



DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

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MAY 28 2009

Mr. David B. Snow, Jr.
Chairman of the Board and Chief Executive Officer
Medco Health Solutions, Inc.
100 Parsons Pond Drive
Franklin Lakes, New Jersey 07417

Reference Number: 06-44385

Dear Mr. Snow:

The U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR), has completed its investigation of the above referenced complaint, received by OCR on October 24, 2005, against Medco Health Solutions, Inc. (Medco). The complaint was filed by the complainant on behalf his mother (the affected party) and all limited English proficient (LEP) members of Medco. By "LEP members," we mean those LEP individuals who are entitled to access Medco's services through their arrangements with health plan sponsors and other entities that have contracted with Medco. The complaint alleged discrimination on the basis of national origin. Specifically, the complaint alleges that Medco failed to provide LEP members, including the affected party, with meaningful access to mail-order pharmacy services and other pharmacy benefit management services provided by Medco.

Background

OCR conducted its investigation in accordance with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 45 C.F.R. Part 80, which prohibit discrimination on the basis of race, color and national origin. OCR reviewed documentation submitted by the complainant and Medco. OCR also spoke with the complainant and interviewed Medco staff. During the course of the investigation, OCR identified certain concerns relating to Medco's provision of language assistance services, and discussed these concerns with Medco's designated representative. Medco's designated representative indicated that, within Medco, there was a perceived business need to address the issue of language assistance services and expressed an interest in resolving the allegations of the complaint. Thereafter, OCR and Medco agreed to address the issues in the complaint through the implementation of corrective actions. To that end, Medco provided OCR with its written assurance that it is willing to implement a number of measures to strengthen its provision of language assistance services to LEP members with whom Medco directly communicates.

Medco identifies itself as one of the nation's largest pharmacy benefit managers (PBMs). Medco indicates that, as a PBM, it administers prescription drug benefit plans on behalf of plan sponsor clients, such as private and public employers, health plans, labor unions and government agencies. Medco states that it provides its clients with "core" pharmacy benefit management

services, including third-party claims processing, formulary administration, benefit plan communications and other similar activities. With respect to its mail-order pharmacy operations, Medco's Annual Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 describes its mail-order pharmacy operations as the industry's largest in terms of the number of prescriptions dispensed: Medco's mail-order pharmacies dispensed 105.8 million prescriptions in 2008.¹ As reported by Medco to OCR, the foreign language most frequently spoken by Medco's LEP members is Spanish, followed by Chinese.

The complainant indicated that the affected party only speaks and reads Spanish. OCR learned that the affected party is a member of a specific health plan that has contracted with Medco to manage its prescription drug benefit. Under the plan covering the affected party, health plan members may use Medco's mail-order pharmacy and Medco's network of retail pharmacies. Medco administers the prescription drug claims of the health plan members. The complainant alleged that Medco discriminates against the affected party (and all LEP members) in a number of ways, including failing to translate important documents or telephone recordings. The complainant alleged that in certain circumstances, Medco calls LEP members and leaves voicemail messages only in English or sends written communications only in English which request that the LEP members take a certain action. According to the complainant, if an LEP member does not take action, because he/she did not understand the request, then this may result in Medco's cancelling the LEP member's prescription (re)fill request, which is particularly problematic for an individual trying to manage a chronic condition, such as high blood pressure.

Medco's Commitments to Improve Service to Limited English Proficient (LEP) Persons

Following the initiation of OCR's investigation, Medco informed OCR that in late 2008, it instituted a project (referred to as the "Other Than English Language" project), staffed with a core team of senior level Medco employees. Through the phased implementation of certain actions throughout 2009, and the identification of certain goals to be addressed beyond 2009, the project will implement changes to Medco's systems, processes, policies and procedures, focusing on the Spanish language throughout 2009. Medco indicated that the core team expects that this will be a multi-year project that will continue to work on other languages, in addition to Spanish, after 2009.

In summary, Medco identified to OCR certain actions that it will take to improve Medco's ability to identify and track LEP members' language preferences, thus improving staff's ability to access such information and permitting Medco to ensure that certain written communications are sent, and certain outbound telephone calls are placed, to LEP members in their primary language. OCR learned that the systems, processes, policies and procedures created and implemented by Medco will include an ongoing assessment of which communications must be offered in languages other than English, and which languages are required to be supported.

¹ Medco's Annual Report indicates that, through its arrangements with networks of retail pharmacies (approximately 60,000 independent and chain retail pharmacies), its specialty pharmacy and its mail-order pharmacies, Medco administered 586 million prescriptions in 2008, serving the needs of more than 60 million people.

OCR also learned that, although Medco continues to have telephonic interpreter services available for over 150 languages other than English, Medco expanded the number of bilingual staff who speak Spanish, and committed to make certain changes to the current telephone systems to improve Medco's ability to route Spanish-speaking members to such bilingual staff.

Medco also committed to assess the feasibility of methods to improve the provision of notice to LEP members about the availability of language assistance services. To this end, Medco identified to OCR a number of specific initiatives being evaluated, relating to written communications from Medco and Medco's internet website. Among the initiatives being considered are: including a footer in Spanish on all Medco communications (for example, "para informarse en español llama al 1-800-123-4567"); adding language to Medco's website; printing certain communications with English on one side and Spanish on the other; and/or the insertion of a Spanish-language notice in certain pharmacy communications, which notice would inform the LEP member that he/she may call Medco for language assistance services.

Medco also indicated that it is developing a process to ensure that Medco staff at call centers and pharmacies, who are either expected to communicate directly with LEP members in a language other than English, or are expected to function as an interpreter with English-speaking Medco staff, are assessed as to their proficiency in that language and, to the extent that they are expected to function as interpreters, their competency at interpreting.

OCR also learned that Medco will monitor the systems and processes that it implements as a result of the "Other Than English Language" project. OCR confirmed that this monitoring will include periodic assessments of the effectiveness of such systems and processes, and that Medco will train all relevant staff on such systems, processes, policies and procedures.

Additionally, Medco agreed that, during the year following the date of this letter, Medco (through its designated representative) will periodically update OCR on significant activities relating to Medco's implementation of the foregoing measures. OCR agreed to continue to serve as a technical assistance resource throughout that year, as reasonably necessary and as requested by Medco.

Conclusion

Based on the above described commitments and actions, OCR has determined that further investigation is not necessary and OCR has closed the case as of the date of this letter.

Advisements

OCR's determination is not intended, nor should it be construed, to cover any issues regarding Medco's compliance status with Title VI which are not specifically addressed in this letter. It neither covers issues or authorities not specifically addressed herein nor does it preclude future determinations of compliance that are based on subsequent investigations.

Please note that 45 C.F.R. § 80.7(e), provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against an individual for the purpose of interfering with any

right, or privilege secured by Title VI or its implementing regulation, or because an individual has made a complaint, testified, assisted or participated in an investigation, proceeding or hearing under the Title VI implementing regulation.

Under the Freedom of Information Act, it may be necessary for OCR to release this document and related correspondence and records upon request. In the event OCR receives such a request, we will seek to protect to the extent provided by law, personal information the disclosure of which would constitute an unwarranted invasion of privacy.

We appreciate the cooperation and professionalism extended to OCR by Paul E. DelloRusso, Esq., Assistant Counsel. If you have any questions, please contact Linda C. Colón, Deputy Regional Manager, or me at (212) 264-3313.

Sincerely,

/s/

Michael R. Carter
Regional Manager
Office for Civil Rights
Region II

cc: Daniel C. Walden
Senior Vice President – Corporate Compliance
Officer and Chief Privacy Officer
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