

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. Two examples of these letters that were sent to Part D Advisors from a concerned third party can be found at the end of this summary. They have been redacted to protect the client's privacy and have been edited for accuracy to demonstrate just how misleading they truly are.

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 voice mails being left and the letters being sent 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.

Monday, November 27, 2017

[Redacted]
[Redacted], [Redacted]
Seattle, Washington 98104
Personal & Confidential
Att: [Redacted], Manager Employee benefits

Regarding: [Redacted Plan Sponsor Name]

Dear Mr. [Redacted]

I have previously left you messages concerning the recovery of a significant underpayment on the Retiree Drug Subsidy that the [Redacted Plan Sponsor Name] are due. ←

This statement is misleading. There is no way to know for certain that a plan sponsor is "due" any additional subsidy without first completing a reopening.

As per my conversation with Mr. [Redacted] of the [Redacted Plan Sponsor Name] today, I am writing you in reference to a potential recovery of an **underpayment of funds** that [Redacted Plan Sponsor Name] currently is receiving from the Centers from Medicare and Medicaid Services Retiree Drug Subsidy program.

I advised the [Redacted Plan Sponsor Name] office that this potential recovery of funds existed on March 20, 2017. In my conversation on that date, I advised the manager of the [Redacted Plan Sponsor Name] department by phone and /or then again by e mail that there was a potential to recover an additional and substantial subsidy payment from the Center for Medicare and Medicaid Services Retiree Drug Subsidy program.

This figure is likely little more than an estimate based on a 10% boost of the plan sponsor's last four years of collected subsidy and is misleading without context or evidence.

That the Federal Governments Retiree Drug Subsidy **reopening program** could yield an additional potential subsidy payment of approximately \$198,086 or more and that a few simple actions could preserve this opportunity to receive this additional payment. However, you should be aware that approximately \$50,000

This dollar amount is based on the assumption the above figure of \$198k is accurate.

Cell Phone:

Office Phone:

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Fax:

of the projected forecast is now in jeopardy due to the delay in responding the
programs submission deadlines.

This is bit misleading. Plan sponsors have four years after the original reconciliation date to reopen old RDS applications. As the plan year ending 2012 application deadline is approaching for most plan sponsors in March 2018, one of the four available

This current P & L expense is completely convertible to a recovery of revenue opportunity with a few simple steps that [Redacted Company Name] administers through the Centers for Medicare and Medicaid Service Retiree Drug Subsidy program.

years is likely about to expire, roughly 1/4th of the assumed, currently available \$198k (which is approximately \$50,000) will expire. However, for plan sponsors who continue to participate in the RDS will have additional years available to reopen as new years are reconciled.

Moreover, that approximately 25% of the potential recovery would be forfeited
within the next few weeks without some simple steps being taken to preserve
[Redacted Plan Sponsor Name] right to the additional subsidy.

I would like to point out that [Redacted Company Name] is one of only a few firms
in the nation that focuses exclusively on the Retiree Drug Subsidy program.

The company that authored this letter shares both staff and resources with a health care consulting firm.

Because [Redacted Company Name] reviews all CMS data files for potential shortages, we have determined that the potential exists. The shortage occurs as a result of many factors beyond the control of the plan sponsor. However, because [Redacted Company Name] focuses exclusively on Retiree Drug Subsidies administration and reopening we have the systems and expertise to recover these additional subsidies. We achieve these enhanced subsidy recoveries through our proprietary software and data aggregation systems that cannot be duplicated by any prescription benefit manager, employer group waiver plan provider or consultant firm.

This is likely a reference to the publicly available RDS plan sponsor list that CMS publishes every year. No one has access to the CMS' data as it contains highly sensitive personal health information.

The ability of [Redacted Company Name] to **"uncover and recover"** the full potential subsidy that [Redacted Plan Sponsor Name] is entitled to from the Retiree Drug Subsidy program is unmatched. As a registered submitter and administrator through the Centers for Medicare and Medicaid Service's RDS Service Center for all of our plan sponsors, they will attest to our ability to maximize the Retiree Drug Subsidy recovery.

There is no such thing as an "registered submitter and/or administrator".

Again, there is no guarantee that a plan sponsor is "entitled" to additional subsidy without first conducting a reopening.

As I am sure you understand, the maximum potential recovery from the Retiree Drug Subsidy program is in the best interest of the thousands of retirees who rely on the drug coverage that is so generously provided by the organization; the active members who support the ~~R~~etiree benefits with their dues; and the management that decided to provide the drug benefits to retirees.

I apologize for putting this routine item in front of you, however, as a matter of prudent governance; I wanted to inform you and the Board of Directors of the potential “cash” recovery or loss that could result in the next few months without prompt action. I appreciate the significant intellectual capital and time you and all of the company’s management invests in the effort to benefit all employees and shareholders alike. Therefore, I would like to meet with you directly to discuss how [Redacted Company Name] will identify any additional potential [Redacted Plan Sponsor Name] is due from the Retiree Drug Subsidy program. How [Redacted Company Name] will conduct the **reopening** process within your current management structure without any disruptions to internal workflows. Finally, how [Redacted Company Name] will recover these funds and the process to disperse them.

Even if you have internal departments or outsourced consultants that have administered the Retiree Drug Subsidy submissions, your subsidy shortage will probably still exist without the intervention of [Redacted Company Name].

Moreover, the RDS Services Center that the Centers for Medicare and Medicaid Services operates to administer the Subsidy program will not voluntarily identify a subsidy payment shortage. Your account must be “reopened” by a qualified

submitter. → *This is false. There is no such thing as a “qualified submitter” and a plan sponsor is absolutely able to pursue a reopening on their own should they see fit.*

These are not state governments. They are city governments.

Like many of our other clients which include [Redacted Reference Name], State Governments to include the City of [Redacted Reference Name] and the City of

[Redacted Reference Name], major authorities like S[Redacted Reference Name], University System like [Redacted Reference Name] ~~and major industrial~~ and major industrial and manufacturing firms like [Redacted Reference Name] that have collective bargaining agreements and or legacy obligations that the Retiree Drug Subsidy helps to support.

There is one common item for all of these clients; they all have recognized the significantly increased financial benefits of entrusting their firms Retiree Drug Subsidy administration to our proven proprietary technology and expertise.

Part D Advisors has reopened the work of the organization who wrote this letter. A case study can be found [here](#).

Please call me concerning this time sensitive matter at [Redacted] with your availability to discuss this important financial benefit. I will reach out to you as well via phone and I look forward to meeting with you to discuss the next steps to achieving the recovery of the subsidy funds you are due through the CMS Retiree Drug Subsidy Program.

Sincerely,

[Redacted], LUTCF
National Sales Manager
[Redacted]

Cc: Zoho
[Redacted], President
[Redacted]

Attachment: Forecast

Cell Phone:

Office Phone:

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Fax:

November 27, 2017
02/22/2017 13:06

via: Email
Certified Mail

[Redacted Plan Sponsor Name]
[Redacted],
[Redacted], [Redacted] [Redacted] US
Personal & Confidential
Attn: [Redacted], Health and Welfare Supervisor

Dear [Redacted],

Please Take Notice.

Greetings and best wishes. I wanted to follow up with you from my call to your office on May 20, 2017 concerning the potential Retiree Drug Subsidy recovery that was on the table at that time. As a provider of Retiree benefits and a recipient of Retiree Drug Subsidy payments from the Centers for Medicare and Medicaid Services, your Union is eligible for additional subsidy payments.

During our conversation in May, you referred me to Mr. [Redacted] at your consultants to discuss the recovery of the funds you would be owed. I am writing to you because as of the date of this letter, Mr. [Redacted] has not reached out to us to discuss the matter. Unfortunately, this inaction will result in a loss of approximately \$70,000 of the potential \$1,980,860.78 recovery on or about December of 2017.

As the authorized submitter for the Centers for Medicare and Medicaid Services Retiree Drug Subsidy program; [Redacted Company Name] annually reviews all subsidy payments made to retiree plan sponsors. During the review process, a benchmark analysis is conducted to determine if [Redacted Plan Sponsor Name] may be eligible for an additional subsidy from the more than 7 Billion dollars in funding the program is allocated.

The analytic process identifies millions of additional drug subsidy dollars each year for companies that sponsor retiree prescription benefit plans. On 02/22/2017 13:06 a review of your organizations Document Control number RDS-2872017 revealed a potential to recover a surplus subsidy payment from the Retiree Drug Subsidy program. The currently forecasted subsidy recovery amount is \$198,086.00 but could be higher.

I called your office on 5/05/2017 11:00 to discuss an additional subsidy payment from the Centers for Medicare and Medicaid Services Retiree Drug Subsidy program and left a message with [Redacted]. The time to recover additional funds is limited by the Retiree Drug Subsidy statute which I will explain to you during an initial meeting that I would like to schedule within the next few weeks.

I will be traveling in the area of your corporate offices at [Redacted] within the week of 01/30/2018. I would appreciate you scheduling an initial and brief meeting to discuss the recovery of these funds for your organization.

Headquarters locate at

East Coast offices located in

Phone: email:

The figure to be "lost" quoted in the first letter was only \$50,000, not \$70,000. Additionally, the \$1,980,860.78 shown as a "potential recovery" is actually just the plan sponsor's last four years of subsidy (which are available to reopen) combined. It is highly unlikely that the plan sponsor would collect over \$1,000,000 in additional subsidy given their size.

This is likely a reference to the publicly available RDS plan sponsor list that CMS publishes every year. While it may be a good starting point to assess the potential benefit of a reopening, it is hardly a formal or encompassing "analysis".

There is no guarantee that a reopening will result in any additional subsidy.

My offices will be calling [Redacted] on 12/05/2017 11:00 to schedule a time to meet with you and your RDS Administrator to explain the benefits of the RDS recovery process and to move your RDS account forward in the subsidy recovery process.

If it is easier for you to schedule a date sooner than 01/30/2018, please call my office and we will advance the appointment date that we have scheduled.

I am looking forward to speaking with you within the coming days on this time sensitive and financially important matter.

Sincerely,

[Redacted], LUTCF
National Sales Director