMS – 03/12/07

supervisors or those more knowledgeable about complicated or unique cases. We are transferred to a number that is not answered and the waiting time starts over.

Most surprising, some companies have even blamed CMS for some of these administrative issues and when we follow up, we find that CMS is not to blame; it is the company that is forbidding the beneficiary to disenroll from their plan, forcing seniors to remain in unsuitable plans.

The ramifications of this situation are varied. From a state senior health insurance counseling program standpoint, my staff has fielded 3,861 client contacts over the past year. (A "client contact" could represent more than one call to or from that client.) Of the total 3,861 client contacts, nearly 90 percent involved problems of some degree from either Part D or Medicare Advantage plans. That means that we have over 300 calls per month that are problems. Of the Medicare Advantage-type calls, 75 percent dealt with enrollments or disenrollments.

This data tells us that:

- 9 out of 10 of client contacts to our SHIC program were the result of some type of problem with the Medicare Modernization Act of 2003, either Part D or Medicare Advantage;
- Only 1 out of 10 client contacts are the basic Medicare/Medigap/ Prescription Assistance/LTC/Medicaid questions that our SHIC staff and SHIC counselors were answering prior to MMA 2003;
- 3 out of 4 problem-type calls involving Medicare Advantage plans are related to enrollments or disenrollments, strongly suggesting inappropriate sales and/or inefficient administrative policies and practices. (By comparison, 1 out of 3 problem-type calls involving Part D plans are related to enrollments or disenrollments.)

I must point out that the picture for us is clear—we are now committing not only the CMS SHIP grant dollars to our program, but are now also utilizing four full-time positions and additional Department resources to address a problem over which I have no jurisdiction. Over 90 percent of our SHIC resources are currently being used to address this problem. And as a side note, CMS should be aware that since this has begun, our program has hemorrhaged SHIP volunteers—the very backbone of this program—who engage in peer counseling. Many of these volunteers are retired seniors themselves and are unwilling to peer-counsel under these negative circumstances. This has placed additional burdens on my staff to pick up the slack where the volunteers have left off.

From our perspective, this situation is untenable. It becomes difficult to do the good work that we desire to help our senior population. As Insurance Commissioner, my main duty is to protect insurance consumers. However, under the current circumstances, seniors in North Dakota are being shortchanged by CMS and the Medicare Modernization Act.

I have addressed these issues with CMS, as well as North Dakota's congressional delegation in letters as recently as this past May.[5] Clearly these companies need more rigorous oversight and CMS is not prepared or seemingly able to do the job. With all due respect, I find it highly unlikely, based on our experience during this situation, that CMS will be able to "do better" as Ms. Norwalk suggests in a recent press release.

And, if "doing better" is exemplified by the agreement just struck between CMS and seven insurance companies, I think "better" is not good enough.

This agreement relies on the assumption that the companies will act in good faith under the terms of the agreement. Quite frankly, I do not trust these companies to fulfill their obligations to CMS or to their policyholders – or for CMS to enforce their insufficient rules.

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[5] Exhibit 5 – Commissioner Poolman: Correspondence—CMS, Rep. Pomeroy, Sen. Conrad, Sen. Dorgan – 05/24/07

In May 2006, I started an action against Humana, one of the companies signed on to this agreement, specific to security breaches that resulted in the theft of private financial information of around 130 seniors from North Dakota who had purchased Part D plans from Humana.[6]

One would think that upon learning of this breach, Humana would have taken proactive steps to remedy the situation for their policyholders. Instead, Humana failed to properly notify any regulator about the theft and showed a complete disregard for the well-being of their customers they're supposed to be serving. It was only after repeated contact with Humana and a one-on-one meeting with Humana management that they acknowledged that the situation was serious.

While the current voluntary agreement between CMS and these insurers is a start at addressing this problem, it does not address the underlying, root causes, which are likely firmly planted in the higher rates of government reimbursement for these plans, the higher commissions that agents receive for selling them, and the complete lack of state oversight over these plans and these companies. The agreement offers no real improvement in consumer protection and companies are allowed loopholes in sales tactics. It also leaves out any close regulatory oversight that is obviously needed in this situation.

Today, I again urge you to restore and expand state insurance regulatory authority over these programs and consider the current regulation of Medicare Supplement (Medigap) insurance as a potential model.

By adopting the Medigap model:

- Consumers would still have a wide variety of standardized plans from which to choose;
- Competition would remain strong, as in the current Medigap market; and,
- State regulators would be able to adequately safeguard consumers.

[6] Exhibit 6 - Correspondence—Humana Insurance Company – 05/31/06; 06/06/06; 06/07/06

If state insurance regulatory authority is restored, all of the stories you have heard about abusive marketing tactics would be prohibited by state law, monitored and questioned by state insurance regulators, and controlled by state-based insurance regulations. By restoring state authority, you would in fact, untie my hands and allow me to take whatever steps appropriate to safeguard and protect seniors in my state.

State regulation assures that companies in North Dakota would be required to file and receive approval of advertising materials before they could be used. (North Dakota is a prior approval state.) This would be in addition to companies being required to be licensed and comply with North Dakota solvency, agent licensing, and appointment requirements. It would provide the State with enforcement authority to ensure that consumers' interests are protected. Ultimately, I believe that by taking these steps, many of the marketing abuses we are currently seeing would be eliminated. In fact, if we currently had the authority, we would have already held these companies accountable for their actions and where appropriate levied fines or issued cease and desist orders.

Mr. Chairman and members of the Subcommittee, thank you again for holding this hearing today. This is an issue that affects many seniors nationwide and this problem must be solved. I hope that the information I have shared will be of help to you and I look forward to working with you to strengthen state regulatory oversight over these companies.

EXHIBIT 1

DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

FOR IMMEDIATE RELEASE **Contact: Jim Poolman**
January 27, 2006 701-328-2440

Poolman: Changes Needed to Simplify Medicare Part D Program

Bismarck, ND – Insurance Commissioner Jim Poolman today urged significant changes be made to Medicare Part D that would simplify this new benefit and greatly enhance this program's benefits to enrollees.

In separate letters to Health and Human Services Secretary Michael Leavitt and the North Dakota Congressional Delegation, Poolman recommended changes that could be implemented to ease the confusion seniors are going through in signing up for the program.

"The complicated process of signing up for a drug plan is clearly overwhelming our seniors," said Poolman. "Because they are overwhelmed, many are just choosing to wait to sign up or not sign up at all." Poolman's concerns are borne out in the latest figures released by the Centers for Medicare and Medicaid Services (CMS) that show that of the 105,800 currently eligible individuals in North Dakota, only 8,720 people have opted to sign up for the new benefit. CMS figures indicate a total of 34,227 are enrolled in plans. However, 10,413 of these enrollees were automatically signed up. All of this is in the wake of a tremendous public awareness campaign waged by many government agencies and interested organizations.

In summary, Poolman is calling for:

- An extension of the enrollment deadline ~

  "We know from the enrollment statistics, the number of calls to our office and other, anecdotal information that seniors are not signing up for the program. If they miss the deadline, they will be penalized. This is unacceptable and should be avoided at all costs," Poolman said.

EXHIBIT 1

The additional time for enrollment into a Part D plan will give Medicare beneficiaries more time to understand their choices, and alleviate the feeling that they are running out of time and must act quickly. It will also give CMS additional time to correct software inaccuracies.

- A standardization of and limit on the number of plans available ~

In 1992, the Medicare Supplement plans were standardized. Under these plans, seniors retain a choice of twelve plans and the industry remains competitive. Forty-one Medicare Part D plans are currently offered in North Dakota. Poolman considers this extremely chaotic and completely unnecessary.

Poolman said, "While it is important to foster competition in the marketplace and enhance the choices available for consumers, it is also important to provide our seniors and disabled with prescription coverage benefits that are easily accessible, understandable, and above all, affordable. If CMS standardizes the plans, these goals could be achieved with the existing program."

CMS should proceed with an effort to standardize Part D plans, as was done with Medicare Supplement plans. The Medicare-eligible person could then select, from a limited number of plans, the one appropriate for them. A company could then be selected on the basis of price and reputation.

During the implementation of this new benefit, the ND Insurance Department, through its Senior Health Insurance Counseling (SHIC) program, together will all if its strategic partners, has conducted nearly 200 outreach sessions reaching around 125,000 people with the Medicare Part D message. In addition, SHIC program staff has conducted numerous sessions across the state to train SHIC volunteers on the implementation process.

"It is critically important that this program be successful for our seniors." Poolman said, "We should all be open to making improvements and changes to make sure people have access.

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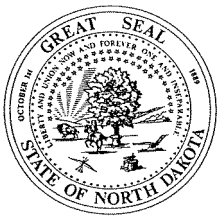
EXHIBIT 2



DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

January 27, 2006

The Honorable Michael Leavitt
Secretary of Health and Human Services
US Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Mark B. McClellan, MD, PhD
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Secretary Leavitt and Dr. McClellan:

The North Dakota Insurance Department, through its Senior Health Insurance Counseling (SHIC) Program, is well prepared to educate and assist with timely enrollment in the Medicare Part D program. A network of strategic partners pooled volunteer resources across the state and continues to collaborate on issues and solutions. This brigade of over 150 trained volunteers stands ready to counsel seniors one-on-one on the attributes of enrollment in the program. In an effort to inform some 125,000 Medicare beneficiaries and interested parties, over 200 Part D outreach sessions have been presented throughout the state. Marketing messages were delivered reaching our target audience with more than two million media impressions in the marketplace. In spite of these efforts, the numbers show we have come up dreadfully short of our anticipated result. I am deeply concerned because relatively few of those eligible for Part D benefits are responding to our call.

The latest figures released by CMS indicate that 34,227 Medicare beneficiaries in North Dakota are enrolled in Part D plans. Of this figure 10,413 were automatically enrolled due to their dual eligible status and only 8,720 Medicare beneficiaries have voluntarily opted to enroll. Additionally, and perhaps more alarming, nearly 72,000 eligible North Dakotans are not taking advantage of the benefit and still do not have prescription coverage.

At the beginning of the enrollment period there were over 105,000 Medicare beneficiaries in North Dakota who needed to be informed about the new Medicare Part D benefit. In North Dakota there are 41 plans to choose from and they vary widely in deductibles, co-payments, premiums and formularies. To further complicate the decision process, if the convenience of a local pharmacy and the pharmacist's personal relationship is considered important to the consumer, the selected plan must be matched with one that also contracts with the consumer's preferred pharmacy.

As a result, the number of factors necessary to consider in making an individual decision is mind-boggling to the average Medicare beneficiary. The advantage of choice is usually a plus; but, unfortunately for our seniors, the obstacle of complexity is overwhelming. Since the beginning of the enrollment period, North Dakota's Insurance Department has received more than 3,500 calls from Medicare beneficiaries expressing concerns, such as: not knowing where to begin or who can help; formulary lists that don't include needed prescriptions; wide variances in drug costs between plans; pharmacies with inaccurate or no information after an individual has enrolled; dwindling time to make a decision; and, unsurprisingly, whether or not it is worth the trouble to choose a plan.

EXHIBIT 2

Medicare Part D is a benefit with tremendous potential to assist many people in need of help with their prescription drug costs. However, the implementation process has made it clear that complexities are hindering the majority of eligible persons from enrolling and stifling the program's success. A modification to the existing Part D program is needed to put it back on track for success.

Two changes will help significantly. First, the May 15, 2006 deadline for the initial enrollment into a Part D plan without penalty should be extended to December 31, 2006. Extending the deadline will give Medicare beneficiaries more time to understand their choices, obtain needed counseling, and alleviate the feeling that they must act quickly. It will also give CMS additional time to correct software inaccuracies.

Second, CMS should proceed with an effort to standardize Part D plans. This approach was taken with Medicare Supplement policies in 1992, and greatly simplified the marketing and distribution of those products. There are currently 12 standardized Medicare Supplement plans from which companies choose what plans to offer. Under this arrangement, seniors retain a good selection of choices and the industry remains competitive. Similarly, the Medicare Part D-eligible person would select an appropriate plan from a limited number of choices. After the plan is chosen, the individual would select a company to purchase the plan from, based on price and reputation.

Limiting the number of Part D plans and standardizing their design among companies will serve to: preserve the integrity of the original Part D concept; maintain the competitive marketplace which serves to lower costs; and alleviate the current high level of confusion that is a major obstacle to the program's success.

We will continue to assist the people of North Dakota with the enrollment process; nevertheless, on behalf of the more than 100,000 North Dakota Medicare beneficiaries and the millions of other beneficiaries across the country, I respectfully ask that CMS, in coordination with Congress, initiate changes critical to the success of the Part D program.

Sincerely,

Jim Poolman
Commissioner of Insurance

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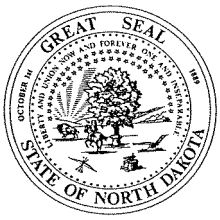
cc: Governor John Hoeven
Alex Trujillo, Administrator, CMS Region VIII

EXHIBIT 2



DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

January 27, 2006

The Honorable Kent Conrad
Senator ~ North Dakota
530 Hart Office Building
Washington, DC 20510-3403

The Honorable Byron Dorgan
Senator ~ North Dakota
322 Hart Office Building
Washington, DC 20510-3405

The Honorable Earl Pomeroy
Representative ~ North Dakota
1501 Longworth HOB
Washington, DC 20515-3401

Dear Senator Conrad, Senator Dorgan and Representative Pomeroy:

As conscientious stewards of the citizens of North Dakota and our representatives in Washington, DC, you are no doubt aware of the serious and increasingly untenable situation facing our state's disabled and senior Medicare beneficiaries as they attempt to enroll in a Medicare Part D plan.

Nevertheless, it is incumbent upon me as Insurance Commissioner to inform you of my position on this issue and ask for your help in achieving this Department's goal of simplifying the Medicare Part D benefit. I have recently outlined my concerns and proposed possible solutions in letters to HHS Secretary, Mike Leavitt and CMS Administrator, Mark McClellan.

The North Dakota Insurance Department, through its Senior Health Insurance Counseling (SHIC) Program, was well prepared to educate and assist with timely enrollment in the Medicare Part D program. A network of strategic partners pooled volunteer resources across the state and continues to collaborate on issues and solutions. In an effort to inform some 125,000 Medicare beneficiaries and interested parties, over 200 Part D outreach sessions were presented throughout the state. Marketing messages were created and delivered reaching our target audience with more than two million media impressions in the marketplace.

In spite of these efforts, we have come up dreadfully short of our anticipated result. As of January 13, 2006, only 8,720 Medicare beneficiaries in North Dakota have voluntarily opted to enroll in the Part D benefit. Throughout the state a brigade of over 150 trained volunteers stands ready to counsel seniors one-on-one on the attributes of the program; nevertheless, relatively few are responding. Additionally, and perhaps more alarming, nearly 72,000 eligible North Dakotans are not taking advantage of the benefit and still do not have prescription coverage.

At the beginning of the enrollment period there were over 105,000 Medicare beneficiaries in North Dakota who needed to be informed about the new Medicare Part D benefit. In North Dakota there are 41 plans to choose from and they vary widely in deductibles, co-payments, premiums and formularies. To further complicate the decision process, if the convenience of a local pharmacy and the pharmacist's personal relationship is considered important to the consumer, the selected plan must be matched with one that also contracts with the consumer's preferred pharmacy.

EXHIBIT 2

As a result, the number of factors necessary to consider in making an individual decision is mind-boggling to the average Medicare beneficiary. The advantage of choice is usually a plus; but, unfortunately for our seniors, the obstacle of complexity is overwhelming. Since the beginning of the enrollment period, North Dakota's Insurance Department has received more than 3,500 calls from Medicare beneficiaries expressing concerns, such as: not knowing where to begin or who can help; formulary lists that don't include needed prescriptions; wide variances in drug costs between plans; pharmacies with inaccurate or no information after an individual has enrolled; dwindling time to make a decision; and, unsurprisingly, whether or not it is worth the trouble to choose a plan.

Medicare Part D is a benefit with tremendous potential to assist many people in need of help with their prescription drug costs. However, the implementation process has made it clear that complexities are hindering the majority of eligible persons from enrolling and stifling the program's success. A modification to the existing Part D program is needed to put it back on track for success.

Two changes will help significantly:

- ***Extend the deadline for initial enrollment to December 31, 2006***

  Extending the deadline for enrollment in a Part D plan will give Medicare beneficiaries more time to understand their choices, obtain needed counseling, and alleviate the feeling that they must act quickly. It will also give CMS additional time to correct software inaccuracies.

- ***CMS should simplify the plans***

  Second, CMS should proceed with an effort to standardize Part D plans. This approach was taken with Medicare Supplement policies in 1992, and greatly simplified the marketing and distribution of those products. There are currently 12 standardized Medicare Supplement plans from which companies choose what plans to offer. Under this arrangement, seniors retain a good selection of choices and the industry remains competitive. Similarly, the Medicare Part D-eligible person would select an appropriate plan from a limited number of choices. After the plan is chosen, the individual would select a company to purchase the plan from, based on price and reputation.

  Limiting the number of Part D plans and standardizing their design among companies will serve to: preserve the integrity of the original Part D concept; maintain the competitive marketplace which serves to lower costs; and alleviate the current high level of confusion that is a major obstacle to the program's success.

We will continue to assist the people of North Dakota with the enrollment process; nevertheless, on behalf of the more than 100,000 North Dakota Medicare beneficiaries and the millions of other beneficiaries across the country, I respectfully ask that you work in collaboration with CMS to initiate changes critical to the success of the Part D program.

Sincerely,

Jim Poolman
Commissioner of Insurance

JP:ls

EXHIBIT 3

North Dakota: Aggressive, abusive and misleading sales tactics:

Examples:

- Pressuring a policyholder to switch their coverage to a Medicare Advantage policy without adequately explaining the implications on the benefits provided, premiums payable, or accessibility of services.
- Telling policyholders that they *must* change, and that they must make the decision immediately.
- Seniors signing only a registration form for attending a meeting, and finding themselves enrolled in a Medicare Advantage plan.
- Agents calling seniors and saying, *"I'm from Medicare and you need to change your policy"*.
- Seniors being sent a notice that says, *"Medicare Supplement insurers have increased their rates up to 30% on Medicare Supplement coverage. Based on this, there is now available a plan to supplement your Medicare coverage….Send in this card to see if you qualify for premium savings from $200 - $500 per year."* The card requires a signature, date of birth, and telephone number. If the card is completed and sent in, an agent comes to sell a Medicare Advantage plan.
- Switching Medicare Advantage policyholders from one plan to another (within the same company) without notifying the policyholder.
- Person was told not to come to a Humana meeting after she told them she works for the insurance department at a local hospital.
- An insurance agent attended a Humana meeting. A "bouncer" was present at the door assisting with controlling the attendees. When people would ask specific questions, they were told they could go into another room and talk about it.
- Agent switched an 86-year old with end stage Alzheimer's Disease to a Medicare Advantage plan by coming to her home. The lady's beneficiary has a Power of Attorney so we were able to dis-enroll her, because of the lack of a signature by the POA. The dis-enrollment took 4 months to complete.
- At meetings that serve food, people have been told to just sign the form and the agent will finish completing it for the people as "no one wants to hold up the serving of the food". Agents were told that there is a separate meeting for agents, so they should not attend the "food" meetings.
- People have life insurance or nursing home plans with an agent. So, that agent knows that the person could be eligible for PFFS plans. The agent calls the consumer to update the life insurance or nursing home policy, and sells a Medicare Advantage plan.

Centers for Medicare & Medicaid Services
Region VIII

EXHIBIT 4

Medicare Prescription Drug
CMS Customer Service TIP Sheet

The Centers for Medicare & Medicaid Services (CMS) Denver Regional Office is receiving a large number "Part D Issues" that can and should be resolved by the plans. While our goal is still to provide support to you and service to the beneficiaries, the volume of inquires (phone, fax and email) our office receives on a daily basis that do not warrant our assistance, limits our ability to assist on cases that require RO assistance.

We would like to take this opportunity to inform you of the process CMS has implemented to handle Medicare Part D Prescription Drug Plan Complaints.

1. The first point of contact is with the affected member's Medicare Drug Plan. This is the fastest course of resolution for issues and information.

2. If the issue is not resolved by contacting the plan directly, or if the issue involves the plan's customer service, contact 1-800-MEDICARE (1-800-633-4227) and request to file an official complaint. The plan will receive the complaint the following day. ***Submitting information directly to the Denver RO adds an additional 2-5 business days to this process***.
   - Please allow at least 30 days for the issue to be resolved. Follow-up with the plan, not 1-800-MEDICARE.
   - If the beneficiary has a limited supply of medications, indicate that to the individual taking the complaint.

Issues that can be sent to the RO:

- SSA deduction issues where money is being withheld and it should not be. ***Please allow 90 days from the date the disenrollment request is processed before reporting this as an issue.*** Do not contact the Social Security Administration for assistance on these cases as they cannot resolve them.

- Issues that remain unresolved after following the steps identified above. **Note:** Unless you are the authorized representative, you may not be contacted by the plan regarding the case. If you or the beneficiary have not heard from the plan and it has been more than 30 days, please contact the plan or the beneficiary to confirm status before sending the information to our office.

Centers for Medicare & Medicaid Services
Region VIII

EXHIBIT 4

When submitting an issue to the RO:

- We must have authorization from the beneficiary if requesting any change in plan enrollment or to release personal information – including plan information.
- Include a detailed explanation of the issue. Requests for us to contact the beneficiary because "they have an issue" cannot be worked.
- Please be prepared to provide specifics about your previous steps. Including names, organizations, date and time of calls or other communications.

Contacting the RO:

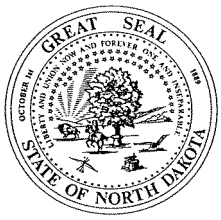
Please do not contact CMS staff directly to report a complaint or check the status of a case.

The following resources are for Partner use only:
To check the status of a case reported to 1-800-MEDICARE or to file a complaint (after following the steps identified above):

- Call (303) 844-4024 or 888-795-4683, or
- Email to Den_drughelp@cms.hhs.gov
  - Do not send Personal Health Information (Name, Medicare Number, etc.)
  - Email box is for Part D issues only
  - Do not send emails with jokes, wallpaper or other graphics
- Use of FAX number (303) 844-2776 should be limited only to submitting documentation when requested.

EXHIBIT 4

EXHIBIT 5



DEPARTMENT OF INSURANCE

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Jim Poolman
Commissioner of Insurance

May 24, 2007

Leslie V. Norwalk, Esq.
Acting Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Ms. Norwalk:

We are now into the second year of the implementation of the Medicare Modernization Act (MMA) of 2003, and there continue to be significant problems causing us grave concern.

As part of the MMA of 2003, the regulation of Medicare Advantage plans (MAP) and the companies marketing them, was given to CMS. This includes the review and approval of companies; the products; the marketing material; changes in availability, premiums, and formularies in the plans; and agent behavior.

The absence of state regulation is a fundamental flaw in the management of these plans. The following examples point out a few essential areas in which the lack of state regulation has resulted in poor consumer protection.

In North Dakota, I have been made aware of a number of significant abuses in the marketing and sale of Medicare Advantage plans. Specific examples include, but are not limited to:

- Pressuring a policyholder to switch their coverage to a MAP without adequately explaining the implications of the change on the benefits provided, premiums payable, or access to services.
- Telling policyholders that they *must* change, and that they must make the decision immediately.
- Seniors signing a registration form at a meeting, and finding themselves enrolled in a MAP.
- Telling Medicare beneficiaries MAPs are free, and failing to adequately explain the total out-of-pocket costs.
- Beneficiaries being called to "review their coverage", and discover later they have been enrolled in a MAP.
- Agents calling seniors and saying, *"I'm from Medicare and you need to change your policy."*
- Seniors being sent a card that states, *"Medicare Supplement insurers have increased their rates up to 30% on Medicare Supplement coverage. Based on this, there is now available a plan to supplement your Medicare coverage…Send in this card to see if you qualify for premium savings from $200 - $500 per year."*
- Telling a beneficiary "Medicare Advantage is the same as Medicare;" or "It is a supplement to Medicare."
- Telling a beneficiary that they *must* remain in a MAP for one year.
- Switching Medicare Advantage policyholders from one plan to another (within the same company) without notifying the policyholder.

The administration and response time on Medicare Advantage plans continues to be slow, inaccurate and cumbersome. Some of the more frustrating examples include:

- For one company, it has taken months to provide Part D identification cards. As a result, seniors have no verification that they are enrolled in a plan. When they go to their pharmacist, they often must pay for their prescriptions immediately because, according to the "system" and without any verification of coverage, it appears they do not have any prescription coverage (when, in fact, they do).

EXHIBIT 5

- Premiums are being deducted from seniors' Social Security checks to pay premiums on Medicare Advantage plans that they do not have. We have an example of a beneficiary who is having premiums deducted for *two* Medicare Advantage plans, without being enrolled in either one…and it is one case among many.

Marketing Medicare Advantage plans through private insurance companies has resulted in a large number of confusing choices for the senior consumer. In North Dakota, there are more than 30 Medicare Advantage plans available for sale to Medicare beneficiaries. Companies can change the number and types of plans they market; and can change the benefits, premiums and formularies for the plans they continue to offer. While policyholders are supposed to receive an annual notice of any changes, this is not always happening. In addition, medical providers choose which plans they will accept or not accept, and this can change at any time. All of these changes can be made without the regulatory supervision that is currently in place *in the states* for all other types of health insurance. The combined impact on North Dakota seniors of the complexity and the companies' ability to change is a level of consumer confusion where some now even wonder if they have any insurance at all.

One of the more disturbing developments is the deterioration of assistance provided by CMS to our Senior Health Insurance Counseling (SHIC) staff. Initially, the regional office of CMS was a resource to assist these Counselors with questions that our staff had already researched. Having access to CMS was effective in resolving these types of cases. That support has diminished significantly, with CMS now taking the position that they will help only as a last resort, after repeated attempts to work with the companies that are involved. The result of this change in position, for North Dakota seniors, is an even longer time frame to get an issue resolved. Our staff is repeatedly transferred back and forth among individuals at companies, CMS and the Social Security Administration, repeating the issues over and over…if we are even able to make contact in the first place. This lack of service to the people of North Dakota is unacceptable. North Dakotans expect better! The support from CMS has deteriorated to the point where we even had a CMS staff person hang up the phone on one of my staff while she was assisting a senior in her office.

Because of funds you provide through the Senior Health Insurance Program grants, our Senior Health Insurance Counseling staff and many others across the state, including scores of dedicated volunteers, continue to work very hard to assist seniors with these difficult and complex choices. Our seniors do not need, nor do they deserve the problems they are currently experiencing regarding their Medicare coverage.

I need your help. The additional benefits introduced by the Medicare Modernization Act of 2003 can help many beneficiaries in North Dakota and across the country. However, we need changes to:

- Streamline administration
- Correct marketing abuses
- Eliminate errors, and
- Return regulation of these health insurance plans to the states.

I look forward to working with you to implement these changes to benefit that valuable segment of our population-- our seniors.

Sincerely,

Jim Poolman
Insurance Commissioner

JP:ls

cc: Byron Dorgan
Kent Conrad
Earl Pomeroy

EXHIBIT 5

DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

May 24, 2007

The Honorable Kent Conrad
Senator, North Dakota
530 Hart Orffice Building
Washington, DC 20510-3403

Dear Senator Conrad:

Attached is a copy of a letter I am sending to CMS regarding the problems North Dakota seniors are having with Medicare Advantage policies.

Medicare Advantage products, as well as the companies and agents marketing them, are regulated by CMS, and not by the state insurance departments. However, it is the state insurance departments that are equipped with the skills and experience necessary to regulate insurance for the protection of consumers.

As described in the attached letter, there are a number of abuses in the marketing, sale and administration of Medicare Advantage policies that I hear about on a daily basis. These abuses are very detrimental to the financial, emotional and physical health of North Dakota seniors.

The deteriorating level of oversight and service to the people of North Dakota is unacceptable, and companies and agents must be held accountable.

I am asking for your help on behalf of North Dakota seniors to eliminate these abuses. I am asking you specifically to return regulation of Medicare Advantage plans, and the companies marketing them, to the states.

I look forward to working with you on this very important issue.

Sincerely,

Jim Poolman
Insurance Commissioner

Enc.

EXHIBIT 5

DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

May 24, 2007

The Honorable Byron Dorgan
Senator, North Dakota
322 Hart Office Building
Washington, DC 20510-3403

Dear Senator Dorgan:

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Sincerely,

Jim Poolman
Insurance Commissioner

Enc.

EXHIBIT 5

DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

May 24, 2007

The Honorable Earl Pomeroy
Representative, North Dakota
1501 Longworth HOB
Washington, DC 20515-3404

Dear Representative Pomeroy:

Attached is a copy of a letter I am sending to CMS regarding the problems North Dakota seniors are having with Medicare Advantage policies.

Medicare Advantage products, as well as the companies and agents marketing them, are regulated by CMS, and not by the state insurance departments. However, it is the state insurance departments that are equipped with the skills and experience necessary to regulate insurance for the protection of consumers.

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Sincerely,

Jim Poolman
Insurance Commissioner

Enc.

EXHIBIT 6

DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

May 31, 2006

Mr. Michael Benedict McCallister
President and CEO
Humana Insurance Company
500 West Main Street
Louisville, KY 40202

Fax: (502)580-3690

Dear Mr. McCallister:

Our Department has learned from Humana policyholders in North Dakota that a laptop containing their personal information has been stolen while in your possession. We have also been notified that hard copy applications themselves were also recently stolen.

We are aware that Humana's only response to this critical breach of consumer trust was to write affected policyholders offering complimentary credit monitoring services for one year. In order to receive the credit monitoring service, these affected consumers would be required to provide, again, sensitive and protected information that was just stolen from them.

As the Commissioner of Insurance charged with protecting the rights of North Dakota consumers, I couldn't be more outraged that Humana did not notify our Department immediately upon discovery of the theft. Furthermore, I am appalled that Humana's only notification to the consumer was an impersonal letter.

The response to this serious breach is nothing more than inadequate. It has left North Dakota policyholders unprotected, potentially subject to their identities being stolen, and less trusting of your company. Humana's response neither served to correct the potential personal implications for your policyholders, nor did it outline procedures to ensure that this does not happen again.

Mr. McCallister, I am sure you know the problem with identity theft is an incredibly serious issue. The apparent lack of proper security for sensitive policyholder information is of great concern to me and undermines the trust that is the foundation of insurance protection. Also of concern is the apparent lack of procedure in place to protect consumers in the event of a loss of personal, private information.

EXHIBIT 6

I would appreciate a response in five (5) business days to the following:

1) Specifically how many North Dakota consumers have had their personal/private information compromised? Please provide the names to this Department, so we may communicate with those policyholders independently.
2) How many consumers outside of North Dakota have had their personal/private information breached?
3) What is the security policy of Humana in storing this information?
4) What is Humana's policy in accepting applications for policies and transferring that information?
5) What are the details of the theft?
6) What assurances can you give to policyholders that there is a thorough investigation taking place to retrieve the information lost?
7) What other procedures does Humana employ to protect affected policyholders?
8) How will you respond to currently unaffected Humana policyholders who now might be concerned with the security of their information?
9) Who, specifically, can consumers contact by toll-free phone number to discuss their concerns?
10) Provide to me weekly reports of any contacts with North Dakota policyholders regarding this issue.

Please know that I am willing to use all provisions in state law to protect North Dakota consumers related to this issue. This may include preventing the marketing of Humana policies in North Dakota by cease and desist order if evidence is not shown that Humana has the policies, procedures and remedies in place to protect North Dakota seniors that are buying your insurance products. You should be aware that allowing an unauthorized individual access to a policyholder's non-public, personal financial information violates North Dakota Administrative Codes 45-14-01-11, a copy of which is attached.

A strong and healthy insurance marketplace for North Dakota consumers requires reliable and trustworthy companies. As a Commissioner elected by the people of North Dakota, I take this breach of consumer trust very seriously. I await your prompt response.

Sincerely,

Jim Poolman
Insurance Commissioner
State of North Dakota

JP:ls

Enc.

cc: Alex Trujillo, CMS, Denver
R. Glenn Jennings, Executive Director, Kentucky Office of Insurance

EXHIBIT 6

DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

June 6, 2006

James S. Theiss
Chief Privacy Officer
Humana Inc.
P.O. Box 1438
Louisville, KY 40201-1438

Dear Mr. Theiss:

Thank you for your letter of June 2, 2006 responding to my request for details surrounding the serious breach of privacy resulting from the May 4, 2006 theft of a computer briefcase containing Medicare Part D insurance applications.

Although I appreciate the information your letter provided, frankly, your reply did little to assuage my outrage over the facts surrounding the theft and the manner in which Humana Inc. and GoldenCare USA, Inc. handled the situation after learning of the breach. Particularly alarming to me are: the irresponsibility and lack of protection for sensitive data while in the employee's custody; the two-week delay in notifying affected policyholders; the complete lack of notification to regulatory authorities; and the inadequate remedy to policyholders of an offer of a year's free credit monitoring service.

Offering a credit monitoring service is an essential step in rectifying the situation; however, limiting this protection to one year is not adequate. I must insist that Humana Inc. extend the monitoring service as long as necessary to protect these potential victims of identify theft.

Furthermore, I must have the assurance that these policyholders will be held harmless for any financial loss that may occur as a result of the unauthorized use of private information stolen under such lax security measures as allowing applications to be removed from GoldenCare USA's office, to be left overnight in an unlocked vehicle, parked in the driveway of the home of an employee.

EXHIBIT 6

As of yet, I have not received sufficient information to decide whether to pursue administrative action over this breach of security. I am asking you to provide me with the following additional information, and would appreciate a response within five (5) business days:

1. An explanation of why the subsequently stolen applications were allowed to be removed from GoldenCare USA's office.
2. Specific information regarding GoldenCare USA's privacy training for employees prior to the breach, including: training materials; records of training meetings; attendance records at these meetings; and any other specifics relating to the training.
3. A copy of training materials distributed at the May 8, 2006 educational session for all GoldenCare USA employees.
4. A copy of GoldenCare USA's corrective action plan referred to in response number (3) of your letter of July 2, 2006.
5. A more specific description of the 'disciplinary counseling' provided for the GoldenCare USA employee involved in the incident.
6. A copy of the reminders sent to all contracted agencies regarding the handling of applicant information as a result of this incident.
7. An update regarding additional contractual or training requirements Humana Inc. put into place with its vendors and agents.
8. An explanation of how Humana Inc. can be confident that there were no more than 44 North Dakota policyholders affected.
9. The names and addresses of any North Dakota policyholders involved in a privacy breach in which the personal information of approximately 17,000 Humana policyholders was found on a computer available to the public in a Baltimore, Maryland hotel.

Thank you for your continued cooperation as we attempt to resolve this matter. I await your prompt response.

Sincerely,

Jim Poolman
Insurance Commissioner

JP:ls

cc: Alex Trujillo, CMS, Denver
R. Glenn Jennings, Executive Director, Kentucky Office of Insurance

EXHIBIT 6

DEPARTMENT OF INSURANCE

STATE OF NORTH DAKOTA
600 East Boulevard Avenue Bismarck, ND 58505
Phone: (701) 328-2440 Fax: (701) 328-4880

Jim Poolman
Commissioner of Insurance

June 7, 2006

Mr. Michael Benedict McCallister
President and CEO

James S. Theiss
Chief Privacy Officer

Humana Inc.
500 West Main Street
Louisville, KY 40202

Fax: (502)580-3690

Dear Mr. McCallister and Mr. Theiss:

Incredibly, after expressing my outrage in letters dated May 31, 2006 and June 6, 2006 over a security breach of Humana Inc.'s policyholders' private information and the company's disregard for communicating this breach to me immediately—*it has happened again!*

The North Dakota Insurance Department is receiving telephone calls from anxious Humana Inc. policyholders, distressed this time over the letter from your company advising them that their personal identification, including their social security numbers, has been inadvertently exposed to the public in the Baltimore hotel incident.

As was the case in the previous breach of security involving the theft of applications from an unlocked vehicle, we have not been notified by representatives of your company of this second exposure of personal identification data affecting North Dakota consumers. This lack of safeguards to protect the private information of your policyholders is apparently widespread and is of tremendous concern to me.

Please respond as soon as possible, but within five business days, with the following information on this latest breach of personal identification data of your policyholders:

1) Why has Humana Inc., *yet again*, failed to notify the North Dakota Insurance Department of this second serious violation?
2) How many total consumers from North Dakota and outside North Dakota have had their personal/private information exposed in this latest incident?

EXHIBIT 6

3) Provide to me names and addresses of *all* North Dakota consumers whose personal/private information has been compromised, so we may communicate with these policyholders independently.
4) Provide to me weekly reports of any contacts with these North Dakota policyholders regarding this incident, as well as with the 44 North Dakota consumers affected by the prior breach.

As you have been made aware in my letter of May 31, 2006, allowing an unauthorized individual access to a policyholder's non-public, personal financial information violates North Dakota Administrative Codes 45-14-01-11. Please know that I will use all provisions in state law to protect North Dakota consumers, including the prevention of marketing Humana Inc. policies through a cease and desist order, if evidence is not shown that policies, procedures and remedies are in place to protect North Dakota consumers who are buying your insurance products.

As a Commissioner elected by the people of North Dakota to protect their interests, I continue to take these breaches of consumer trust very seriously. Again, I am awaiting your prompt response.

Sincerely,

Jim Poolman
Insurance Commissioner
State of North Dakota

JP:ls

Enc.

cc: Alex Trujillo, CMS, Denver
R. Glenn Jennings, Executive Director, Kentucky Office of Insurance