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MEDICARE

Issues Concerning the HealthChoice Demonstration Project

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The Honorable John Heinz
Ranking Minority Member
Special Committee on Aging
United States Senate

Dear Senator Heinz:

In your letter of April 9, 1987, you asked us to review a number of issues regarding Medicare and health maintenance organizations (HMOs). One of these issues concerned a Medicare demonstration project involving HealthChoice, Inc., a nonprofit company under contract with Medicare.

The Health Care Financing Administration (HCFA), which administers Medicare for the Department of Health and Human Services (HHS), awarded HealthChoice contracts for two demonstration projects, effective September 1982 and September 1985. The projects were intended to (1) test the effect of educating Medicare beneficiaries on the HMO option by giving them comparative information on participating HMOs in their community and (2) ascertain the feasibility of using a broker as a marketing agent. As its funding authority, HCFA cited section 402(a) of the Social Security Amendments of 1967, which allows for experiments with alternative methods of paying for Medicare services.

Under the contracts, HealthChoice prepared and distributed informational brochures to Medicare beneficiaries in Portland, Oregon, and San Francisco and Los Angeles, California. It also conducted face-to-face educational sessions to explain the HMO concept and the services offered. Additionally, HealthChoice operated as an independent broker, helping participating HMOs market their plans to Medicare beneficiaries in the three West Coast service areas. Medicare and the participating HMOs shared the cost of HealthChoice.

Your letter and accompanying materials raised three concerns:

1. Was it appropriate for HCFA to fund such a project, as federal funds were used to promote private companies?

2. Were HMOs promoted equally in the project?

3. Were names and addresses of Medicare beneficiaries, given by HCFA to HealthChoice so it could mail beneficiaries HMO promotional materials, properly safeguarded?

To address these concerns, we reviewed relevant documents, including contract files, correspondence, progress reports, HealthChoice marketing material, and applicable laws and regulations. In addition, we interviewed officials from selected HMOs, HealthChoice, its contractors, HCFA headquarters, and a Medicare beneficiary advocacy group.

Combining education and marketing components in a single project, as HealthChoice did, led to problems in implementation. These problems and the issue of HCFA's legal authority to conduct such a demonstration should be resolved if HCFA is to use the broker concept to promote use of HMOs by Medicare beneficiaries in the future. Specifically, we found that:

- HCFA's authority to fund these demonstrations is questionable. The HealthChoice project may not be authorized under section 402(a). Accordingly, we have asked HHS to provide a legal opinion explaining its basis for funding the HealthChoice project. Also, we do not believe that HCFA should share with the HMOs their costs of marketing their services to beneficiaries, as HMOs are required to pay such costs out of their Medicare reimbursements. The extent to which HMOs do not pay for this service represents an additional administrative cost to Medicare.
- Because some HMOs in the three service areas elected not to participate in the demonstration project, HealthChoice did not promote all HMOs in the areas equally. Medicare beneficiaries received little or no information from HealthChoice about the nonparticipating HMOs. Furthermore, the propriety of HealthChoice enclosing a HCFA transmittal letter with its promotional mailings to beneficiaries is questionable. The recipients could construe the letter as a federal endorsement of the HMOs in question, which is contrary to HCFA regulations.
- HCFA and HealthChoice did not follow applicable Privacy Act rules governing the release and timely disposal of confidential beneficiary data (names and addresses). We found no indication, however, that confidential information had been used for purposes other than sending HMO educational and marketing materials to Medicare beneficiaries.

We recommend that the Secretary of HHS direct the Administrator of HCFA not to fund additional broker projects without first reviewing HCFA's authority to do so, as we question whether the authorities cited for the HealthChoice demonstration apply. To the extent that funding

authority is identified and HCFA decides to authorize projects with similar objectives, we recommend that the Secretary direct that the Administrator:

- Either not fund projects that include marketing of individual HMOs or assure that any marketing component is distinct and funded solely by the participating HMOs.
- Preclude use of a HCFA transmittal letter by any project or effort involving the marketing of HMOs.
- Establish written procedures for monitoring compliance with Privacy Act rules when releasing Medicare records. These procedures should assign responsibility for assuring that release agreements are properly completed.

We obtained written comments on our draft report from HHS and HealthChoice. Both offered additional perspectives on the goals of the demonstration and the context in which it was originally funded. Also, while not disagreeing with the content of the recommendations, HHS offered reasons why the agency believes them to be unnecessary. Appendix I, which presents further details on the results of our review, also includes a summary of the HHS and HealthChoice comments on our draft report and our evaluation of them. Appendix II discusses HCFA's authority for funding the HealthChoice demonstration, and appendix III is the HHS transmittal letter used by HealthChoice. Copies of the HHS and HealthChoice written comments are included as appendixes IV and V, respectively.

As requested by your office, we will not make further distribution of this report for 30 days unless you publicly disclose its contents before then. At that time, we will send copies to other interested committees and parties and to the Secretary of HHS.

Sincerely yours,

Lawrence H. Thompson
Assistant Comptroller General

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Abbreviations

HCFA	Health Care Financing Administration
HHS	Department of Health and Human Services
HMO	health maintenance organization

Issues Concerning the HealthChoice Demonstration Project

Background

Medicare helps pay medical costs for about 31 million people. The Health Care Financing Administration (HCFA) administers the Medicare program for the Department of Health and Human Services (HHS). Under Medicare, beneficiaries have the option of obtaining medical care through the traditional fee-for-service system or a health maintenance organization (HMO) approved by HCFA. These HMOs are paid at a rate that reflects the expectation that Medicare will save 5 percent of what it would cost under the fee-for-service system without reducing services.

HCFA awarded to HealthChoice, a nonprofit company, two contracts, effective September 1982 and September 1985, for a demonstration project. Under the contracts—one for Portland, Oregon, and the other for San Francisco and Los Angeles, California—HealthChoice was to (1) invite HMOs in these areas to participate in the project, (2) produce and distribute information comparing the options available to Medicare beneficiaries from the participating HMOs, and (3) hold educational sessions to explain and answer questions about the available HMO programs. HealthChoice did not enroll beneficiaries in HMOs, but did provide them with applications.

Although the Portland and California projects were similar in the methods used to promote HMO enrollment, their marketing strategies differed. In Portland, HealthChoice continually promoted the HMOs throughout most of the project's implementation phase. In the California project, however, HealthChoice was to market HMOs within a 30-day, open-enrollment period.

Between March 1985 and June 1987, HealthChoice mailed about 530,000 HMO promotional packages to beneficiaries in the three locations, according to the projects' annual and quarterly progress reports, and held about 860 educational sessions. As of September 1987, HealthChoice reported that 12,233 beneficiaries had enrolled in HMOs.

Objectives, Scope, and Methodology

In an April 9, 1987, letter, Senator John Heinz, Ranking Minority Member of the Senate Special Committee on Aging, asked us to review a number of issues concerning Medicare and HMOs. With respect to the HealthChoice project, he sought to learn:

1. Was it appropriate for HCFA to fund such a project, as federal funds were used to promote private companies?

2. Were HMOs promoted equally in the project?

3. Were names and addresses of Medicare beneficiaries, given by HCFA to HealthChoice so it could mail beneficiaries HMO promotional materials, properly safeguarded?

Because of the limited scope of HealthChoice's activities, as agreed with the requester we are reviewing the HealthChoice demonstration project separately in this report. To address the concerns raised, we reviewed relevant documents, including contract files, correspondence, and progress reports, at both HCFA headquarters and HealthChoice. Also, we reviewed HealthChoice's marketing material used to promote HMOs in Portland, San Francisco, and Los Angeles. Applicable laws and regulations relating to Medicare demonstration projects, HMO marketing materials, and safeguarding Medicare records were examined.

We interviewed officials from selected HMOs, HealthChoice, its contractors, HCFA headquarters, and a Medicare beneficiary advocacy group in California. Our fieldwork was done between June and October 1987 in accordance with generally accepted government auditing standards.

Funding Authority Cited Was Questionable

The authority HCFA cited in contract award documents for funding HealthChoice, section 402(a) of the Social Security Amendments of 1967, was questionable. This section authorizes the expenditure of Medicare trust funds for contracts with private organizations to conduct experiments and demonstrations. Apparently, HCFA relied on paragraphs (1)(A) and (B), which allow for experiments with alternative payment methods. These paragraphs authorize experiments with alternative payment methods that either (1) involve payment or reimbursement for health care or services authorized by the Social Security Act or (2) are for services furnished by organizations, such as HMOs, that have the capacity of providing health care.

But the HealthChoice demonstration did not directly involve an alternative payment method for Medicare services, nor was HealthChoice to provide health care services. Rather, as an HMO broker, HealthChoice promoted HMOs as an alternative to Medicare's fee-for-service system. Because of the doubt surrounding HCFA's authority to fund the project, we asked the Administrator of HCFA, in a letter dated March 8, 1988, for an explanation of the legal basis for funding HealthChoice. We will advise you of HCFA's response and our analysis at a later date. (For a more detailed discussion of this issue, see app. II.)

Brokers an Additional Administrative Cost to Medicare's HMO Program

HCFA should not fund projects that have HMO marketing as a component, because HMOs are responsible for funding marketing activities out of their Medicare reimbursements. The project's other component—that of better educating Medicare beneficiaries about their health care options—is a desirable funding objective (as we discuss in the following two sections). But combining marketing and beneficiary education components in a single project can create problems that are best avoided.

HealthChoice's Portland project grew out of a solicitation HCFA issued in May 1982 to test alternative methods for financing health care. Part of the solicitation asked qualified organizations to submit proposals to act as a broker in offering alternative health plans, such as HMOs, to Medicare beneficiaries. HCFA's rationale for the broker project was to minimize beneficiaries' confusion by having a broker consolidate information on the costs and benefits of such plans. The solicitation also stated that HMOs might find that sharing the costs of a broker with others would reduce their costs. Similarly, the California project was funded as a result of HCFA's January 1985 solicitation requesting applications to conduct a variety of Medicare and Medicaid research and demonstration projects, including one to test the independent broker model in specific geographic areas.

In its initial solicitation, HCFA proposed methods for funding independent brokers. Under the project, both HCFA and the participating HMOs were to pay HealthChoice's operating costs. Federal funding for the Portland project amounted to $980,646 for the period September 1982-February 1987. The California project was to run from September 1985 through August 1988. Federal funds awarded on this contract through the end of August 1987 totaled $522,197. Also, participating HMOs in both projects were to pay a set rate (for example, $30) for each beneficiary who enrolled in their plans after being contacted by HealthChoice.

In 1985, the first year of the Portland project, HealthChoice reported that HCFA directly funded 97 percent of the project's costs. In 1986, 50 percent of HealthChoice's projected budget was to be funded by HCFA and 50 percent by the participating HMOs. In the project's last 2 months, the HMOs were to pay for all of HealthChoice's costs. According to HealthChoice's director, after the contract ended in February 1987 the participating HMOs in the Portland area continued to use HealthChoice's services. Funding for the California project was designed with the intention that HCFA and the participating HMOs would fund an equal share of HealthChoice's operating costs. By paying a portion of HealthChoice's

costs, HCFA in essence incurred additional administrative costs for its HMO program.

HealthChoice provided an additional service to beneficiaries by compiling and distributing comparative information, agency officials told us. HCFA viewed this service as desirable, as HMOs themselves do not provide beneficiaries with such information.

To evaluate the benefits of the demonstration to Medicare, HCFA awarded two contracts—one to the Brandeis Research Center and Health Policy Research Consortium, and another to Mathematica Policy Research, Inc. The Brandeis evaluation will address both the effectiveness of the broker demonstration project and the possibility of HMOs absorbing the full cost of brokers. The Mathematica evaluation will measure whether it is less expensive for the HMOs to use a broker than to market their own Medicare plans. As of June 1, 1988, the evaluations had not been completed. We did not attempt to compare the merits of HCFA's funding approach to other possible approaches, as this would duplicate HCFA's current evaluation contracts.

As Not All HMOs Participated, Not All Were Treated Equally

The stated philosophy behind the HealthChoice project was that, for a marketplace to function optimally, consumers must have access to high quality comparative information to make informed purchasing decisions. However, from the HMOs' perspective, HealthChoice's principal value was as a marketing agent. Because not all HMOs needed or wanted this service, not all participated. Therefore, HealthChoice did not promote all HMOs equally, nor did it supply the beneficiaries with information on all available options.

To participate in the project, an HMO had to agree to provide health plan information and staff to support such membership services as educational sessions, and pay HealthChoice a fee per enrollee. While both HCFA and HealthChoice encouraged HMOs to participate in the demonstration, HCFA officials told us that HCFA could not require them to do so. One of four HMOs in each service area declined to participate (see table I.1). Officials from the nonparticipating HMOs told us or wrote HealthChoice that they did not take part in the project largely because they believed it was not cost-beneficial to pay for marketing they were already doing.

Table I.1: HMO Participation in Demonstration Project

	HMOs	
Project area	**Participating**	**Nonparticipating**
Portland	Good Health Plan First Choice Sixty-Five Secure Horizons	Kaiser Permanente[1]
San Francisco	Bay Pacific Health Plan Children's Hospital Health Plan French Health Plan	Health Plan of America
Los Angeles	Secure Horizons FHP SCAN Health Plan	Maxicare

[1]Participated in 1985, then dropped out for the remainder of the project through February 1987.

Materials supplied to beneficiaries did not include comparative information on the nonparticipating HMOs. For example, in the last 14 months of the Portland project the material did not mention Kaiser Permanente, a nonparticipating HMO. In the California project, however, the nonparticipating HMO was mentioned as another HMO contracting with Medicare, but no comparative information was supplied. In commenting on a draft of this report, HHS said that HCFA and HealthChoice discussed the pros and cons of including such material. They decided not to include comparative information on nonparticipating HMOs because these HMOs would not review and comment on its contents. But when an HMO declined participation, HealthChoice did not ask if it wanted information on its plan included in the comparative information sent to beneficiaries.

In January 1988, HCFA discontinued the HealthChoice project in California, effective March 31, 1988, 5 months ahead of schedule. This was done because none of the Medicare risk-based HMOs in Los Angeles, the only remaining demonstration site, would agree to use HealthChoice services, HCFA officials told us. The HMOs made the decision, HCFA officials believed, because they already had aggressively marketed their plans and could derive little additional benefit from HealthChoice.

Transmittal Letter Inconsistent With Marketing Standards

For each HealthChoice project, HCFA prepared a transmittal letter explaining it. HealthChoice included the letter in the informational materials mailed to beneficiaries. A Medicare beneficiary advocacy group in the Los Angeles area, while supportive of the idea of disseminating information on HMOs, was critical of this letter. According to the director of the group, the HCFA letter made it sound as though the government was recommending that everyone join an HMO.

Although the transmittal letter (see app. III) stated that enrollment in an HMO was strictly voluntary, we believe the letter, on HHS letterhead, could be misinterpreted as the federal government's advocating that beneficiaries join an HMO. For example, the letter states, "Medicare HMOs can expand your Medicare coverage and save money for you and for Medicare."

HMO marketing regulations preclude HMOs stating that they are recommended or endorsed by HCFA. HCFA regulations require HMOs to obtain prior approval of promotional materials and do not allow such material to state or suggest federal sponsorship, e.g., use a picture of the U.S. Capitol. According to HCFA officials, HCFA reviewed all of the HMOs' and HealthChoice's marketing materials to assure that none contained statements that could be construed as a federal endorsement. But sending the HCFA transmittal letter along with unsolicited promotional material for individual HMOs being promoted by HealthChoice could itself be construed as a federal endorsement of the specific HMOs.

HCFA officials told us that they believed a HCFA transmittal letter was needed so that beneficiaries would recognize that HealthChoice was a federally supported project. Such a letter, however, seems to us inconsistent with HCFA's HMO marketing regulations. Under these regulations, HCFA could not prepare such a letter for an HMO because it could be misconstrued as HCFA's endorsement of the HMO (certainly as much so as a picture of the Capitol could be misconstrued as federal endorsement). For the same reason that HCFA would not prepare such a letter for an individual HMO, it should not have prepared a letter for the demonstration project, as HealthChoice was a marketing agent of the HMOs.

That HCFA prepared such a letter and allowed its use by HealthChoice to help market specific HMOs is troublesome from two other aspects. First, not all HMOs in a service area participated in the HealthChoice project, which could cause confusion among Medicare beneficiaries as to why some HMOs were included in the marketing materials and others not. Second, any appearance by HCFA of endorsing individual HMOs creates a potential conflict with HCFA's HMO regulatory responsibilities.

If HCFA appeared to encourage enrollment in specific HMOs, beneficiaries would normally expect that such HMOs were meeting Medicare requirements. This was not the case for one of the HMOs marketed by HealthChoice. HCFA's compliance branch undertook a compliance action against this HMO because of violations of Medicare requirements that occurred during the period covered by the HealthChoice project. In May

1986, the HMO was placed under HCFA evaluation (the first stage of the process for determining compliance) because of financial and management problems. In October 1986, HCFA notified the HMO that it was not in compliance with federal financial solvency requirements. Specifically, it was found to have insufficient cash flow and an unacceptable financial plan.

Although we are not advocating such a practice, HHS could send a separate letter discussing the advantages and disadvantages of enrolling in an HMO and advising Medicare beneficiaries of any HHS-sponsored information programs to be offered. Any such letter should be neutral as to whether beneficiaries should enroll in HMOs and make it clear that participating HMOs are not endorsed and, if applicable, that they are not the only HMOs available.

Confidential Records Not Safeguarded

To support the project's mailings to Medicare beneficiaries, HCFA furnished HealthChoice with computer tapes of the names and addresses of Medicare beneficiaries within the project area. HealthChoice provided the tapes to mailing service contractors that mailed the HealthChoice and HMO promotional material to beneficiaries. HCFA considers information on the tapes to be confidential and subject to Privacy Act rules to protect against the misuse of personal information. The HealthChoice contracts require that these rules be followed. We found instances in which rules for the release, use, and disposal of confidential records were not followed.

Confidential Data Released Without Written Agreement

Under Privacy Act rules, HCFA must obtain a written statement attesting to the contractor's understanding of and willingness to abide by the Privacy Act. HCFA did not obtain this statement before releasing the tapes for the Portland or San Francisco mailings. HealthChoice had these tapes more than a year before the necessary statements were completed. Also, the release agreements contain a signature line for HCFA approval. For Portland, HCFA did not sign the agreement until about 3 months after the contract for the project ended. For San Francisco, HCFA did not sign the agreement until 13 months after the tape had been given to the mailing service contractor.

Further, in April 1987 HCFA released an updated tape to HealthChoice for Portland area beneficiaries, even though the contract for the Portland project had ended in February 1987, 2 months earlier.

Data Use Unauthorized, Disposal Untimely

After the confidential records are no longer needed, Privacy Act rules require that a contractor make no further use of the records and return or destroy them as soon as possible. In a number of instances, these rules were not followed.

After the Portland project's contract ended in February 1987, HealthChoice for about 2 months continued to use the 1986 HCFA-supplied tape for other commercial mailing activities, an unauthorized practice under the rules. These mailings were in essence the same as those authorized under the project. According to HealthChoice's project director, use of the tapes in its commercial mailing business occurred mainly because ongoing discussions with HCFA about extending the Portland project resulted in confusion as to the project's ending date. Beginning in June 1987, HealthChoice used its own mailing list from a nongovernment source to support its commercial mailing activities.

Also, HealthChoice did not routinely destroy or return to HCFA old tapes when new tapes were received for the Portland and San Francisco projects. Thus, the 1985 and 1986 tapes were not returned to HCFA until May 1987—several months to over a year after they were no longer needed. In addition, about 4 months after the Portland contract ended, a HealthChoice mailing service contractor told us that a 1986 HCFA tape was being stored on site and a backup copy, off site. This mailing service was waiting for instructions from HealthChoice on what to do with the tape. The tapes were used for no other purpose, the mailing service contractor told us, than supporting HealthChoice operations in accordance with its signed agreement with HealthChoice. HealthChoice's director was unaware that the mailing service contractor had the tapes, she told us, and she subsequently directed the contractor to dispose of them.

Why the Privacy Act rules were not followed in each instance was unclear. But there was a lack of HCFA procedures that provided for monitoring compliance. For example, no written procedures exist within HCFA detailing who is responsible for assuring that release agreements are properly completed. Our review of HealthChoice files and conversations with mailing house subcontractors disclosed no evidence, however, that confidential information was used by anyone other than HealthChoice or its subcontractors to mail HMO promotional material to beneficiaries.

HCFA's adherence to Privacy Act rules concerning HealthChoice appears to have improved since the Special Committee on Aging's staff investigation raised the issue in 1987.[1] For example, in the Los Angeles project the statement of understanding was signed by HealthChoice before the April 1987 release of the tapes to HealthChoice. Also, in May 1987 HCFA reviewed and retroactively completed Privacy Act paperwork for the other two projects. Further, HealthChoice's final work plan dated December 1987 requires it to retrieve all tapes from mailing houses and return them to HCFA.

Conclusions

HCFA's rationale for conducting the HealthChoice project contained two components: (1) to better educate beneficiaries about the HMO option by providing comparative information on the costs and benefits of available plans and (2) to ascertain whether it would be beneficial to market HMO plans through independent brokers. Combining these two components into a single project resulted in problems that HCFA should resolve before authorizing future broker projects. Also, in regard to funding, HCFA should determine whether sufficient authority exists to fund independent broker projects. In our opinion, the authorities it cites do not apply.

Regardless of the authority for conducting a broker demonstration, a question still arises as to whether there should be any federal funding for projects that involve marketing of individual HMOs. HMOs' marketing expenses are to be borne solely by the HMOs out of their Medicare reimbursements; thus, it is inappropriate for HCFA to provide additional funding. Although the beneficiary education activities of the broker project were appropriate for HCFA funding, it is unclear how HealthChoice as a practical matter could have separated its marketing from its beneficiary education. Both activities were conducted simultaneously and with the same intent—to encourage beneficiaries to enroll in a participating HMO. Consequently, having these dual components in a single project may not be practical.

The use of dual components in the HealthChoice broker model posed other problems as well, i.e.:

- As not all HMOs wanted to use HealthChoice's marketing services, some did not participate in the project, and beneficiaries received little or no

[1]Special Committee on Aging, U.S. Senate, Medicare and HMOs: A First Look with Disturbing Findings, Minority Staff Report, Apr. 7, 1987.

information about the nonparticipating HMOs. This meant that not all the HMOs were promoted equally, and beneficiaries were not fully informed of all available options. A related problem was a transmittal letter prepared by HCFA that HealthChoice included with promotional material sent to beneficiaries. Such a letter could be construed as an endorsement of the HMOs whose promotional materials were enclosed, potentially confusing beneficiaries as to why some HMOs were omitted.

- Any appearance by HCFA of endorsing individual HMOs creates a potential conflict with HCFA's HMO regulatory responsibilities; e.g., HealthChoice was promoting an HMO at the same time HCFA's compliance office was questioning the HMO's compliance with Medicare requirements.

For these reasons, if HCFA has authority and decides to use independent brokers in the future, it should exclude any marketing element from the broker role unless the marketing is distinct from the educational activities and funded solely by HMOs.

HCFA's internal controls are inadequate to assure that HCFA and future brokers follow Privacy Act rules governing confidential beneficiary data. Specifically, there are no written procedures assigning responsibility for assuring that Privacy Act rules are followed.

Recommendations

We recommend that the Secretary of HHS direct that the Administrator of HCFA not fund additional broker projects without first reviewing HCFA's authority to do so. To the extent that funding authority is identified and HCFA decides to authorize projects with similar objectives, we recommend that the Secretary direct that the Administrator:

- Either not fund projects that include marketing individual HMOs, or assure that any marketing component is distinct and funded solely by the participating HMOs.
- Preclude use of a HCFA transmittal letter by any project or effort involving the marketing of HMOs.
- Establish written procedures for monitoring compliance with Privacy Act rules when releasing Medicare records. These procedures should assign responsibility for assuring that release agreements are properly completed.

HHS and HealthChoice Comments and Our Evaluation

We obtained written comments on our draft report from HHS and HealthChoice. Copies of their written comments are included as appendixes IV and V, respectively.

HHS Comments

In a general comment, HHS stated that the draft report dealt with the HealthChoice project as though it were not implemented under HCFA's demonstration authority. The purpose of a demonstration program, HHS pointed out, is to test and evaluate new concepts. When the HealthChoice project was initially approved in 1982, the concept was judged appropriate for funding as a demonstration project. Until the project's evaluation is completed, HHS believes, it is "premature to draw conclusions about the wisdom and efficacy of the project."

We agree with HHS that demonstration projects should test new concepts. Our report acknowledges the demonstration nature of the HealthChoice project and does not question the merits of HCFA initially testing the concepts underlying the project. Further, as our report states, we did not attempt to duplicate the work currently being done under HCFA's contract to evaluate the project. Rather, our work was restricted to addressing the concerns raised by Senator Heinz's letter. However, in addressing these concerns, several issues came to light that we believe should be resolved if future broker projects are funded.

With regard to the appropriateness of using federal funds to promote private companies, HHS commented that there might not be a way that HCFA can inform beneficiaries about HMOs without indirectly benefiting the HMOs.

We do not take issue with the need to educate beneficiaries about HMOs or the indirect benefits that these educational activities might have on the individual HMOs. Rather, we point out some of the practical difficulties with a project that attempts to educate beneficiaries about their HMO options and, at the same time, market individual HMOs.

Concerning our recommendation that HCFA not fund additional broker projects without first reviewing its authority to do so, HCFA stated that the Social Security Act contains such authority, which was being reviewed. Presumably, the HHS review was in response to our March 8,

1988, letter to HCFA requesting an explanation of the legal basis for funding the HealthChoice projects. As of June 15, 1988, we had not received HCFA's response.

HHS agreed with a recommendation in our draft report that HCFA not endorse HMO enrollment, but HHS believed that HCFA did not do so in its letter used to transmit HealthChoice's informational materials. HHS stated that a careful review of the transmittal letter showed that endorsing HMOs was not HCFA's purpose.

HHS's comments demonstrate the difficulty of including with the promotional material an HHS transmittal letter that would not be considered by some recipients as an endorsement of HMOs.

We agree with HHS that the purpose of HCFA's transmittal letter was not to promote or endorse the participating HMOs. However, when enclosed with unsolicited material promoting individual HMOs the transmittal letter could, in itself, be construed as a federal endorsement of HMOs, especially those specifically identified in the informational material. We believe that the transmittal letter, as used in the demonstration, also could cause confusion among beneficiaries as to why for some HMOs comparative information was included in the marketing material and for others none was included. Further, any appearance by HCFA of endorsing individual HMOs creates a potential conflict with HCFA's HMO regulatory responsibilities. Therefore, we revised our recommendation to state that no HCFA transmittal letter should be included with the material provided by brokers to Medicare beneficiaries.

Concerning safeguard of confidential Medicare records used in the demonstration, HHS stated that most of the information was controlled properly and that it believed that HealthChoice abided by the Privacy Act. However, HHS agreed that tighter control procedures should have been implemented to ensure that all tapes were properly controlled. In response to our recommendation that HCFA establish written procedures for monitoring compliance with Privacy Act provisions, HHS cited and discussed the existing departmental regulations and other measures that provide such procedures.

Although we are aware of the departmental regulations and other measures discussed in HHS's comments, they do not negate the need for internal procedures to help assure compliance. Our recommendation addresses this need. For example, there was no internal procedure to

ensure that the Privacy Act release agreements were signed before HCFA released the Medicare information.

HHS also made technical comments, and we made appropriate changes to the body of the report in response to these comments.

HealthChoice Comments

By letter dated April 28, 1988, HealthChoice raised some of the same points as HHS concerning our findings about the appropriateness of the project's funding and the intent of HCFA's transmittal letter.

HealthChoice also stated that "in contrast to the position adopted in the draft report, it is not easy in the case of HMO Medicare services to separate the educational component from the marketing component as the report suggests." HealthChoice said that beneficiaries would need both education and marketing information to make a decision and that the demonstration was designed to provide this information in an unbiased way.

The report does not state that separation of educational and marketing components is easy, nor does it question the benefits that can be gained by combining them. Rather, we point out that combining both components into a single project created problems that need to be resolved if broker projects are to be used in the future. These problems involve the legislative authority to fund such projects, the HMO's responsibility in absorbing marketing costs, and the potential risk of implying federal endorsement of specific HMOs.

HealthChoice also elaborated on the purpose of the demonstration projects and provided additional historical perspective.

Authority for HealthChoice Demonstration

In funding HealthChoice, HCFA cited section 402(a) of the Social Security Amendments of 1967 as its authority. This section authorizes the expenditure of Medicare trust funds for contracts with private organizations to conduct experiments and demonstrations. Apparently, HCFA relied on paragraphs (1)(A) and (B), which allow for experiments with alternative payment methods. These paragraphs authorize experiments with alternative payment methods that either (1) involve payment or reimbursement for health care or services authorized by the Social Security Act or (2) are for services furnished by organizations that have the capacity of providing health care.

The application of section 402(a) to the HealthChoice demonstration appears questionable. The HealthChoice demonstration did not directly involve an alternative payment method for Medicare services, nor was HealthChoice to provide health care services. Rather, HealthChoice promoted HMOs as an alternative to Medicare's traditional fee-for-service reimbursement system.

In March 1987, the Ranking Minority Member of the Senate Special Committee on Aging wrote to the Administrator of HCFA requesting, among other matters, an explanation of how section 402(a) of the 1967 Social Security Amendments authorized funding the HealthChoice demonstration. In May 1987, HCFA's Associate Administrator for Program Development responded by stating ". . . that Section refers to research and demonstration waivers which were not utilized in the California demonstration."

In its response, HCFA also cited a variety of other authorities for funding research and demonstration projects. In regard to these additional authorities, the two most relevant in our view are sections 1875(a) and 1110(a) of the Social Security Act, i.e.:

- Section 1875(a) allows the Secretary to study methods for encouraging the further development of efficient and economical health care. If the HealthChoice demonstration could be considered a study, section 1875(a) would appear broad enough to serve as a funding basis. However, HCFA viewed the HealthChoice project as a demonstration to test the broker model.
- Section 1110(a) allows for demonstrations to improve the administration and effectiveness of programs carried out or assisted under the act. However, funds for demonstrations under section 1110(a) authority are appropriated annually, as opposed to the section 402(a) Medicare demonstration funds, which are taken directly out of the Medicare trust

funds. As trust fund moneys were used to fund HealthChoice, section 1110(a) would not seem to apply.

In view of the questionable nature of the authority used to fund HealthChoice, on February 1988 we requested that HCFA provide us a legal opinion and explanation.

HHS Transmittal Letter Used by HealthChoice

DEPARTMENT OF HEALTH & HUMAN SERVICES — Health Care Financing Administration

6325 Security Boulevard
Baltimore, MD 21207

Dear Medicare Beneficiary:

The Federal Medicare program and local Medicare Health Maintenance Organizations (HMOs) are sponsoring information sessions about HMO Medicare options. Enrolling in an HMO is a new alternative to regular Medicare made possible by Federal legislation. Medicare HMOs can expand your Medicare coverage and save money for you and for Medicare.

We have arranged with HealthChoice, a nonprofit organization, to inform you about the new HMO Medicare options and to explain the differences between regular Medicare and enrollment in a Medicare HMO. HealthChoice has prepared the enclosed brochure and the chart which compares the premium rates and benefits of the HMO options and regular Medicare. Also enclosed is a list of sites, time, and locations of information and enrollment sessions. We urge you to attend a session to learn more about the important HMO Medicare options.

Enrollment in an HMO is strictly voluntary for Medicare beneficiaries. If you choose to enroll and become dissatisfied with the HMO, you can return to regular Medicare at any time.

If you want to learn more about Medicare HMOs, read the enclosed materials and consider attending an information session. Call 1-800-423-0236 (toll-free), and a HealthChoice representative will provide you with information by phone. Or you may send the reply card to receive written material. The Federal Medicare program wants to be sure that you have the information necessary to make an informed choice.

Sincerely yours,

Judith B. Willis
Director
Office of Research and Demonstrations

Enclosure

Comments From the Department of Health and Human Services

DEPARTMENT OF HEALTH & HUMAN SERVICES Office of Inspector General

Washington, D.C. 20201

MAY 12 1988

Mr. Lawrence H. Thompson
Assistant Comptroller General
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Thompson:

Enclosed are the Department's comments on your draft report, "Medicare: Issues Concerning the HealthChoice Demonstration Project." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard P. Kusserow
Inspector General

Enclosure

Comments of the Department of Health and Human Services
on the General Accounting Office Draft Report,
"Issues Concerning the HealthChoice Demonstration Project"

Overview

This report was prepared at the request of Senator Heinz who raised three concerns:

-- Was it appropriate for the Health Care Financing Administration (HCFA) to fund such a project, as Federal funds were used to promote private companies?

-- Were Health Maintenance Organizations (HMOs) promoted equally in the project?

-- Were names and addresses of Medicare beneficiaries, given to HealthChoice by HCFA so it could mail beneficiaries HMO promotional materials, properly safeguarded?

According to GAO, combining both education and marketing components in a single project, as HealthChoice, led to problems in implementation. These problems, along with questions surrounding HCFA's legal authority for conducting such a demonstration, raised several issues that GAO believes should be resolved if the broker concept is used in the future. These issues include:

-- Whether the legislative authority used to fund broker demonstration projects was appropriate.

-- Whether HMOs should assume complete financial responsibility for costs associated with the marketing effort. The extent to which HMOs do not pay the costs of this service represents an additional administrative cost to Medicare.

-- Whether a HCFA transmittal letter should be enclosed with the broker's HMO promotional mailings to beneficiaries. Such a letter was questionable because beneficiaries could construe it as a Federal endorsement of the particular HMOs participating in the project. Not all HMOs participated in the project, and some which did participate were not fully complying with Medicare requirements.

We would like to point out that as to the first of Senator Heinz's concerns, in September 1982, when the contract to fund HealthChoice - Portland was approved, the concept was judged to be appropriate for funding. It was not thought of as a demonstration to promote private companies but, rather, as an initiative to enhance Medicare beneficiary choice, one of the important characteristics of a competitive market. We do not believe that the demonstration promoted private companies. The word promote implies that HCFA took some action with respect to HMOs. It did not. Instead, it could be argued that HCFA promoted beneficiary understanding and choice. There may well be no way that HCFA can promote choice and inform beneficiaries about HMOs without indirectly benefiting HMOs.

In a letter dated June 27, 1984, members of Congress from Oregon urged HCFA to implement the HealthChoice demonstration and stated that the model could prove that a broker could measurably reduce Medicare costs. They believed HealthChoice was a model other States could use to extend the benefits of a competitive market to federally funded health care recipients.

With respect to the second concern, we believe HMOs were treated equally in the project. HealthChoice worked with each HMO in the test sites to obtain cooperation and agreement to participate in the coordinated enrollment periods. We talked to the HMOs and tried to convince them to participate but had no legal authority to mandate participation. While both HealthChoice and HCFA wanted all HMOs in each test site to participate in the demonstration, HCFA could not require it.

Through negotiation and discussion, HealthChoice was able to obtain almost complete participation. However, 100 percent participation would have been preferable to accomplish the main objective of the project; that is, to provide maximum choice information to beneficiaries.

As to Senator Heinz's third and final concern, we believe we tried to properly safeguard the names and addresses of Medicare beneficiaries. From the initiation of the demonstrations, we realized that in order to obtain maximum access to the Medicare population, HealthChoice would need names and addresses. HealthChoice and HCFA signed a Privacy Act release form according to Privacy Act requirements. We believed the initial agreement was sufficient for updated tapes of names and addresses that were to be sent later. We now realize that a tighter control procedure should have been implemented to ensure that all tapes sent over the 2- to 3-year period were controlled. Most of the information was controlled properly, and we believe that HealthChoice understood and abided by the Privacy Act requirements. Its intent and HCFA's intent was to keep the names and addresses strictly under HealthChoice's purview for use in the demonstration.

GAO Recommendation

That the Administrator of HCFA not fund additional broker projects without first reviewing HCFA's authority to do so, as the authorities cited for the HealthChoice demonstration, in our opinion, do not apply. To the extent that funding authority is identified and HCFA decides to authorize projects with similar objectives, we recommend that the Administrator of HCFA:

-- either not fund any projects which include marketing individual HMOs, or assure that any marketing component is distinct and funded solely by the participating HMOs;

Department Comment

It should be noted that we believe the Social Security Act contains adequate authority to fund such a project; however, we are reviewing that authority. Outside the demonstration mode, we would agree with this recommendation if it is clear that HCFA information dissemination is not considered to be HMO marketing. HCFA's current Private Health Plan Option (PHPO) Information Campaign is not intended to market HMOs, but it will likely benefit HMOs through its efforts to inform beneficiaries.

GAO Recommendation

-- not allow a HCFA transmittal letter advocating the HMO option to be included in any project or effort involving the marketing of HMOs; and,

Department Comment

We believe HCFA should not endorse HMO enrollment. We also believe HCFA did not endorse or advocate HMO enrollment by virtue of the transmittal letter that was sent in the HealthChoice demonstration. A careful review of that letter reveals that HCFA's purpose is to encourage beneficiaries to read enclosed materials, to attend an information session, and to use the information before making a choice.

GAO Recommendation

-- establish written procedures for monitoring compliance with Privacy Act provisions when releasing Medicare records. These procedures should assign responsibility for assuring that Privacy Act release agreements are properly completed.

Department Comment

There are already in place departmental regulations to "Establish written procedures for monitoring compliance with the Privacy Act provisions when releasing Medicare records" as recommended by GAO. CFR 48 Subpart 315.70 requires that all special clearances and requirements including the Privacy Act be listed and appropriate documents be attached to a Request for Contract before it can be approved. The Goverment-wide and departmental imposed clearances and requirements are set forth in 48 C.F.R. section 307.105-2. Further, the Project Officers' Handbook requires project officers to ensure that the necessary Privacy Act language is included in a contract and that a contractor abides by the requirements. In addition, the HCFA Privacy Act Officer periodically reviews a sampling of contracts to ensure proper compliance.

Whenever HCFA releases data, whether for research or other legitimate purposes, the entity receiving the data is required to sign a Data Release Agreement. This agreement requires, among other things, that the entity use the records only for a stated purpose. No attempt can be made to link information from any other source to the records for any specific individual. The entity dates and signs the agreement acknowledging that it has received and read the Privacy Act and is aware that any person who knowingly and willingly requests or obtains any records under false pretense shall be guilty of a misdemeanor and fined up to $5,000 under the Privacy Act.

We believe that the GAO report has dealt with this project as though it were implemented under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) rather than under HCFA's demonstration authority. Clearly, the project could not have been fully implemented under TEFRA. However, the purpose of demonstration programs is to test and evaluate new concepts which would not be possible under existing authority. Until such evaluation can be completed, we believe it is premature to draw conclusions about the wisdom or efficacy of a demonstration.

Technical Comments

Now on p. 1

Page 2, Line 6

The text implies that Item (2) was an objective of the demonstration. In the background section beginning on page (4), objectives do not include "decreasing HMO administrative cost." As the report states on page 7, line 8, the cost sharing approach might be a cost-efficient way of conducting information programs. We believe GAO has assumed this suggestion was an objective. We do not believe it was.

Now on p. 7

Page 7, Line 10

The California demonstration was a cooperative agreement awarded as a result of a general Federal Register solicitation which requested applications to conduct research and demonstration across a broad range of topics, including broker models. The solicitation was not designed specifically to test broker models in geographic areas, as the text may imply.

Now on p. 7

Page 9, Line 3

The text implies HCFA gave equal emphasis to education and HMO marketing, which we do not believe was the case. Under a demonstration, HCFA can test concepts not possible under the regular program. Often in demonstrations, several concepts are tested; however, the evaluation of the demonstration is designed to assess each.

Now on p. 9

Page 10, Line 16

HCFA and HealthChoice discussed the pros and cons of including comparative information on nonparticipating HMOs. We decided it would not be wise to include the detailed information on benefits since the HMO would not review and comment on its content. We believed it not advisable to list benefits that may not be correct or worded the way the HMO would prefer. This was a limitation necessitated by the nature of a voluntary demonstration.

Now on p. 9

Page 10, Line 23

We believe the evaluation of the demonstrations will address this issue.

Now on p. 10

Page 11, Line 9

We object most strenuously to GAO's assertion that the transmittal letter advocates that beneficiaries join an HMO. While everyone interprets written language differently, the quoted sentence, "Medicare can ...," is a true statement but does not endorse or advocate HMO enrollment. The letter went through several reviews, and we were careful to emphasize that we wanted beneficiaries to read and use the information presented.

Now on p. 11

Page 13, Line 4

There is a statement concerning two health maintenance organizations against which "HCFA's compliance branch was considering or had undertaken compliance actions because of violations of Medicare requirements which occurred during the period covered by the HealthChoice project." The first health maintenance organization referenced is FHP, Inc., which has its headquarters in Fountain Valley, CA. The problems cited, violation of the 50/50 requirement and acceptable availability and accessibility of care, were for FHP's regional components in Arizona and New Mexico respectively. They were not issues in the Los Angeles area where FHP was participating in this demonstration project. Correspondence from HCFA to FHP, Inc., on these problems was addressed to FHP, Inc.'s President, Robert Gumbiner, M.D., in Fountain Valley. We believe GAO was not aware of the concept of a regional component for a federally qualified HMO and may have thought that any correspondence to Dr. Gumbiner referred to FHP's Los Angeles operations.

Now on p. 11

Page 13, Line 22

The demonstration did not intend to market HMOs. However, unless HCFA prohibits an HMO from marketing or enrolling beneficiaries, HealthChoice could not cease informing beneficiaries about a particular HMO. We did coordinate the HealthChoice demonstration activity with appropriate regional office staff and were not aware of the fact that any HMO contracts had been terminated or that enrollment was prohibited.

Comments From HealthChoice, Inc.

HealthChoice, Inc.

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(503) 228-2567

April 28, 1988

Lawrence H. Thompson
Assistant Comptroller General
United States General Accounting Office
Human Recources Division
Washington D.C. 20548

Dear Mr. Thompson:

Enclosed are comments from HealthChoice Inc. on the draft report to Senator John Heinz entitled "Medicare: Issues Concerning the HealthChoice Demonstration Project". We welcome the opportunity to comment and appreciate being able to respond before the report is finalized.

If we can be of further assistance, please feel free to contact me.

Sincerely

Colleen Cain

Colleen Cain
Executive Director

May 5, 1988
HealthChoice, Inc.

General comment:

The GAO report does not discuss the purpose of the broker model or evaluate the results achieved by HealthChoice in educating Medicare beneficiaries to make appropriate choices.

It is important to note that at the time that HCFA funded the HealthChoice demonstration, HMO's were not yet contracting with HCFA because the applicable TEFRA regulations had not been completed. At this time HCFA was in the demonstration phase evaluating many aspects of HMO contracting. HCFA had the goal of exploring how best to inform beneficiaries of the HMO option through Medicare. This interest was stimulated by the desire to achieve cost containment and consumer protection through the introduction of HMOs into the Medicare system. The context for HCFA's interest included:

An environment in which HMOs as a vehicle for insurance for the general population was just gaining momentum. Medicare beneficiaries had generally not been exposed to the HMO concept. Through the broker model, HCFA was able to inform beneficiaries of the new option.

A marketing environment for private Medicare supplement plans that is replete with abusive sales tactics. HCFA wanted to control these abuses.

A confused Medicare population. Surveys showed that Beneficiaries didn't understand their Medicare benefits. HCFA wanted to provide a forum to create informed consumers who could force HMOs to compete by providing the best benefits for the lowest premium. Key to the broker model was the dissemination of comparison charts arraying the costs and benefits of the participating HMOs side by side.

A desire within HCFA to keep administrative costs as low as possible. Through the broker demonstration, HCFA devised a method of controlling the content of the information that was given to Medicare beneficiaries while building a model that would be paid for by participating HMOs.

Subsequent experience with HMOs has shown that marketing practices can create problems for Medicare beneficiaries. HealthChoice has seen that comparison information is key to informing beneficiaries about the options available.

What follows are comments about some of the specific concerns raised in the GAO report.

1. Compensation and participation: As correctly stated in the draft report, the demonstrations were designed for HCFA and the HMOs to share the cost and to phase in complete payment for HealthChoice services by the HMOs. Of course, this meant that participation by each HMO was voluntary since the HMO would eventually by paying 100 percent of the cost. The report also addressed the question of whether all HMOs were "promoted" equally. All HMOs in the three areas were offered and strongly encouraged to participate in the demonstration. Complete participation by all HMOs could not be mandatory due to the compensation arrangement by the HMOs. Both of these issues are addressed by the report but the relationship between them is not addressed. The design of the project was an effort to demonstrate whether it was possible to offer broker services to encompass all HMOs offered in an area with part or all of the payment of the services by the HMOs themselves. If the model had required that HealthChoice supply beneficiaries with information on all available options, it would be necessary for HCFA to pay all or a greater proportion of the costs.

2. Marketing costs, additional costs to Medicare, marketing abuses

If HMO's are part of the Medicare program, it is important that beneficiaries be informed about the program. In addition to the objective to enroll beneficiaries into the program, part of the function of "marketing" is to inform beneficiaries of the existence of an option. However, it is important to recognize that if this function is carried out solely by the HMOs themselves, traditional HMO marketing methods in some cases have lead to problems. Deceptive practices and confusion among beneficiaries due to simultaneous marketing by several HMOs have been the biggest problems. If the HMO model were to be successful, the costs to assure unbiased information about the options, whether this is called "marketing" or not, is indeed a cost of implementing and operating the program to be borne by the federal government. The costs of the broker demonstration, if the goals of the broker demonstration are met, can be viewed as part of the cost to conduct HMO contracting for Medicare services. It is important to note also that HCFA paid only for the initial demonstration. HCFA was paying for the development of the broker model. The model was designed so that after the demonstration period, the health plans would pay the entire cost.

Another point made in the draft report was that it is inappropriate to combine education and marketing. In contrast to the position adopted by the draft report, it is not easy in the case of HMO Medicare services to separate the educational component from the marketing component as the report suggests. Many beneficiaries who attend an informational meeting about Medicare's fee-for-service and HMO options have specific questions about a particular HMO due to their experience through an employer plan or through a friend or relative. Even those beneficiaries who come to a meeting or read material about the options with little prior knowledge are drawn logically to the next step: "This sounds good, so what HMOs are available?" "How are they different?" The broker model assumes that the information should be made available at the same time, in an unbiased format. The model argues that by refusing to provide this information at the same time, the beneficiary who truly wishes to further explore the benefits and rates of more than one HMO must then make several more telephone calls and attend more meetings.

3. HCFA's goals for HMO enrollment in the early 1980's

Several references in the draft report concern the posture of HHS and HCFA in promoting enrollment in HMOs. It is our understanding that to adequately test the HMO demonstration projects as a whole, HCFA did intend to explicitly and implicitly "promote" enrollment in HMOs so that a large enough base of enrollment would be in place to test hypotheses about such issues as cost savings and adverse selection. During the late 70's and early 80's, the HMO demonstrations were the primary cost containment strategy in place for Medicare spending.

4. Dual role in education and marketing

The Portland demonstration was intended to determine if the educational approach to marketing a menu of HMOs was not only more cost-effective but would serve as an alternative to some of the aggressive marketing campaigns that occurred in some areas of the country. In Portland, the broker was to serve as the exclusive source of information about these HMOs. The assumption underlying the San Francisco and Los Angeles demonstration was different; here the HMOs were more established and the model provided the educational approach to marketing by HealthChoice in addition to the individual marketing by the HMOs.

5. Enrollment methods

The draft report does not distinguish between the Portland and California projects in the system for enrolling members. In the Portland model, Medicare beneficiaries do enroll through HealthChoice and the applications are processed and then forwarded on to the HMO. In the California "open enrollment" model, all applications are forwarded directly to the HMO.

6. Transmittal letter

The draft report describes the transmittal letter to beneficiaries from HHS as an endorsement of the HMOs. It is important to note that before TEFRA, under the HMO demonstrations, HHS regularly sent notices to every beneficiary in the HMO's service area whenever a new HMO signed a contract. This was a regular practice for several years. As stated earlier, this was one of the vehicles which was used to inform beneficiaries of the existence of this option. When the demonstrations were conducted, HHS was seeking ways besides the direct HMO marketing model to make beneficiaries aware of this type of Medicare benefit. By including a transmittal letter as part of the broker demonstration, HCFA was informing beneficiaries of this method of getting information about Medicare HMOs.

The draft report also describes problems of certain HMOs in complying with the 50/50 rule and other financial regulations. This should be seen as a weakness of the HMO compliance system, not the broker model.

In conclusion, the broker model remains a viable method of informing Medicare beneficiaries about the Medicare HMO option. If HCFA wanted to insure that all HMO's be represented by the broker, HCFA could mandate participation, or pay for the entire costs of the broker. HCFA could also encourage participation through an incentive program.