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DOJ Puts New Target On Medicare Advantage 'Steering'

By **Hannah Albarazi**

Law360 (May 13, 2025, 6:38 PM EDT) -- U.S. Department of Justice officials' decision to back whistleblower claims that major health insurance companies paid hundreds of millions of dollars to brokers in illegal kickbacks marks a dramatic escalation of an effort to crack down on Medicare Advantage "steering," experts told Law360 Healthcare Authority.

In most U.S. states, Medicare Advantage plans now pay agents and brokers $626 in commissions for each new enrollment, while agents and brokers receive only $109 in commissions for new enrollments in Part D prescription plans. (iStock.com/alfexe)

Rather than reimbursement fraud claims, the suit against Humana, Aetna and Elevance Health, along with a trio of broker defendants, focuses on the behind-the-scenes relationship between insurers and the middlemen who pitch and sell Medicare Advantage plans to seniors.

"[T]he DOJ's intervention in this case represents the most significant enforcement action to date related to broker compensation and how patients are steered into Medicare Advantage plans," said David A. O'Neal, a former federal prosecutor at Parker Hudson Rainer & Dobbs LLP.

'Systemic Efforts' to Steer Enrollees

In a bombshell **complaint** filed in Massachusetts federal court, federal officials accused Humana, Aetna and Elevance Health of knowingly paying illegal kickbacks to insurance broker organizations over several years.

Justice officials say the broker companies, GoHealth Inc., SelectQuote Inc. and eHealth Inc., incentivized insurance agents to sell more lucrative Medicare Advantage plans offered by the insurers, rather than the plans that would best meet customers' needs.

According to the complaint, the brokers set up teams of insurance agents to sell only those plans that offered the highest payout, and at times refused to sell plans that did not generate sufficient kickbacks.

Aetna and Humana are also accused of conspiring with the brokers to discriminate against Medicare beneficiaries with disabilities whom they believed would be less profitable, and at times threatening to withhold payments to pressure brokers to enroll fewer disabled beneficiaries.

The government alleges that the kickbacks, which it said were paid from at least 2016 through at least 2021, were disguised as administrative payments and were a violation of the Anti-Kickback Statute.

"In public statements, the defendant brokers claimed to be 'unbiased,' 'carrier-agnostic,' and to 'have your best interests in mind,' the complaint said. "In private, however, the [brokers] repeatedly directed Medicare beneficiaries to the plans offered by insurers that paid them the most money, regardless of the quality or suitability of the insurers' plans."

The case stems from a whistleblower complaint from Andrew Shea, formerly eHealth's senior vice president of marketing, which was filed under seal in 2021. The government investigated his allegations and, in the final days of the Biden administration, partially intervened in the case.

In a January notice, the DOJ declined to intervene in Shea's claims against electronic medical records company AllScripts Healthcare LLC, which now does business as Veradigm, but said it was continuing to investigate health insurers Devoted Health Inc. and WellCare Health Plans Inc.

Shea's attorney Gregg Shapiro, a former DOJ prosecutor who now represents whistleblowers, said his client "looks forward to seeing this matter through to a just conclusion."

"People with Medicare must know that when an insurance agent recommends a plan, that recommendation is based solely on the client's individual needs and preferences," Shapiro said.

Broker GoHealth said it complies with laws "specifically designed by Congress and [Department of Health and Human Services] to address payments by Medicare Advantage carriers to the brokers that sell their plans."

The company denied that it received kickbacks or "placed beneficiaries in suboptimal plans due to compensation from carriers or that it engaged in any form of discrimination."

SelectQuote and GoHealth said they disagree with the allegations and plan to vigorously defend themselves, as did Elevance Health and Aetna's parent company, CVS Health. Humana and broker eHealth did not respond to requests for comment.

Mark K. Meiselbach, a health economist and assistant professor at Johns Hopkins Bloomberg School of Public Health, said the enforcement action, **unsealed on May 1** in Massachusetts federal court, is evidence that the government "is taking seriously the use of administrative payments to avoid commission caps."

"Caps on broker commissions in MA are intended to curtail significant steering incentives that could lead Medicare beneficiaries to enroll in MA plans for anything other than their own preferences and needs," Meiselbach said. "But the concern is that insurers and brokers can come to agreements on other administrative fees and perks that live outside the commission fee."

A 'Complex Ecosystem of Middlemen'

In the Medicare Advantage market, created in 1997 to allow beneficiaries to receive their Medicare benefits through private insurance plans that contract with the federal government, insurers typically contract with agents and brokers to enroll beneficiaries.

The Centers for Medicare and Medicaid Services sets maximum commissions that insurers can pay agents for enrolling individuals in Medicare Advantage and Part D prescription drug plans, based on fair market

value. Insurers also pay commissions for plan renewals or when an existing Medicare beneficiary switches onto a new plan.

Agents earn far more in commissions enrolling beneficiaries in Medicare Advantage than in Medigap, the private insurance plans that supplement Medicare, creating the potential for conflicts of interest when a Medigap plan is the better fit for a beneficiary.

In most U.S. states, Medicare Advantage plans now pay agents and brokers $626 in commissions for each new enrollment, while agents and brokers receive only $109 in commissions for new enrollments in Part D prescription plans.

Insurers can additionally pay agencies or brokers administrative fees for marketing, technology, training or compliance. Unlike enrollment commissions, CMS does not cap these payments but requires them not to exceed fair market value. In addition, insurers often offer bonuses to agents who hit certain Medicare Advantage enrollment targets.

Last year, 32.8 million people were enrolled in a Medicare Advantage plan, according to federal data, representing more than half of the entire eligible Medicare population.

Booming enrollment comes amid widespread concerns about Medicare Advantage beneficiaries facing onerous prior authorization requirements as well as limited provider networks and prescription drug coverage.

Congressional committees, regulatory watchdogs and consumer advocates have frequently raised concerns about potential conflicts of interest in the booming Medicare Advantage market.

In December 2024, the HHS Office of Inspector General issued a rare "special fraud alert" about Medicare Advantage marketing schemes involving "third-party marketers such as agents and brokers."

The office warned that these schemes can mislead enrollees into choosing plans "that may not meet the enrollees' needs," cause unfair competition and improperly steer beneficiaries based on lucrative third-party incentives rather than enrollee needs. Such schemes implicate the federal Anti-Kickback Statute, according to the alert.

In March, U.S. Senate Finance Committee ranking member Ron Wyden, D-Ore., released a report finding that insurers are increasingly relying on third-party marketing organizations and lead generators, creating "a complex ecosystem of middlemen that evade oversight and regulation." The system inflates costs and may lead to seniors and people with disabilities being "steered" to unsuitable plans by agents seeking higher pay, the report said.

For many insurers, Medicare Advantage is highly profitable, netting roughly twice the gross profits of other plan types, the committee's investigation found.

"It's high time that the federal government cracks down on these abusive practices — I'll be pushing to make sure they follow through and hold bad actors accountable," Sen. Wyden told Law360 Healthcare Authority.

A Blocked CMS Rule

Industry groups challenged a Biden-era CMS rule that prohibited contractual provisions creating incentives that could reasonably be expected to inhibit a broker or agent's ability to objectively recommend a plan that best fits a beneficiary's needs.

Last year, a judge blocked the provisions from taking effect. The Trump administration **supported the Biden-era provisions** in court in February.

Meiselbach, at Johns Hopkins, said CMS' suspended rule would have expressly barred the kind of marketing arrangements referenced in the DOJ's complaint, on the grounds that they are likely to compromise an agent or broker's impartiality.

The enforcement action also comes at a time when beneficiaries are increasingly relying on brokers — rather than Medicare.gov or State Health Insurance Assistance Programs, known as SHIPs — to help them select Medicare Advantage plans. The case is a "signal that regulators are taking seriously the significant

financial conflicts that underlie many insurance markets," he said.

David A. Lipschutz, an attorney who co-directs the Center for Medicare Advocacy, agrees that the suspended CMS provisions would have been an important step toward addressing conflicts of interest in the Medicare Advantage marketplace.

The outgoing Biden administration also proposed a rule for contract year 2026 that would have expanded agent and broker requirements and bolstered CMS review of Medicare Advantage marketing materials. The Trump administration has, so far, not implemented it.

Lipschutz argues that current CMS regulations don't adequately address the financial incentives driving inappropriate steering, and called on the agency to ensure broker and agent Medicare Advantage commissions are equal to their commissions for Part D plans, which provide prescription drug coverage for individuals on original Medicare.

O'Neal, the federal prosecutor-turned defense attorney, said CMS has long taken the position that payments to brokers in excess of fair market value and compensation tied to the health status of a beneficiary can trigger the Anti-Kickback Statute.

"While there have been prior enforcement actions involving individual brokers or agents, this is the first case targeting what the DOJ alleges are large-scale, systemic efforts to steer patients to certain Medicare Advantage plans and to exclude disabled patients from those plans," he said.

--Editing by Haylee Pearl.
