



DEPARTMENT OF HEALTH & HUMAN SERVICES

Health Care Financing Administration

7500 SECURITY BOULEVARD
BALTIMORE MD 21244-1850

JUL 10 1997

Ms. Wendy Krasner
McDermott, Will & Emery
1850 K Street
Washington, D.C. 20006

Dear Ms. Krasner:

This is in response to your notification that an HMO would like to solicit its Medicare membership to become involved in lobbying activities and would like to fund lobbying activities, such as paying expenses for a trip to Washington, D.C. Specifically we have been asked about the provision in the Medicare contract, item D., Prohibition against use of HCFA funds to influence legislation or appropriations.

The anti-lobbying provision at section 503(b) of the HHS Appropriations Act for fiscal year 1997 prohibits the use of funds from this appropriation for any activity designed to influence legislation or appropriations before Congress or any State legislature. This provision does not apply to risk contracts under section 1876 of the Social Security Act (risk contracting HMOs and CMPs) because the focus of the law is on the final price, not the individual elements of a fixed price payment contract. However, this section is applicable to section 1876 contracts paid for under cost contracts. The statute expressly forbids HHS from reimbursing a cost contractor for salaries and expenses relating to lobbying activities.

A related question could be: "Do any other requirements, for example the prohibition against distributing marketing material that is inaccurate, misleading, or that misrepresents the HMO/CMP, its marketing representatives, or HCFA, prohibit an HMO from informing its members of proposed legislation and exhorting them to express their opinions?" While it may be difficult for a reviewer to ascertain whether or not the information about legislation, for example contained in a member's newsletter issued by an HMO, is accurate and without a slant or unrevealed self-interest, we believe that prohibiting such information would violate basic freedom of speech and other constitutional rights of the Medicare beneficiary as a citizen. As long as member materials that discuss the rights and responsibilities of the member and the HMO with regard to HMO membership are not misrepresented in the context of this article, we see no reason for prohibiting the distribution of information.

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However, any materials given to members which discuss proposed legislation or related lobbying materials must contain the following statement, printed in a font size of 12 point or larger:
"Neither the Health Care Financing Administration nor the Medicare program has reviewed the statement below for accuracy or misrepresentation."

A handwritten signature in black ink, appearing to read "Bruce Merlin Fried", written over a horizontal line.

Bruce Merlin Fried
Director
Center for Health Plans and Providers