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**PROGRAM MEMO**

TO: <b>AREA AGENCIES ON AGING DIRECTORS</b>	NO.: <b>PM 05-17 (P)</b>
SUBJECT: Health Insurance Counseling and Advocacy Program Policy and Guidance on Medicare Modernization Act Part D Enrollment Process	DATE ISSUED: November 10, 2005
REVISED	EXPIRES: July 1, 2007
REFERENCES:	SUPERSEDES:
PROGRAMS AFFECTED: <input type="checkbox"/> All <input type="checkbox"/> Title III-B <input type="checkbox"/> Title III-C1/C2 <input type="checkbox"/> Title III-D <input type="checkbox"/> Title III-E <input type="checkbox"/> Title V <input type="checkbox"/> CBSP <input type="checkbox"/> MSSP <input type="checkbox"/> Title VII <input type="checkbox"/> ADHC <input checked="" type="checkbox"/> HICAP <input type="checkbox"/> Other: _____	
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This Program Memo (PM) transmits policy and guidance for Area Agencies on Aging, Health Insurance Counseling and Advocacy Program (HICAP) providers, and HICAP Counselors on the process of assisting Medicare beneficiaries in enrolling in Medicare Modernization Act (MMA) Part D prescription drug plans or other Medicare health plans.

**Introduction**

The passage of MMA and the Part D prescription drug benefits has changed the nature of Medicare. When an individual "enrolls" in Medicare Part D, they are also purchasing a prescription drug plan offered from one of a variety of companies. In enrolling in a Medicare Part D plan, one must either 1) purchase a separate private prescription drug plan or 2) enter a Medicare Advantage plan with prescription drug coverage.

This PM transmits federal guidelines and provides clarification of State HICAP policy in regard to those guidelines.



## HICAP Liability Protection In State Statutes

California Welfare & Institutions Code, Section 9541, require all HICAP Counselors to be competently trained and then registered by the State of California [by the California Department of Aging (CDA)]. Counselors must follow State law, regulation, and procedures issued by CDA. State law says, in part:

“No registered volunteer health insurance Counselor shall be liable for his or her negligent act or omission in providing counseling services under this chapter. No registered volunteer health insurance Counselor shall be liable to any insurance agent, broker, employee thereof, or similarly situation person, for defamation, trade libel, slander, or similar actions based on statements made by the Counselor when providing counseling, unless a statement was made with actual malice. Counselors are acting in good faith to provide information about health insurance policies and benefits ... and that the Counselors are, generally, not liable unless their acts and omissions are grossly negligent or there is intentional misconduct on the part of the Counselor.”

## HICAP Administrative Manual Requirements

In addition to State statutes, the HICAP Administrative Manual sets forth operational policies for HICAP. Under the master agreement between the State and its contractors, the HICAP Administrative Manual provides essential State policy and guidance to the Program in this regard.

- 108.2** “A HICAP Counselor shall be cognizant of their potentially influential position with respect to their clients and they shall not exploit the trust and dependency of the client.”
- 108.3** “A HICAP Counselor shall use reasonable diligence and good judgment in the performance of his/her duties.”
- 108.4** “A HICAP Counselor shall not abandon or neglect clients. The intent is that all clients will be served to the extent possible and, when necessary, arrangements must be made for the continuation of service or referral to another agency.”
- 108.8** “A HICAP Counselor shall not make decisions for the client or advise the client of what ‘they should do.’ The Counselor’s role is to provide information which will assist the client in making an informed independent decision.”
- 110.0** “The overall intent of the HICAP is to provide clients with the information they need to make informed, independent decisions about their health insurance needs. Based upon the nature of the Program, clients may ask HICAP Counselors to make specific recommendations and or referrals. **Counselor’s must not make decisions for the client.** When a client is properly informed about their personal options, they should be able to select, on their own, an appropriate company, service, or product. Recommending specific policies or products may backfire on HICAP, particularly if the client does not end up with the best value and later files a

complaint against HICAP or if HICAP is accused of interfering in the market place by endorsing some organizations at the expense of others.”

### **Federal Guidance**

On September 21, 2005, the Centers for Medicare and Medicaid Services issued a document entitled: “*Guidance for Organizations Providing Personalized Assistance for Medicare Prescription Drug Coverage.*” This federal guidance is attached to this PM. The guidance walks through four steps of the assistance process.

For the purposes of this PM, “enrollment assistance” or “personal enrollment assistance” means accessing and providing information about Medicare’s prescription drug benefits in a manner that is customized to an individual’s unique needs. This includes helping the individual understand the various prescription drug plans, including comparisons between plans, drug coverage similarities and differences, and cost comparisons. With the implementation of MMA, a significant portion of the discussion of plan options and how those options match the needs and preferences of specific individuals will be guided by the HICAP Counselor’s use of Internet-based information (available directly through Medicare.gov or through Access to Benefits Coalition’s *Benefits Checkup Rx* online tools). Counselors may also direct beneficiaries to 1-800-Medicare or use the services of the Medicare toll-free line in assisting clients.

### **State Policy**

HICAP has a long 20-year tradition of educating the public and informing beneficiaries of their health care benefits and rights in a neutral and unbiased manner. The goal has always been to empower HICAP clients to make their own decisions. This position remains an essential part of the Program. HICAP assists in communicating facts to the public and to individual Medicare beneficiaries who, in turn, make decisions in their own best interest.

To reiterate existing policy, Section 110 of the HICAP Administrative Manual has had an introductory statement since 1991 that states:

“Based upon the nature of the Program, clients may ask HICAP Counselors to make specific recommendations and or referrals. **Counselors must not make decisions for the client.** When a client is properly informed about their personal options, they should be able to select, on their own, an appropriate company, service, or product.”

Enrollment assistance does not include making a decision for the individual, but rather allowing the client to make his or her own decision and empowering them to move through the process to the extent possible.

Equally important, no HICAP client should be left without the means of procuring Medicare prescription drug benefit coverage if it is clear the client wishes to enroll.

The essence of this State policy is to: (1) empower the client to select and purchase a plan that best meets his or her needs; and (2) assist the client with process and forms if the complexity of the

enrollment process or a disability would otherwise prevent the client from obtaining the Medicare benefit he or she desires. In all cases, the Counselor is completing forms only to the extent that this activity reflects the client's own choices and decisions.

### **Clarification of the Federal Guidance**

To meet existing State policy, the following is a clarification of Step 4 of the federal enrollment process. The last step in the federal guidance states:

**“Step 4** – If the person chooses a plan and wishes to enroll, help the person fill out the necessary forms, or explain where to go for further assistance.”

California's HICAP Counselors are allowed to assist a client with a Part D enrollment form, either electronically over the Internet or on paper. When a beneficiary decides to join a Medicare Prescription Drug Plan, a Counselor can help in the enrollment process on behalf of the HICAP client. To the extent the beneficiary can complete this enrollment form by him or herself, this is preferred and should be the first choice.

Under certain circumstances, HICAP Counselors may assist in the completion of forms if the client is showing clear intent to enroll in a plan of their choice, but is having significant difficulty executing the process of enrollment due to the complexity of the process or due to a disability (e.g., someone who is blind).

For additional clarity, the HICAP Counselor should read or provide the following Part D disclosure statement before enrollment assistance begins: *“If you choose a plan and have difficulty in completing the forms or process for enrollment, the HICAP Counselor will assist you, but you will be responsible for the actual plan contract. The HICAP Counselor will not choose your plan for you.”*

CDA has requested clarification from the California Insurance Commissioner and the California Department of Insurance (CDI) on whether the State insurance statutes have bearing on the MMA enrollment process. This guidance is, therefore, subject to revision should CDA receive a CDI interpretation of State insurance statutes that affects our policies.

Sincerely,

***((Original signed by Lora Connolly))***

Lora Connolly  
Acting Director

Attachment **(AAA's Only)**