

Beware Misleading Marketing Campaign

It has come to our attention that many plan sponsors participating in the Retiree Drug Subsidy (RDS) program may have recently received information (by mail and by phone) from another firm regarding the RDS reopening appeals process. The information being mailed is **misleading, inaccurate, and potentially dangerous** for RDS plan sponsors. The communications have, in some cases, been mistaken to represent CMS and imply mandatory obligations from the group.

Although plan sponsors should feel free to reach out to PDA with any concerns, the following list outlines some of the more egregious and misleading statements that have been made:

MISLEADING STATEMENT #1: THERE IS AN “OFFICIAL ADMINISTRATOR” FOR THE RDS

The voicemails being left by these organizations make it sound like they are acting as an official “administrator of the Retiree Drug Subsidy” which gives a false impression of being a government sanctioned or appointed group.

Plan sponsors should take note that CMS/RDS does not appoint any single subsidy recovery firm to notify plan sponsors of underpayments or overpayments. Plan sponsors are free to contract with any vendor they wish, or none at all, to conduct a reopening.

MISLEADING STATEMENT #2: KNOWLEDGE OF ADDITIONAL FUNDS AVAILABLE WITHOUT REVIEWING RAW DATA

The “additional funds” listed as available are simply a guess based on what the Plan has collected in the past. This misleading figure has led some plan sponsors to be concerned that another organization had access to detailed CMS files and/or PHI.

Detailed Information regarding a Plan’s retiree eligibility, claims data, and Medicare status is **not** publicly available and should only be shared once sufficient Business Associate and Confidentiality Agreements are in place. CMS publishes very basic summary level statistics on total subsidy paid which other organizations have used in their marketing attempts.

MISLEADING STATEMENT #3: PROVIDING FIDUCIARY ADVICE TO PLAN SPONSORS

Statements such as “We are notifying Plan Sponsors in order to remain compliant with their fiduciary responsibilities ...” and “...we wanted to reiterate how important this is for your organization and your fiduciary responsibilities” are dangerous and misleading.

Fiduciary responsibilities vary greatly in different types of Plans and there is no way for an outside organization to know exactly what those responsibilities entail; in fact, for ERISA plans the Plan Sponsor is generally not the fiduciary. Plan sponsors concerned with their fiduciary responsibilities need to consult their legal counsel alone on the issue and should never rely on information presented in an unsolicited marketing letter.

MISLEADING STATEMENT #4: THE ORIGINAL DATA IS “INHERENTLY FLAWED”

It is misleading to state that “the data that was used to calculate your organization’s Retiree Drug Subsidy payments are recognized by the Federal Government as inherently flawed.”

Assertions like the one above cannot be made without careful review of the raw data (PHI). CMS/RDS Appeals are required to be based on evidence of an inaccuracy in the data and not on an optimistic guess as to what the subsidy “should” be instead.

Submitting a reopening appeal request leads the Plan Sponsor through a new final reconciliation which includes a request for Federal funds. **No such request should ever be made without the sufficient evidence and careful planning that is required to support that request in the event of an audit.** The Office of the Inspector General can pursue treble damages against a Plan in the event of malfeasance for up to six years from the date of such a request.