SafeGuard Services LLC

STATEMENT OF HOWARD B. APPLE

SAFEGUARD SERVICES, LLC

ON

OVERSIGHT CHALLENGES IN THE MEDICARE PRESCRIPTION DRUG PROGRAM

BEFORE THE

U.S. SENATE HOMELAND SECURITY AND GOVERNMENT AFFAIRS

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

MARCH 3, 2010

Mr. Chairman, Senator McCain, and distinguished members of the Subcommittee, thank you for the opportunity to discuss SafeGuard Services' (SGS) role in helping CMS combat fraud and abuse in the Medicare Prescription Drug Program. My name is Howard Apple. I am the President of SafeGuard Services, LLC.

BACKGOUND

The enactment of the Medicare Modernization Act on December 8, 2003 represented the largest change to Medicare since its inception by creating a new Prescription Drug Benefit for Medicare beneficiaries (Part D).[1] Beginning in September, 2006, CMS geographically divided the United States and awarded contracts to three Medicare Part D Integrity Contractors (MEDICs)--MEDIC North, South and West. Each MEDIC was responsible for performing program safeguard functions to detect, deter and prevent fraud, waste and abuse and to mitigate vulnerabilities associated with Part D benefit services provided within their

[1] Medicare Part D Integrity Contractor Task Order North MEDIC Statement of Work, 06/2006

geographic jurisdiction. SGS was awarded the contract for the MEDIC North, which consisted of 24 of the states in the northern U.S., the District of Columbia and the U.S. Virgin Islands.

In September 2008, CMS reduced the number of MEDIC contractors to two organizations, resulting in the reassignment of the MEDIC West states to the MEDIC North and South. The MEDIC North's jurisdiction expanded to include 35 states, four U.S. Territories and the District of Columbia. Additionally, the MEDICs were tasked with supporting the Center for Drug and Health Plan Choice's (CPC) efforts to address new or emerging areas of compliance and enforcement related to Medicare Advantage (Part C), Part D, and the Program of All Inclusive Care for the Elderly (PACE) for these states and territories.

Under the MEDIC North contract with CMS, SGS's responsibilities included the investigation of allegations or suspicions of fraud, waste and abuse in the Part D program within our jurisdiction. Complaints were received from a variety of sources. The majority of complaints were received via CMS' toll-free, Part D Hotline and through CMS' Complaint Tracking Module (CTM). Typically, complaints involved telemarketing scams, inappropriate enrollment or disenrollment within a plan, Explanation of Benefits (EOBs) that were in error, improper marketing practices and drug diversion. Additional responsibilities included using innovative data analysis techniques to identify potential fraud and abuse, fulfilling requests for information from law enforcement agencies, and conducting Compliance Plan Audits of Part D sponsors to assess the sponsor's compliance with the Part D regulations found at 42 CFR §423.

In October 2009, SGS's MEDIC North contract was again modified. CMS decided to realign the responsibilities of the MEDICs functionally, rather than geographically. MEDIC North became the Compliance and Enforcement (C&E) MEDIC with the mission of providing nationwide support of CPC's compliance and enforcement strategy and to bridge the gap between compliance and enforcement activities managed by the Program Compliance & Oversight Group (PCOG) in CPC, and the nationwide fraud, waste and abuse activities tasked to Health Integrity (HI) and managed by the Program Integrity (PI) Group in the Office of Financial Management (OFM of CMS). Our responsibilities now include providing audit technical assistance; conducting plan sponsor readiness and ongoing compliance assessment; investigating complaints against agents and brokers involving alleged violations of the Medicare regulations and guidelines; and monitoring/evaluating sponsors' compliance plans and the effectiveness of those compliance plans.

ACCOMPLISHMENTS

From December 1, 2006 through November 14, 2009, while tasked with the responsibility of investigating Part D fraud, waste and abuse, SGS received over 10,000 calls via the toll-free hotline. We handled over 3,200 complaints from beneficiaries, Part D plans and beneficiary advocacy groups. SGS initiated approximately 1,100 investigations, and referred over 120 instances of fraud and abuse to HHS OIG and other law enforcement agencies. We also fulfilled over 300 requests for information, such as Part D data, from law enforcement agencies and referred over 170 agent or broker misconduct[2] cases to the State Insurance Commissioners (SICs) and Departments of Insurance (DOIs) in 18 states.

[2] Since October 1, 2009, as the C&E MEDIC, we have referred an additional 300 agent/broker referrals to SICs and DOIs.

During the course of our MEDIC work, CMS and the MEDICs have encountered and experienced several of the challenges and growing pains associated with any new program. . However, over time, as CMS and its partners acquired the necessary tools and built the necessary infrastructures, we began to see our efforts generate results. As the MEDIC Program matured, the MEDICs continue to work with CMS in developing alternative solutions. In 2009, we began to see some of these alternative solutions yield dividends, especially as it related to pharmacy fraud—a prominent problem area in the Part D program.

For instance, we conducted proactive data analysis of the prescription drug event data, Part A and Part B claims data, and analyzed the Complaint Tracking Module to identify red flags with pharmacies participating in the Part D program. Our Data Analysts utilized innovative data analysis software tools to evaluate potential relationships, such as pharmacies and physicians sharing beneficiaries or identifying clusters of beneficiaries obtaining prescriptions from the same group of physicians.

Another challenge involved the MEDIC's lack of the legislative authority to directly obtain medical records, such as prescriptions from pharmacies, pharmacy benefit managers, and physicians, made it difficult to verify the validity of prescription drug events and associated payments. Since the MEDICs only had the authority to request information from the plan sponsors, we reached out to the respective compliance officers and special investigative units of the largest plan sponsors with CMS' approval and proposed conducting joint audits of pharmacies participating in their networks. Several Part D sponsors accepted our offers as their representatives viewed this collaborative opportunity as a mutually beneficial endeavor. They could utilize our investigative skill sets and receive support from our pharmacy

technicians who possess retail pharmacy experience as well as fraud investigation experience. And, they could expand the scope of audits and increase the number of audits, thereby opening the door for additional payment recoveries. We saw this as an opportunity to strengthen our investigations, detect non-compliances, and develop proactive leads for potential referral to law enforcement. This collaborative activity resulted in MEDIC North's participation in 16 pharmacy audits that detected numerous non-compliance and fraud, waste, and abuse issues. These audits led to the removal of problematic pharmacies from plan sponsor's networks and referrals to law enforcement for potential criminal or civil actions.

CONCLUSION

These accomplishments resulted from developing a collaborative and constructive relationship with CMS at all organizational levels which we continue to foster through weekly status meetings and ad hoc meetings and conference calls to exchange mutual ideas and information to enhance MEDIC and Part C and Part D operations. Despite the challenges we have faced in this relatively new program, SGS is proud of its association with the CMS and its partners and is deeply committed to seeing this program succeed. Thank you, Mr. Chairman for the honor of speaking with you today. I would b happy to answer any questions that you or members of the Subcommittee may have.