

Module 4-Marketing Medicare Adv and Part D Plans

1. Module 4-Communications and Marketing Rules for Medicare Advantage and Part D Plans

1.1 *Communications and Marketing Rules for Medicare Advantage and Part D Plans*



1.2 Navigation Instructions

Navigation Instructions

- The "PREV" and "NEXT" buttons at the bottom of each page will take you backwards and forward through the course one page at a time.
- Please note: Students are required to view each slide. Users can view the current slide and any slide they previously viewed but will be unable to skip and or jump ahead within the menu.
- Click the menu icon (☰) to expand and or collapse the table of contents.
- You may download content material by clicking on "Download Slides" located on the left hand side under "Download Content Materials".

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1.4 LEARNING OBJECTIVES

LEARNING OBJECTIVES




- | | | | |
|-----------|---|-----------|---|
| 01 | What are communications | 06 | Permitted promotional and marketing activities |
| 02 | What activities constitute marketing and what materials are marketing materials | 07 | The difference between educational and marketing events |
| 03 | The special rules for marketing Medicare health plans | 08 | Rules regarding agent compensation |
| 04 | Required disclosures and rules for making marketing appointments | 09 | Plan and CMS oversight and enforcement of the marketing rules |
| 05 | Prohibited marketing and communications practices | | |

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1.5 Training Roadmap: Part 1

A graphic showing a winding road with four location pins (yellow, green, blue, red) and a purple banner reading "Training Roadmap: Part 4".

Training Roadmap: Part 4

- Key terms and general background information
- Discussion of marketing activities
- Required and prohibited marketing practices
- Distinct issues
- Promotional activities
- Marketing in a health care setting and employer/union groups
- Educational events
- Rules regarding agent compensation
- Oversight and enforcement of the marketing requirements, including CMS concerns

The AHIP logo, featuring the letters "AHIP" in a bold, sans-serif font with a stylized starburst or arrow shape above the "I".

1.6 Regulation of materials and activities that discuss and/or promote Medicare Health Plans and Part D Plans

Regulation of materials and activities that discuss and/or promote Medicare Health Plans and Part D Plans

- CMS regulates activities and materials that provide information to current and prospective enrollees based on whether they are “marketing” or “communications.”
- Marketing activities and materials are generally subject to a higher degree of regulation and oversight.



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1.7 What are Communications?

What are Communications?

- **Communications** are activities and use of materials to provide information to current and prospective enrollees.
- All activities and materials aimed at prospective and current enrollees, including their caregivers and other decision makers associated with a prospective or current enrollee, are “communications.”



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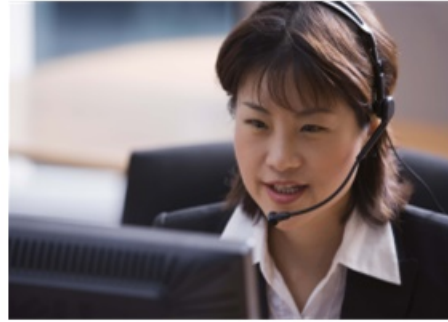


1.9 Regulation of Marketing Activities in General

Regulation of Marketing Activities in General

CMS regulates marketing activities in a variety of ways, including:

- **Setting** - CMS has rules regarding marketing in a health care setting versus marketing in other settings and marketing at educational versus marketing events.
- **Who may market** - CMS requires marketing representatives to comply with state laws concerning licensure; CMS places strict limits on marketing by health care providers.
- **Timing** - CMS regulates when marketing representatives can begin marketing the next year's plans.
- **Contact** - CMS regulates how marketing representatives can contact potential enrollees.
- **Content** - CMS regulates what marketing representatives may say to enrollees and potential enrollees.



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1.10 What are Marketing Activities?

What are Marketing Activities?

Examples of marketing activities include:

- Providing a presentation on health plan benefits to Medicare beneficiaries where the intent is to steer them toward a plan or set of plans
- Participating in an event where health plan brochures and a summary of benefits are distributed
- Meeting with a Medicare beneficiary to review the Annual Notice of Change and encourage him or her to remain enrolled in his or her current Medicare plan
- Passing out plan-specific benefits information and agent business cards at a health fair
- Accepting enrollment forms and performing enrollment at marketing/sales events



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1.11 What are Marketing Activities - Case Study

What are Marketing Activities - Case Study

Mr. Travis calls Agent Watson because he has questions about all the extra benefits Medicare Advantage plans may offer and he's thinking about switching from his Medigap plan. Agent Watson discusses the range of supplemental benefits offered by Superior Care, a plan he represents and furnishes Mr. Travis with a summary of benefits. By discussing benefits and promoting enrollment in Superior Care, Agent Watson is marketing.



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1.12 Regulation of Marketing Materials

Regulation of Marketing Materials

CMS regulates materials that qualify as marketing materials as follows:

- **Content:** CMS may require that certain disclaimers or other information be included in marketing materials. In addition, CMS prohibits the use of certain claims or language.
- **Review and Approval:** CMS requires that all marketing materials be submitted to CMS for approval and/or review.
 - Materials developed for use with employer/union group members are not subject to CMS prior review and approval.



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1.13 What are Marketing Materials? Format

What are Marketing Materials? Format

Depending on the content, marketing materials may include, but are not limited to the following:

- Materials such as brochures; posters; advertisements in media such as newspapers, magazines, television, radio, or billboards;
- Internet materials such as webpages, mobile applications, and social media posts;
- Materials used by marketing representatives such as scripts or outlines for telemarketing or other presentations; and
- Presentation materials such as slides and charts.



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1.14 What Materials are not Marketing Materials?

What Materials are not Marketing Materials?

Regardless of intent, if the materials that do not contain any of the following content, they are **not** marketing materials:

- Information about benefits or benefit structure;
- Information about premiums and cost sharing;
- Comparisons to other Plan(s)/Part D sponsor(s);
- Rankings or measurements in reference to other Plan(s)/Part D sponsor(s); or
- Information about Star Ratings.

CMS specifically designates certain other materials, which may include this content, as not meeting the definition of marketing because they are not intended to draw a prospective or current enrollee's attention to a plan or group of plans to influence a beneficiary's decision when selecting and enrolling in a plan or deciding to stay in a plan, for example, CMS designates the Evidence of Coverage as a communication material, while the summary of benefits is marketing material.



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1.15 What are Examples of Marketing Materials?

What are Examples of Marketing Materials?

Examples of marketing materials include the following if they contain marketing content:

- General audience materials such as brochures, direct mail, newspapers, or Internet sites that promote specific plans and discuss their star ratings.
- Marketing representative scripts or outlines for telemarketing, enrollment or other presentations that discuss plan benefits.
- Presentation materials such as slides and charts that explain the benefits of enrolling in a particular plan.
- Promotional materials such as brochures or leaflets, including materials for circulation by physicians, other providers, or third parties that discuss plan rankings and benefits.
- Social media (e.g., Facebook, Twitter, YouTube, etc.) posts.



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1.16 What are Examples of Materials that ARE NOT Marketing Materials

What are Examples of Materials that ARE NOT Marketing Materials

- A flyer that says “Superior Health Care Co. offers many Medicare Advantage plan choices. One may be right for you! To find out more, call us at 1-800-888-8888.” (Does not include benefit, cost-sharing, premium, star rating or comparison information).
- A letter sent to enrollees of Superior Health Care Co. to remind them to get their flu shot. The letter says, “Superior Health Care Co. enrollees can get their flu shot for \$0 copay at any network pharmacy...” (The intent of the letter is not intended to steer enrollees into staying with the Plan, but instead to encourage them to get a flu shot.)
- Materials specifically designated by CMS as communications because they do not meet the “intent” standard, such as the Evidence of Coverage, formulary or provider directory.

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1.17 Regulation of Communications Materials and Activities

Regulation of Communications Materials and Activities

Materials:

Content: While CMS generally does not require review and approval of communications materials; it may require certain disclaimers to be used in those materials. In addition, CMS prohibits the use of certain claims or language.

CMS prohibits plans and their marketing representatives from distributing communications that are materially inaccurate, misleading, or otherwise make misrepresentations or could confuse beneficiaries.

Activities:

Contact - CMS regulates how marketing representatives can contact potential enrollees.

Content - CMS regulates what marketing representatives may say to enrollees and potential enrollees.

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1.18 Medicare Marketing and Communications Rules

Medicare Marketing and Communications Rules

The Medicare marketing and communications rules apply to the following types of Medicare health plans and Part D plans:

- Medicare Advantage (MA) only plans
- Medicare Advantage Prescription Drug (MA-PD) plans
- Prescription Drug Plans (PDPs)
- 1876 Cost plans
- Medicare-Medicaid Plans (MMPs)
 - For MMPs, marketing requirements may be modified by the state-specific requirements. Each state in which MMPs are offered has state-specific marketing guidelines and CMS approved model documents. Those guidelines and documents can be accessed at <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/MMPInformationandGuidance/MMPMarketingInformationandResources.html>

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1.19 Medicare Communications and Marketing Rules: Plan Marketing Representatives

Medicare Communications and Marketing Rules: Plan Marketing Representatives

Plan marketing representatives include:

- individuals employed by a plan and
- individuals or entities under contract to the plan through a direct or downstream contract
 - This would include brokers and agents (contracting directly with the plan or through an agency or other entity), third party marketing organizations (TMOs) such as a field marketing organizations (FMOs), general agents (GAs), or other marketing contractors).

Plans are responsible for ensuring compliance with Medicare rules by their marketing representatives.



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1.20 Plan Marketing Representatives - Case Study

Plan Marketing Representatives - Case Study

Agent Johnson works for an agency that has a contract with PrimeMedicare health plan, a Medicare Advantage organization, to offer marketing services. Agent Johnson returns calls to individuals who fill out an online form indicating that they want to be contacted by a representative of PrimeMedicare. Agent Johnson is a marketing representative of PrimeMedicare. Thus, he is obligated to comply with all marketing requirements, including those regarding using only approved call scripts to conduct marketing.



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1.21 Medicare Communications and Marketing Rules: Marketing Representatives - State Licensure

Medicare Communications and Marketing Rules: Marketing Representatives - State Licensure

- Plan sponsors must contract with or employ as marketing representatives only individuals who are licensed by the state to conduct marketing activities in that state, and whom the plan has informed the state it has appointed, consistent with the appointment process provided for under State law.
 - Plans must comply with state requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual's conduct.
 - Plans must report to States termination of agents or brokers including the reasons for the termination if State law requires that the reasons be reported.



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1.22 Marketing Representatives - State Licensure Case Study

Marketing Representatives - State Licensure Case Study

Agent King is employed by an agency under contract with HealthMax health plan, a Medicare Advantage organization that offers plans in multiple states. The agency maintains a website marketing the Medicare Advantage plans with which it has contracts. Agent King follows up with individuals who request more information about HealthMax via the agency's website and tries to persuade them to enroll in HealthMax. Agent King is a marketing representative of HealthMax. Thus, he must be licensed and appointed in every state in which beneficiaries to whom he markets HealthMax are located. He may not submit enrollment applications or receive commissions for enrollees residing in states in which he is not licensed and appointed.

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1.23 Medicare Communications and Marketing Rules: Marketing Representatives Training

Medicare Communications and Marketing Rules: Marketing Representatives Training

- All employed and contracted representatives marketing MA and Part D plans must complete training each year on Medicare rules and regulations and on details specific to the plan products they sell.
- They also must pass a written test each year that demonstrates thorough familiarity with both the Medicare program and the products they are selling.
- Agents/brokers marketing only employer/union group plans are not required to be tested. However, plans may choose to require testing.
- Marketing representatives of MA and Part D plans must provide plan sponsors with documentation of completed training and testing (as applicable).



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1.24 Permitted Marketing Representative Activities

Permitted Marketing Representative Activities

Under the Medicare Communications and Marketing Guidelines, permitted marketing representative activities include, but are not limited to:

- Conducting sales presentations;
- Holding one-on-one sales appointments with potential enrollees;
- Providing business reply cards at educational events;
- Creating and distributing communication materials;
 - Marketing representatives should make sure that their contracts with Medicare Health plans allow them to create and distribute such materials, and/or whether the plan must approve the materials.
 - Agent created communications materials must comply with all relevant requirements, such as including certain disclaimers.
- Distributing marketing materials as long as CMS has accepted/approved those materials as submitted through the Plan(s)/Part D sponsor(s) with whom the broker contracts; and
- Using CMS-created materials provided the materials are not modified in any way.



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1.25 Unsolicited Contacts

Unsolicited Contacts

Marketing representatives are prohibited from making unsolicited contact with beneficiaries, including through:

- Door-to-door solicitation, including leaving leaflets, flyers or door hangers at a residence or on someone's car;
- Approaching beneficiaries in common areas such as parking lots, hallways, lobbies, or sidewalks; or
- Telephonic solicitation, including text messaging.
- The prohibition on making unsolicited contact does not extend to e-mail, conventional mail and other print media such as advertisements.



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1.26 Unsolicited Contacts, Continued

Unsolicited Contacts, Continued

- Marketing representatives may not make unsolicited calls about other business as a means of generating leads for Medicare plans (e.g., bait and switch strategies).
- Marketing representatives may not make unsolicited calls based on referrals. However, they may leave business cards with beneficiaries for distribution to friends they are referring.
- Enrollees who are voluntarily disenrolling may not be contacted for sales purposes or be asked to consent to sales contacts.
- Marketing representatives may not make calls to beneficiaries who attended an event unless the beneficiary gave express permission at the event for a follow-up call (there must be documentation of permission to be contacted).



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1.27 Unsolicited Contacts Example

Unsolicited Contacts Example

Agent Jackson sells life insurance in addition to MA plans. Agent Jackson makes a cold call to a beneficiary to sell her life insurance. During the conversation, Agent Jackson asks the beneficiary if she would like to learn more about Medicare Advantage plans. Agent Jackson has violated the prohibition against making unsolicited calls about other business as a means of generating leads for Medicare plans.



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1.28 Unsolicited Contacts: Permitted

Unsolicited Contacts: Permitted

Marketing representatives may:

- Place outbound calls to existing enrollees to conduct normal business related to enrollment in the plan, including calls to enrollees who have been involuntarily disenrolled to resolve eligibility issues.
- Call former enrollees after disenrollment to conduct disenrollment surveys for quality improvement purposes.
- With advance approval from CMS, call low-income subsidy eligible enrollees that a plan is prospectively losing due to reassignment to encourage them to remain in their current plan.
- Call their current enrollees to discuss/inform them about general plan information such as Annual Enrollment Period dates, availability of flu shots, upcoming plan changes, educational events, and other important plan information.



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1.29 Unsolicited Contacts: Permitted, continued

Unsolicited Contacts: Permitted, continued

Marketing representatives may:

- Call current enrollees, including those in non-Medicare products, to discuss plan business, for example, they may:
 - Contact individuals enrolled in one of the MA organization's commercial products when the individual is aging into Medicare,
 - Contact the MA organization's Medicaid plan enrollees to discuss Medicare products,
 - Contact current MA enrollees to promote other Medicare plan types or to discuss plan options/ benefits, and
 - Contact the MA organization's Medigap enrollees regarding MA, PDP, or cost plan options.
- Return calls or messages from individuals who initiate contact and request information.
- Initiate electronic contact through e-mail. However, they must provide an opt-out process to no longer receive electronic communications.
 - Text messaging and other forms of electronic direct messaging (e.g., social media platforms) would fall under unsolicited contact and are not permitted.



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1.30 Unsolicited Contacts: Additional Information

Unsolicited Contacts: Additional Information

Marketing representatives may:

- Call beneficiaries who have expressly given permission for that specific contact, for example by filling out a business reply card or asking a plan customer service representative to have an agent contact them.
- Call a beneficiary who the marketing representative enrolled in a plan while the beneficiary is an enrollee of that organization.
- Call beneficiaries to confirm an appointment that has already been agreed to by a beneficiary. This may also be done by third parties.
- Market using mailings, websites, advertising, and public sales events. Note that websites and other materials that contain marketing content must be submitted to CMS through the plan sponsor for review and approval.



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1.32 Medicare Communications and Marketing Rules



1.33 Medicare Communications and Marketing Rules: Marketing and Educational Events

Medicare Communications and Marketing Rules: Marketing and Educational Events

- Marketing/sales events are events designed to steer potential enrollees toward a plan or limited set of plans or to encourage current enrollees to retain their plans.
- Educational events are events designed to inform potential enrollees about MA, Part D, or other Medicare programs and do not include marketing activities. (See slides titled "Educational Events" for more information.)
- Educational events may be held in public venues and hosted by the Plan/Part D Sponsor or an outside entity.
- Advertisements and invitations (in any form of media) that are used to invite beneficiaries to a marketing or educational event must include the following statement:
 - "For accommodation of persons with special needs at meetings call <insert phone and TTY number>."

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1.34 Medicare Communications and Marketing Rules: Sales Events

Medicare Communications and Marketing Rules: Sales Events

At marketing/sales events agents may:

- Discuss plan specific information such as premiums and benefits;
- Discuss the merits of a plan;
- Distribute and collect enrollment applications; and
- Distribute plan-specific advertisements, explanatory information, and general information about Medicare.

A photograph showing a red pen with a silver tip resting on a Medicare Enrollment Form. The form is partially filled out and includes fields for SSN, VA File #, Patient's Birth Date (MM/DD/YY), Sex (M/F), Patient Relationship to Insured (Self, Spouse, Child, Other), and Insured's Name and City. The title "Medicare Enrollment Form" is prominently displayed at the top of the form.

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**1.35 Medicare Communications and Marketing Rules: Sales Events,
continued**

**Medicare Communications and Marketing Rules: Sales
Events, continued**

At marketing/sales events agents may not:

- Require beneficiaries to provide contact information as a prerequisite for attending the event.
 - This includes requiring an email address or other contact information as a condition to RSVP for an event online or through the mail.
 - Sign in sheets must be labeled as optional.
- Conduct health screenings or other like activities that could give the impression of “cherry picking.”
- Use personal contact information obtained to notify individuals of raffle or drawing winnings for any other purpose.



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1.36 Medicare Communications and Marketing Rules: Educational Events



1.37 Medicare Communications and Marketing Rules: Educational Events

Medicare Communications and Marketing Rules: Educational Events

Educational events:

- May not include any sales activities such as:
 - the distribution of marketing materials; or
 - the distribution or collection of plan applications
- Must be explicitly advertised as “educational”



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1.38 Medicare Communications and Marketing Rules: Educational Events, Permitted Activities

Medicare Communications and Marketing Rules: Educational Events, Permitted Activities

At educational events, marketing representatives may:

- Engage in communications activities and distribute communication materials.
- Use a banner with the plan name and/or logo displayed.
- Distribute promotional items, including those with the plan name, logo, and toll-free number and/or website. These items must be free of benefits information and consistent with nominal gift rules.
- Provide an objective presentation to educate beneficiaries about the different ways they can get their Medicare benefits.
- Have a health care provider make an educational presentation on wellness or another health care related topic.



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1.39 Medicare Communications and Marketing Rules: Educational Events, Permitted Activities, continued

**Medicare Communications and Marketing Rules:
Educational Events, Permitted Activities, continued**

At educational events, marketing representatives may:

- Answer beneficiary-initiated questions.
- Set up marketing appointments, (this includes completing and collecting a Scope of Appointment (SOA) form).
- Distribute business cards and contact information for beneficiaries to initiate contact.
- Provide meals that comply with the nominal gift requirements.



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1.40 Medicare Communications and Marketing Rules: Educational Events, Impermissible Activities

Medicare Communications and Marketing Rules: Educational Events, Impermissible Activities

When an event has been advertised as “educational,” marketing representatives may

NOT:

- Conduct sales presentations;
- Discuss or distribute plan-specific premiums, benefits, or marketing materials;
- Distribute or collect enrollment applications.
- The following are examples of marketing/sales activities that are **prohibited** at any event that has been advertised as “educational.”
 - An agent gives a neutral informational presentation on what a Medicare Advantage plan is and then distributes summaries of benefits and applications to attendees.
 - The organization sponsoring the event sets up a table in which health plans and agents can leave their marketing materials for attendees who want it.



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1.42 Medicare Communications and Marketing Rules: Marketing at Individual Appointments



1.43 Medicare Communications and Marketing Rules Individual Marketing Appointments

Medicare Communications and Marketing Rules Individual Marketing Appointments

- Personal/Individual marketing appointments are defined by the intimacy of the appointments' location or format and typically take place in person at the beneficiary's home or a venue such as a library or coffee shop or via a telephone call.
- All individual appointments
 - must follow the scope of appointment requirements



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1.44 Medicare Communications and Marketing Rules Individual Marketing Appointments, continued

Medicare Communications and Marketing Rules Individual Marketing Appointments, continued

During individual appointments, marketing representatives may:

- Distribute plan materials such as an enrollment kit or marketing materials.
- Provide educational information.
- Provide and collect enrollment forms.

During individual appointments, marketing representatives may not:

- Discuss plan options that were not agreed to in the Scope of Appointment.
- Market non-health care related products.
- Solicit/accept an enrollment request for a January 1st effective date prior to the start of the Annual Election Period on October 15 unless the beneficiary is entitled to another enrollment period (for example, an initial enrollment period or special enrollment period).



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1.45 Required Practices: Scope of Appointment

Required Practices: Scope of Appointment

Marketing representatives **must**:

- Market only health care related products during any MA or Part D sales activity or presentation. Such products include Medicare health plans, Medigap plans, and dental plans, but not accident-only plans.
- Prior to any marketing appointment, clearly identify the types of product(s) that will be discussed, obtain agreement from the beneficiary and document that agreement.
 - Types of products include, for example, MA, PDP, Cost plans, and Medicare-Medicaid plans.

Service	Cost
PHYSICAL THERAPY	\$60/visit
AMBULANCE	\$200
HOSPITAL ADMISSION	\$1,500
HOSPITAL CONFINEMENT	\$390/day
HOSPITAL INTENSIVE CARE	\$600/day

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1.46 Required Practices: Scope of Appointment, continued

Required Practices: Scope of Appointment, continued

- Documentation for appointments may be in writing, in the form of a signed agreement (including electronic signature) by the beneficiary, or a recorded oral agreement. Any technology (e.g., conference calls, fax machines, designated recording line, pre-paid envelopes, and email) can be used to document the scope of appointment.
- For appointments made over the phone, documentation is generally a recording of the call. However, if the agent does not have a recording mechanism, the agent must obtain a written agreement signed by the beneficiary or authorized representative.
- A plan sponsor or agent may not agree to the scope on behalf of the beneficiary.

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1.47 Scope of Appointment: Documentation

Scope of Appointment: Documentation

Plans/Part D Sponsors are expected to include the following when documenting the SOA:

- Product type (e.g. MA, PDP) that the beneficiary has agreed to discuss during the appointment,
- Date of appointment,
- Beneficiary contact information (e.g. name, address, telephone number),
- Written or verbal documentation of beneficiary or appointed/authorized representative agreement,
- A statement that beneficiaries are not obligated to enroll in a plan; their current or future Medicare enrollment status will not be impacted and clearly explain that the beneficiary is not automatically enrolled in the plan(s) discussed.

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1.48 Required Practices: SOA Marketing Activities

Required Practices: SOA Marketing Activities

- During an appointment, marketing representatives may only discuss the products indicated in the scope of appointment.
- Exception: If during an individual appointment a beneficiary expresses interest in another product type, not covered in the pre-appointment scope of appointment, the marketing representative must document the second scope of appointment that includes the new product type, and then may then discuss the additional product during the same appointment.



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1.49 Required Practices: SOA Marketing Activities, continued

Required Practices: SOA Marketing Activities, continued

- Sales presentations open to the public do not require documentation of prior beneficiary agreement to the scope of the presentation.
- A beneficiary may sign a scope of appointment form at a marketing presentation for a follow-up appointment.
- When a beneficiary unexpectedly initiates contact, for example, by unexpectedly walking into a marketing representative's office, or attending a sales appointment properly set up for another individual, the marketing representative should document their agreement to the scope of the appointment.



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1.51 Telephone Marketing



1.52 Outbound Calls

Outbound Calls

- Outbound marketing scripts must be submitted verbatim for CMS review and approval (bullets or talking points are not acceptable).
- Third parties may not make unsolicited MA, MMP, Cost Plan or PDP marketing calls to potential enrollees (other than to current plan enrollees, if the third party is contracted by the plan), for example:
 - Third parties may not make unsolicited calls to provide a “benefits compare” meeting and provide those contacts to plans for ultimate use as an MA, MMP, Cost Plan or PDP appointment.
 - Third parties may not set up an appointment to discuss Medigap policies and use the appointment to discuss MA, MMP, Cost Plan or PDP products unless the third party complies with CMS’ scope of appointment guidance.
- Third parties cannot gather contact information through a website to use for marketing unless the beneficiary requests to be contacted by a plan representative.



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1.53 Marketing to Establish a New Relationship vs. to Current Clients

Marketing to Establish a New Relationship vs. to Current Clients

- CMS distinguishes between telephonic contact with a beneficiary to establish a new relationship and contact where a business relationship already exists with the marketing representative.
- When contacting a beneficiary by telephone to establish a new relationship when the beneficiary has given permission for the contact (e.g., by filling out a business reply card), the permission applies only to the entity from which the individual requested contact, for the duration of that transaction, for the scope of product previously discussed or indicated in the reply card.
- If an agent is contacting a current client or a plan is contacting current plan enrollees, consent for each specific contact is not required to discuss normal plan business.



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1.55 Other Marketing: General Audience and E-mail



1.56 General Audience Marketing

General Audience Marketing

- General audience marketing includes direct mail, newspapers, magazines, television, radio, yellow pages, and the Internet.
- Rules regarding unsolicited contacts do not apply to marketing through these materials.
- These materials are subject to CMS approval and content requirements if they meet the definition of marketing.
 - For example, if an agency wishes to place an ad in a newspaper that says “We sell Medicare Advantage plans offered by BestHealth and TopChoice. Contact us if you would like to learn more,” the ad would not meet the definition of marketing materials and would not be subject to CMS approval. (It does not include Information about the plans’ benefit structure or cost sharing or information about measuring or ranking standards).



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1.57 Use of E-mails and Social Media to Market

Use of E-mails and Social Media to Market

- Marketing representatives may initiate e-mail contact.
- They must provide an opt-out process for the individual to no longer receive electronic communications.



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1.58 Use of Social Media to Market

Use of Social Media to Market

- Plans/Part D Sponsors must submit to CMS social media (e.g., Facebook, Twitter, YouTube, LinkedIn, Scan Code, or QR Code) posts that meet the definition of marketing materials, specifically those that contain plan-specific benefits, premiums, cost-sharing, or Star Ratings.
- Social media posts are subject to marketing/communications requirements, such as the use of disclaimers.
- Re-publication of individual users' content or comment that promotes a Plan's/Part D Sponsor's product from social media sites (e.g., Facebook, Twitter, YouTube, LinkedIn, Scan Code, or QR Code) is considered a product endorsement/testimonial and must adhere to the guidance on testimonials.



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1.60 Required and Prohibited Marketing Practices: Required Practices

**Required and Prohibited Marketing Practices:
Required Practices**

COMPLIANCE



1.61 Required Practices: Marketing Activities

Required Practices: Marketing Activities

Marketing representatives must:

- Provide to prospective enrollees only CMS-approved plan-specific marketing materials or CMS marketing materials.
- Use only CMS-approved talking points and presentations if they are marketing.
- If gifts or prizes are offered, state clearly that there is no obligation to enroll.
- Provide accurate, state-specific information if Medicare-Medicaid plans (MMPs) are discussed.
- Refer beneficiaries to their State Medicaid Agency if they have questions about passive enrollment into an MMP.



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1.62 Required Practices: Marketing & Non-Health Related Activities

Required Practices: Marketing & Non-Health Related Activities

- Plans/Part D Sponsors must obtain HIPAA authorization from an enrollee prior to using or disclosing the enrollee's protected health information (PHI) to market non-health related items or services such as accident-only policies, life insurance policies or annuities.
- HIPAA authorization is specific to the use of the PHI, the individual or entity to whom it may be disclosed and may limit the amount of PHI to be used or disclosed. A general plan or provider authorization will not suffice to use or disclose PHI for marketing purposes.



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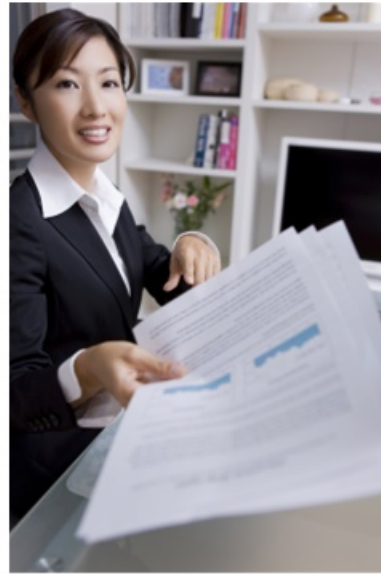


**1.63 Required Practices: Marketing & Non-Health Related Activities,
continued**

**Required Practices: Marketing & Non-Health Related
Activities, continued**

Authorizations must contain HIPAA required content.

- Plan Sponsors may send written requests to obtain the beneficiary's authorization. The beneficiary must sign and return the request before the plan can send non-health related materials.
- Authorization may also be obtained by directing a beneficiary to a website to provide consent as long as the website includes a mechanism for an electronic signature that is valid under applicable law.
- Authorization can be provided in person at marketing events, health fairs, or other public venues.
- Authorization can be provided via an email to the plan, provided that the authorization includes an electronic signature that is valid under applicable law.



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1.64 Required Practices: Required Materials with an Enrollment Form

Required Practices: Required Materials with an Enrollment Form

- When a beneficiary is provided with enrollment instructions/form, he/she must also receive:
 - Plan ratings information;
 - Summary of Benefits; and
 - Pre-enrollment checklist.
- For Dual Eligible Special Needs Plans, if Medicaid benefits are not included in the summary of benefits, a separate document including the Medicaid benefits must be included with the enrollment form.
- When a beneficiary enrolls in a plan online, the plan sponsor must make these materials available electronically, (e.g., via website links) to the potential enrollee prior to the completion and submission of the enrollment request.



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1.65 Required Practices: Required Materials at the Time of Enrollment

Required Practices: Required Materials at the Time of Enrollment

Plans must provide the following materials to new enrollees at the time of enrollment:

- Annual Notice of Change/Evidence of Coverage (ANOC/EOC) or EOC as applicable.
- Comprehensive or abridged formulary (Part D sponsors only).
- Provider directory (does not apply to PDPs).
- Pharmacy directory (Part D sponsors only).
- Low-income premium subsidy - must be provided to potential enrollees of what their plan premium will be once they are eligible for Extra Help and receive the low-income subsidy.
- Low-Income Subsidy (LIS) Rider (Part D Sponsors only), as applicable.
- Membership ID Card.
- The materials must be provided within 10 days of confirmation of enrollment or by the last day of the month prior to the effective date, whichever is later (Low-income premium subsidy must be furnished prior to enrollment effective date, the LIS rider must be sent to enrollees who qualify for Extra Help or have a change in LIS levels within 30 days of receiving notification from CMS).
- The formulary, EOC, and Provider/Pharmacy Directories may be provided in hard copy or a distinct and separate notice (in hard copy), describing where the enrollee can find the documents online and how the enrollee can request a hard copy.

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1.66 Required Practices: Plan Ratings

Required Practices: Plan Ratings

- CMS releases star ratings that allow beneficiaries to compare MA plans and Part D plans. These ratings include topics such as getting appointments and care quickly, whether members got various screening tests, vaccines, and other check-ups to help them stay healthy, how members rate the plan, and customer service.
- Beneficiaries who have access to the Internet may obtain plan rating information at <http://www.medicare.gov/>.
 - Click the “Find Health & Drug Plans” button on the left.



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1.67 Required Practices: Plan Ratings, continued

Required Practices: Plan Ratings, continued

- Plan sponsors must provide the plan's overall performance ratings to beneficiaries in the standard Plan Ratings information document.
 - The document must be provided with any enrollment form.
 - Only the Plan logo may be added to the document (no other changes or alterations are permitted).
 - The Star Ratings information document must also be prominently posted on plan websites.
 - New Plans/Part D Sponsors that do not have any Star Ratings information is not required to provide Star Ratings information until the next contract year.
 - CMS generally issues plan ratings in October of each year, and plan sponsors must update their ratings within 21 calendar days of the release of updated information on Medicare plan finder.



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1.68 Required Practices: Plan Ratings, continued

Required Practices: Plan Ratings, continued

- Plan sponsors and their marketing representatives may only reference or mention a plan's rating on an individual measure in conjunction with the plan's overall performance rating (MA-PD), the contract's highest rating, Part C summary rating (MA-only), or Part D summary rating (PDPs), with equal or greater prominence.
- Plan sponsors and their marketing representatives may not use the plan's star ratings in a manner that misleads beneficiaries into enrolling in plans based on inaccurate information.
- Plans'/Part D Sponsors' written or graphical reference to a contract's overall Star Rating must make it clear that the rating is "___ out of five (5) stars."
- Plan sponsors and their marketing representatives may only market the Star Ratings in the service area in which the Star Rating is applicable.



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1.69 Required Practices: Plan Ratings, continued

Required Practices: Plan Ratings, continued

Plan sponsors and their marketing representatives may not:

- Use a plan's star rating in an individual category or measure to imply a higher overall plan rating that is actually the case.
 - For example, a plan which received a 5-star rating in customer service promotes itself as "rated 5-stars by our enrollees," when its overall plan rating is only 4 -stars.
- Specifically, target beneficiaries in poor performing plans.
- Continue to use an old star rating after 21 days from the release of a new star rating.
- Use a star rating that applies to a contract in a different geographic area from the one in which they are marketing.

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1.70 Required Practices: Plan Ratings, continued

Required Practices: Plan Ratings, continued

- Plans/Part D Sponsors are not permitted to display or release their Star Ratings information until CMS releases the Star Ratings on Medicare Plan Finder.
- Plans/Part D Sponsors must clearly identify which contract year their Star Ratings references.
- Plan sponsors must include the following statement on all marketing materials referencing Plan Ratings information: “Every year, Medicare evaluates plans based on a 5-star rating system.”
- Plan sponsors with an overall 5-star rating may market and enroll beneficiaries year-round under a special election period (SEP).
 - If a plan sponsor with an overall 5-star rating is assessed a lower rating for the upcoming year, the sponsor must stop marketing under the SEP by November 30 of the current year.
- Plan sponsors with an overall 5-star rating may include CMS’ gold star icon on marketing materials.
 - The plans must be clear that the 5-star rating is for the applicable contract.
 - CMS’ Regional Offices will provide the gold star icon each fall.
 - Plans may create their own gold star icon (or any other icon of distinction) so long as the icon is not misleading.
- Plans with one or more contracts without 5-star ratings must not disseminate materials that imply other contracts achieved this rating. Materials must list specific contracts with overall 5-star ratings or be specific to a contract with an overall 5-star rating.

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1.71 Required Practices: Plan Ratings, continued

Required Practices: Plan Ratings, continued

- Plan sponsors with a rating below 3 stars for three consecutive years receive a low performer icon (LPI).
 - CMS notifies enrollees in these plans that if they do not make a change during the Annual Election Period, they have a one-time chance to switch to a plan with 3 stars or more by calling 1-800-MEDICARE.
- Plan sponsors with an LPI:
 - Cannot mention their star ratings without also noting their LPI status.
 - Must state that its LPI status means that it received a 2.5-star or below summary rating in either Part C and/or Part D for the last three years.
 - Cannot dispute the validity or importance of the LPI in outreach materials by showcasing a higher overall Star Rating on another contract or specific measure Star Ratings.
- If a Plan Sponsor with an LPI has an overall Star Rating of 3 or above on its marketing materials, the LPI must also be clearly stated on its marketing materials.

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1.72 Required Practices: Out-of-Network/Non-Contracted Providers

Required Practices: Out-of-Network/Non-Contracted Providers

All materials referencing out-of-network/non-contracted providers must include the following statement: “Out-of-network/non-contracted providers are under no obligation to treat <Plan/Part D sponsor> members, except in emergency situations. Please call our customer service number or see your Evidence of Coverage for more information, including the cost-sharing that applies to out-of-network services.”



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**1.74 Required and Prohibited Marketing and Communications Practices:
Prohibited Practices**



1.75 Prohibited Practices: Marketing and Communications Materials and Activities

Prohibited Practices: Marketing and Communications Materials and Activities

Marketing representatives must **NOT**:

- Market any non-health care related products (such as annuities and life insurance) during any MA or Part D sales activity or any other marketing activity for existing enrollees. This is considered cross-selling.
- Use or disclose the enrollee's protected health information (PHI) for marketing purposes, including sending any non-plan or non-health related information or otherwise contacting him/her for purposes unrelated to plan benefits administration or CMS contract execution, without first obtaining HIPAA required authorization from the enrollee.



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1.76 Prohibited Practices: Marketing and Communications Materials and Activities, continued

Prohibited Practices: Marketing and Communications Materials and Activities, continued

Marketing representatives must **NOT**:

- Knowingly target or send unsolicited marketing materials to any Medicare Advantage enrollee during the Open Enrollment Period (unless subject to a specific exception).
- Use a Medicare beneficiary to endorse a plan unless the beneficiary was an enrollee of the plan when the endorsement was created.
- Solicit enrollment applications for the following contract year prior to the start of the annual election period on October 15.
- Use marketing materials that have not been reviewed and/or approved by CMS.
- Charge beneficiaries marketing fees.
- Engage in any discriminatory activity such as attempting to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.



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1.77 Prohibited Practices: Marketing and Communications Materials and Activities, continued

Prohibited Practices: Marketing and Communications Materials and Activities, continued

Marketing representatives must NOT:

- Encourage individuals to enroll based on their health status unless the plan is a special needs plan that focuses on the beneficiary's particular condition.
- Conduct health screening or other activities that could give an impression of "cherry picking."
- Use the term "free" to describe a zero-dollar premium.
- Use the term "free" in conjunction with any reduction in premiums, deductibles or cost share, including Part B premium buy-down, low-income subsidy or dual eligibility.
- Imply that the MSA plan operates as a supplement to Medicare.
- Market that the Plan Sponsor will not disenroll individuals due to failure to pay premiums.



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1.78 Prohibited Practices: Marketing and Communications Materials and Activities, continued

Prohibited Practices: Marketing and Communications Materials and Activities, continued

- Marketing representatives must NOT engage in aggressive marketing, which includes prohibited marketing practices that have a high likelihood of misleading beneficiaries and causing harm, such as:
 - High pressure sales tactics and scare tactics. This would include activities such as pressuring a hesitant beneficiary to decide in a very short period or discouraging a beneficiary from consulting with a family member before enrolling;
 - Bait and switch strategies such as making unsolicited outbound calls to beneficiaries about other lines of business as a means of generating leads for Medicare plans; and
 - Engaging in activities that could mislead or confuse beneficiaries, such as claiming that a PFFS plan is the same as Original Medicare or a Medigap plan.



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1.79 Prohibited Practices: Marketing and Communications Materials and Activities, continued

Prohibited Practices: Marketing and Communications Materials and Activities, continued

High pressure sales example:

Agent Cooper has a face to face meeting with Ms. Ford. Ms. Ford indicates that she wants to talk to her son before moving from Original Medicare to a Medicare Advantage plan. Agent Cooper explains that her son will be proud that she's made the choice on her own and asks Ms. Ford whether she trusts him. Agent Cooper continues to encourage her to enroll during their meeting and tell her son afterward.

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1.80 Prohibited Practices: Marketing and Communications Materials and Activities, continued

Prohibited Practices: Marketing and Communications Materials and Activities, continued

Marketing representatives must NOT:

- Provide false or misleading information about the plan, including benefits, provider rules, and all other plan information.
- Make disparaging remarks about Medicare-Medicaid Plans (MMPs). Marketing representatives need to be very careful in conveying any negative points about MMP programs unless they are clearly accurate.
- Claim that Medicare, CMS, or any government agency endorses or recommends the plan.
- Lead beneficiaries to believe that the broker or agent works for Medicare, CMS or any government agency.



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1.81 Prohibited Practices: Marketing and Communications Materials and Activities, continued

Prohibited Practices: Marketing and Communications Materials and Activities, continued

Unless they are promoting a D-SNP, Marketing representatives must NOT:

- Imply that the plan is designed for dual eligible individuals.
- Claim that the Plan has a relationship with the state Medicaid agency, unless the MA plan (or its parent organization) has contracted with the state to coordinate Medicaid services, and the contract is specific to that MA plan (not for a separate D-SNP or MMP).
- Target their marketing efforts for the Plan exclusively to dual eligible individuals.

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1.82 Prohibited Practices: Marketing and Communications Materials and Activities

Prohibited Practices: Marketing and Communications Materials and Activities

Marketing representatives must NOT:

- Assert that their plan is the “best” plan or use other unsubstantiated absolute or qualified superlatives or pejoratives. (However, unsubstantiated absolute and/or qualified superlatives may be used in logos/taglines).
- Make explicit comparisons between plans, unless they can support them, such comparisons are factually based, and the comparisons are not misleading.



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1.83 Prohibited Practices: Inducements

Prohibited Practices: Inducements

Marketing representatives must NOT:

- Offer gifts or prizes to potential enrollees during an event that exceed \$15 retail value. Such gifts must be offered to all potential enrollees without discrimination and regardless of whether they enroll.
- Offer rebates or other cash inducements of any sort to entice beneficiary enrollment.
- Offer a gift or prize that is cash or a monetary equivalent.
- Provide any meal or allow any other entity to provide or subsidize a meal at any marketing event, although light snacks are permitted.



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1.84 Light Snacks versus Prohibited Meals

Light Snacks versus Prohibited Meals

- Marketing representatives should contact plan sponsor regarding the appropriateness of the food products provided and must ensure that items provided could not be reasonably considered a meal and/or that multiple items are not being “bundled” and provided as if a meal.
- Examples of foods that may be considered “light snacks” include:
 - Fruit and raw vegetables
 - Pastries and muffins
 - Cookies or other small bite-size dessert items
 - Crackers
 - Cheese
 - Chips
 - Yogurt
 - Nuts



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1.85 Prohibited Practices: Examples

Prohibited Practices: Examples

Marketing representatives cannot say:

- The government wants you to join a Medicare health plan because it helps them.
- I am certified by Medicare to sell this plan.
- If your doctor accepts Medicare, she accepts this plan.
- There are no limits on services.
- We cover all drugs without restrictions.
- If you don't like this plan, you can stop paying your premium and return to original Medicare anytime.
- It is better to choose a different company if you are sick.
- *(Name of the plan)* is the best Medicare plan you can buy.
- Medicare Advantage plans are the same as Medigap plans.
- You should opt out of Medicare-Medicaid plan (MMP) enrollment because everyone knows you will get higher quality care through a Medicare Advantage plan.

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1.86 Promoting Health Plans During the Open Enrollment Period

Promoting Health Plans During the Open Enrollment Period

The Medicare Advantage Open Enrollment Period (MA-OEP) is a period during which an individual enrolled in an MA or MA-PD plan can make a one-time change to another MA plan, elect Original Medicare, or can change Part D coverage.

For individuals enrolled in an MA plan on January 1, the MA-OEP is the first 3 months of the calendar year (different rules apply to individuals choosing an MA plan during their initial coverage election coverage period (ICEP)).

During the Open Enrollment Period (OEP), marketing representatives may not:

- Send unsolicited materials advertising the ability/opportunity to make an additional enrollment change or referencing the OEP;
- Specifically, target beneficiaries who are in the OEP because they made a choice during the Annual Enrollment Period (AEP) by the purchase of mailing lists or other means of identification;
- Engage in or promote activities that intend to target the OEP as an opportunity to make further sales; or
- Call or otherwise contact former enrollees who have selected a new plan during the AEP.

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1.87 Promoting Health Plans During the Open Enrollment Period

Promoting Health Plans During the Open Enrollment Period

However, during the OEP, marketing representatives may conduct marketing activities that focus on other enrollment opportunities, including but not limited to:

- Marketing to age-ins (who have not yet made an enrollment decision),
- Marketing by 5-star plans regarding their continuous enrollment SEP, and
- Marketing to dual-eligible and LIS beneficiaries who, in general, may make changes once per calendar quarter during the first nine months of the year.

In addition, during the OEP marketing representatives may:

- Send marketing materials when a beneficiary makes a proactive request;
- At the beneficiary's request, have one-on-one meetings with a sales agent; and
- At the beneficiary's request, provide information on the OEP through the Plan's call center.



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1.88 Beneficiary Referrals

Beneficiary Referrals

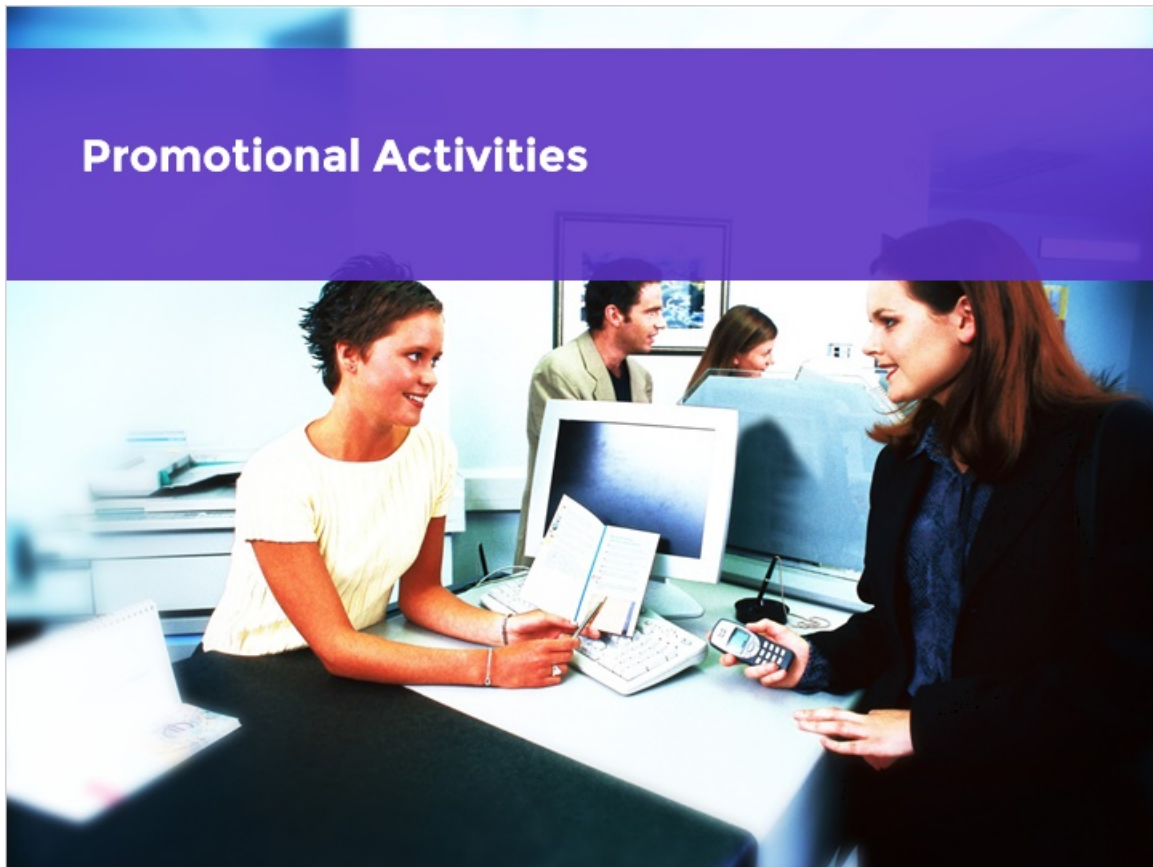
In the past, the Medicare Communications and Marketing Guidelines (MCMG) contained regulations around beneficiary referrals. Those regulations limited when a marketing representative could solicit such referrals and what types of gifts (nominal value) marketing representatives could provide in exchange for a referral. CMS has removed these provisions from the MCMG. Inducements for referrals may still be regulated under fraud and abuse laws (such as the anti-kickback statute). Marketing representatives should consult with their plans to determine whether the plans impose requirements around beneficiary referrals.



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1.90 Promotional Activities



1.91 Promotional Activities: Nominal Gifts

Promotional Activities: Nominal Gifts

- Marketing representatives may offer gifts to beneficiaries for marketing purposes as long as the gifts are of nominal value and provided regardless of enrollment and without discrimination.
 - Gifts are of nominal value if an individual item is worth \$15 or less (based on the retail purchase price of the item);
 - When more than one gift is offered, the combined value of all items must not exceed \$15;
 - Gifts must not be in the form of cash or other monetary reward or rebate, even if their worth is less than \$15.
 - Multiple gifts given to a beneficiary on different occasions may not exceed \$75 aggregate, per person, per year
 - If the gift is one large one that is enjoyed by all attending an event, the total cost must be \$15 or less when divided by the estimated attendance. Anticipated attendance may be used, but must be based on venue size, response rate, or advertisement circulation.



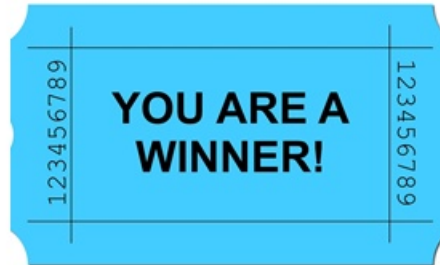
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1.92 Promotional Activities: Drawings, Prizes, Giveaways

Promotional Activities: Drawings, Prizes, Giveaways

- Plan sponsors must include a disclaimer on all marketing materials promoting a prize or drawing or any promise of a gift that there is no obligation to enroll in the plan.



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1.94 Marketing to Current Enrollees



1.95 Marketing Activities: Current Enrollees

Marketing Activities: Current Enrollees

Plan sponsors **may**:

- market non-Medicare health-related products to current enrollees only with any authorizations required by HIPAA Privacy Rules.
- market health-related products, which may include,
 - Long term care insurance, or
 - Dental or vision policies.



Plan sponsors **must**:

- allow enrollees and non-enrollees to opt out of communications describing non-Medicare health-related products.

Plan sponsors must **NOT**:

- market non-health related products to current enrollees unless they have obtained authorization from the enrollees as required by HIPAA Privacy Rules.

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1.96 Marketing in a Health Care Setting



1.97 Marketing Activities: Marketing in a Health Care Setting

Marketing Activities: Marketing in a Health Care Setting

Marketing representatives must **NOT**:

- engage in marketing activities in areas where patients receive health care services, for example:
 - Exam rooms, dialysis center treatment areas, or hospital patient rooms, pharmacy counter areas and other treatment areas where patients interact with a provider and his/her clinical team and receive treatment.

Marketing representatives **may**:

- engage in marketing activities (i.e., conduct sales presentations and distribute and accept enrollment applications) in common areas of health care settings, for example:
 - In a cafeteria, community or recreational room, waiting room, common entryway, vestibule, or conference room;
 - At a retail pharmacy, in areas away from the pharmacy counter.
- provide communication materials to be distributed and displayed in the healthcare setting.

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1.98 Marketing Activities: Marketing in a Long-term Care Facility

Marketing Activities: Marketing in a Long-term Care Facility

- Long-term care facilities include, for example, nursing homes, assisted living facilities, and board and care homes.
- Plan sponsors/marketing representatives may schedule an appointment with a beneficiary in a long-term care facility **ONLY** upon request of the beneficiary (or authorized representative).
- Plans sponsors may provide long-term care facilities with communications materials for admission packets announcing the Plan contractual relationship.
- Plan sponsors may use staff operating in a social worker capacity to provide information, including marketing materials, to residents. Such information must not include an enrollment form and the social worker may not accept or collect a scope of appointment or enrollment form on behalf of the plan sponsor.



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1.99 Marketing Activities: Example

Marketing Activities: Example

Agent King has a cousin who is a nurse at a local hospital. Agent King has asked his cousin to give his card to her patients when she checks in on them in their hospital rooms and encourage them to call him about their Medicare options. Agent King and his cousin will be violating the prohibition against marketing where a beneficiary receives care.

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1.101 Marketing to Employer/Union Groups



1.102 Marketing to Employer/Union Groups

Marketing to Employer/Union Groups

When marketing an employer/union group waiver plan, marketing representatives must follow all marketing rules and guidelines except the following:

- the prohibition against unsolicited contacts;
 - the prohibition against cross-selling other products;
 - the requirement to obtain prior documentation of the scope of an appointment;
 - the prohibition against providing meals at marketing events;
 - the pre-enrollment checklist requirement;
 - marketing representative compensation requirements; and
 - the requirement that a marketing representative must pass an annual test, although the requirement for annual training does apply.
- Plans offering employer group health plans are not required to submit marketing materials specific only to those employer plans to CMS at the time of use. However, CMS may request and review copies if employee complaints occur or for any other reason to ensure the information accurately and adequately informs beneficiaries about their rights and obligations under the plan.



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1.103 Oversight and Enforcement

Oversight and Enforcement



1.104 Oversight and Enforcement: By Plans

Oversight and Enforcement: By Plans

- Plan Sponsors are responsible for ensuring compliance with CMS' current marketing regulations and guidance, including monitoring and overseeing the activities of their subcontractors, downstream entities, and/or delegated entities (e.g. marketing representatives and providers).
- Plans are required to implement a strategy to prevent prohibited marketing practices from occurring, to detect prohibited marketing tactics at their early stages, and to take immediate corrective action to respond to aggressive and misleading marketing tactics.
- Plans must take corrective action in the event of verified misconduct, including disciplinary action in cases of aggressive marketing by marketing representatives. Examples include:
 - Withholding or withdrawing commissions;
 - Retraining;
 - Suspension of marketing;
 - Termination; and
 - Reporting agent terminations to State Departments of Insurance and CMS.



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1.105 Oversight and Enforcement: By Plans, Continued

Oversight and Enforcement: By Plans, Continued

- Plans must comply with requests from a State insurance or other department in connection with investigations of plan marketing representatives who are licensed by the department.
- Plans must report to States the termination of any agent or broker, including the reasons for the termination if required under State law. Plans must also report to CMS for-cause terminations.
- Upon CMS' request, the plan must provide CMS with information necessary for it to conduct oversight of marketing activities.

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1.106 Oversight and Enforcement: By CMS

Oversight and Enforcement: By CMS

Plan sponsors are subject to CMS penalties for non-compliance that include:

- Corrective action plans;
- Suspension of marketing and enrollment;
- Monetary penalties; and/or
- Contract termination.



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1.108 Marketing Representative Compensation



1.109 Marketing Representative Compensation: Compensation Defined

Marketing Representative Compensation: Compensation Defined

- Compensation includes monetary or non-monetary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to-
 - Commissions;
 - Bonuses;
 - Gifts;
 - Prizes or Awards; or
 - Referral or Finder fees paid to agents/brokers.
- Compensation does not include-
 - Payment of fees to comply with State appointment laws, training, certification, and testing costs;
 - Reimbursement for mileage for appointments with beneficiaries or costs associated with beneficiary sales appointments such as venue rent, snacks, and materials.



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1.110 Compensation Example

Compensation Example

SuperAgency offers its agents \$400 per initial enrollment, \$200 per renewal enrollment and mileage reimbursement for sales appointments and attending training. In addition, SuperAgency sends the agent who sells the most, new Medicare Advantage policies on an all-expense paid trip to Tahiti. "Compensation" includes the enrollment commissions and, for the agent who wins it, the cost of the Tahiti trip.

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1.111 Marketing Representative Compensation: Applicability of Rules

Marketing Representative Compensation: Applicability of Rules

- Compensation structures for independent agents must comply with CMS guidance.
 - Compensation rules do not generally apply to marketing representatives who are plan employees, to “captive” agents who market for only one plan/Sponsor or when independent agents are marketing only to employer/union groups.
 - Employed and captive agents/brokers who only sell for one Plan/Part D Sponsor are subject to the requirements related to referral/finder fees.
 - Compensation to independent agents who market to and enroll beneficiaries is covered by the rules whether it is paid directly by a plan or paid by an agency, FMO, TMO, or similar organization.



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1.112 Marketing Representative Compensation: When Compensation May Be Paid

Marketing Representative Compensation: When Compensation May Be Paid

Plan Sponsors **may not** pay agents:

- who have not been trained and tested.
- who do not meet state licensure/appointment requirements.
- who have been terminated for cause.
- When a Plan Sponsor and/or a contracted independent agent terminates an agent contract without cause, any future payment for existing business will be governed by the terms of the contract that specifies the agent's payment, subject to the limits in the CMS regulation.
 - However, to continue receiving renewal fees, agents must remain trained, tested, licensed and appointed, regardless of whether they are actively selling.

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1.113 Marketing Representative Compensation: Applicable Amounts

Marketing Representative Compensation: Applicable Amounts

- Applicable compensation amounts depend on whether enrollment is an initial year enrollment or a renewal year enrollment.
 - CMS provides reports to the plan that specifies whether enrollment is initial or renewal.
- Renewal year enrollments include plan changes between “like plans.”
 - A “like plan type” enrollment includes:
 - A PDP to another PDP;
 - An MA, MA-PD, or MMP to another MA, MA-PD, or MMP; or
 - A Section 1876 Cost Plan to another Section 1876 Cost Plan.
 - An “unlike plan type” enrollment includes:
 - An MA or MA-PD plan to a PDP or Section 1876 Cost Plan;
 - A PDP to a Section 1876 Cost Plan or an MA (or MA-PD) plan; or
 - A Section 1876 Cost Plan to an MA (or MA-PD) plan or PDP.



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**1.114 Marketing Representative Compensation: Applicable Amounts,
continued**

**Marketing Representative Compensation: Applicable
Amounts, continued**

- For enrollments in two plans at once (for example, enrollment in an MA-only plan like an MSA and a stand-alone PDP or a cost plan and a PDP), the compensation rules apply independently to each plan. This is known as “dual plan” enrollment.
- However, when dual plans are replaced by an enrollment in a single plan, compensation is paid based on the MA or cost plan movement (e.g., movement from an MA-only PFFS plan and PDP to an MA-PD plan would be compensated at the renewal compensation amount for the MA to MA-PD “like plan type” move).

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1.115 Marketing Representative Compensation: Limits on Amount of Compensation

Marketing Representative Compensation: Limits on Amount of Compensation

- Compensation for initial year enrollments cannot exceed a fair market value (FMV) published annually by CMS. This amount is known as the FMV cut-off.
- Compensation for renewal year enrollments cannot exceed 50 percent of the FMV cut-off.
- Referral or finders' fees paid to independent, captive or employed agents/brokers may not exceed \$25 for PDPs or \$100 for all other types of plans.
- Referral fees paid to independent, captive or employed agents/brokers must be part of total compensation. Thus, any compensation paid for enrollments plus any referral fee paid to an agent may not exceed the FMV cut-off.
- Note that CMS no longer includes requirements about referral fees paid to non-agents/brokers in the Medicare Communications and Marketing Guidelines. However, any such fees would still be subject to general laws, including anti-kickback prohibitions.
- Plans must annually file with CMS whether they will use independent agents/brokers and, if so, the amounts or range of amounts that they intend to pay for enrollment commissions.
- Once the deadline for filing has passed, plans may not change the amounts they pay or types of brokers they use.

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1.116 Marketing Representative Compensation: Limits on Amount of Compensation (General Rule)

Marketing Representative Compensation: Limits on Amount of Compensation (General Rule)

Compensation is paid on a calendar year basis. Thus, regardless of the month of a beneficiary's initial year enrollment, the renewal year begins on January 1 of the subsequent year, NOT on the beneficiary's enrollment anniversary date.

Example: Mr. Miller becomes eligible for Medicare for the first time in August and enrolled in a Medicare Advantage plan with an effective date of August 1. The Plan paid the agent the initial year compensation amount for the months of August through December. On January 1, the plan must start paying the agent the renewal amount if Mr. Miller remains enrolled.



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1.117 Marketing Representative Compensation: Limits on Amount of Compensation, continued

Marketing Representative Compensation: Limits on Amount of Compensation, continued

- Plan Sponsors have the flexibility to make compensation payments annually, quarterly, monthly, or by a different schedule. However, Plans/Part D Sponsors must pay compensation payments during the year of enrollment.
- Compensation (with some limited exceptions) may only be paid for the months the beneficiary is enrolled in the plan.
 - If a plan pays compensation in advance, it must recoup amounts paid for months a beneficiary is not enrolled.
 - If a beneficiary enrolls mid-year, compensation must be prorated.

Example: Ms. Gibbons became eligible for Medicaid in May. She decided to take advantage of the SEP for dual eligibles to leave her MA-PD to enroll in a D-SNP effective June 1 with the help of an agent. The D-SNP may only pay the agent commissions for 7 months of enrollment. If her MA-PD paid agent commissions in advance, it will need to recoup payments for months after May.

1.118 Marketing Representative Compensation: Exception to pro rata payment rule

Marketing Representative Compensation: Exception to pro rata payment rule

- A plan may choose to pay for an entire initial enrollment year, despite less than 12 months of enrollment, for a beneficiary who has never been enrolled in a plan before or where a beneficiary moves from an employer group plan to a non-employer group plan.
- However, if the plan pays a full initial compensation and the enrollee disenrolls during the contract year, the plan must recoup a pro-rated amount for all months the enrollee is not enrolled.

Example: Mrs. J turns 65 in August and is eligible for Medicare for the first time. An agent helped her enroll in an MAPD with a September 1 effective date. The plan will pay the agent an initial year compensation amount. Depending on its contract with the agent, the plan may choose to pay for the entire year if she remains enrolled for the contract year or for only September through December (4 months).

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1.119 Marketing Representative Compensation: Rapid Disenrollment

Marketing Representative Compensation: Rapid Disenrollment

- If a beneficiary disenrolls within the first 3 months of enrollment (referred to as “rapid disenrollment”), the entire compensation amount must be recouped, except under certain circumstances.
 - Plans do not have to recoup when a beneficiary enrolls in a plan effective October 1, November 1, or December 1, and subsequently changes plans effective January 1 of the following year during the Annual Election Period.
 - Other examples (not all-inclusive) of instances in which plans do not have to recoup include when a beneficiary disenrolls in the first 3 months because of:
 - Becoming dually eligible for both Medicare and Medicaid
 - Qualifying for another plan based on special needs
 - Becoming LIS eligible
 - Loss of entitlement
 - Moving out of the service area
 - Non-payment of premium
 - Moving into a plan with a 5-star rating or out of an LPI plan into a plan with three or more stars
 - Moving into or out of an institution
 - Gaining/dropping employer/union sponsored coverage

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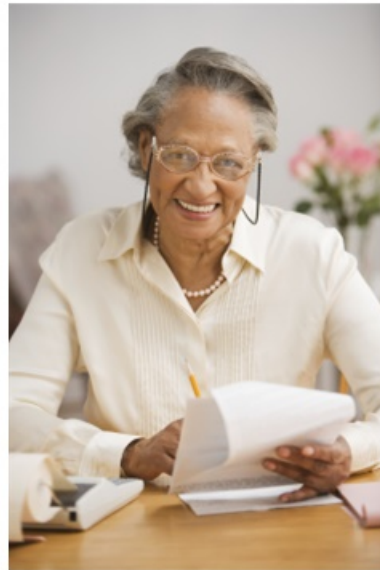


**1.120 Marketing Representative Compensation: Rapid Disenrollment,
continued**

Marketing Representative Compensation: Rapid Disenrollment, continued

- Rapid disenrollment applies when an enrollee moves from one parent organization to another parent organization, or when an enrollee moves from one plan to another plan within the same parent organization.

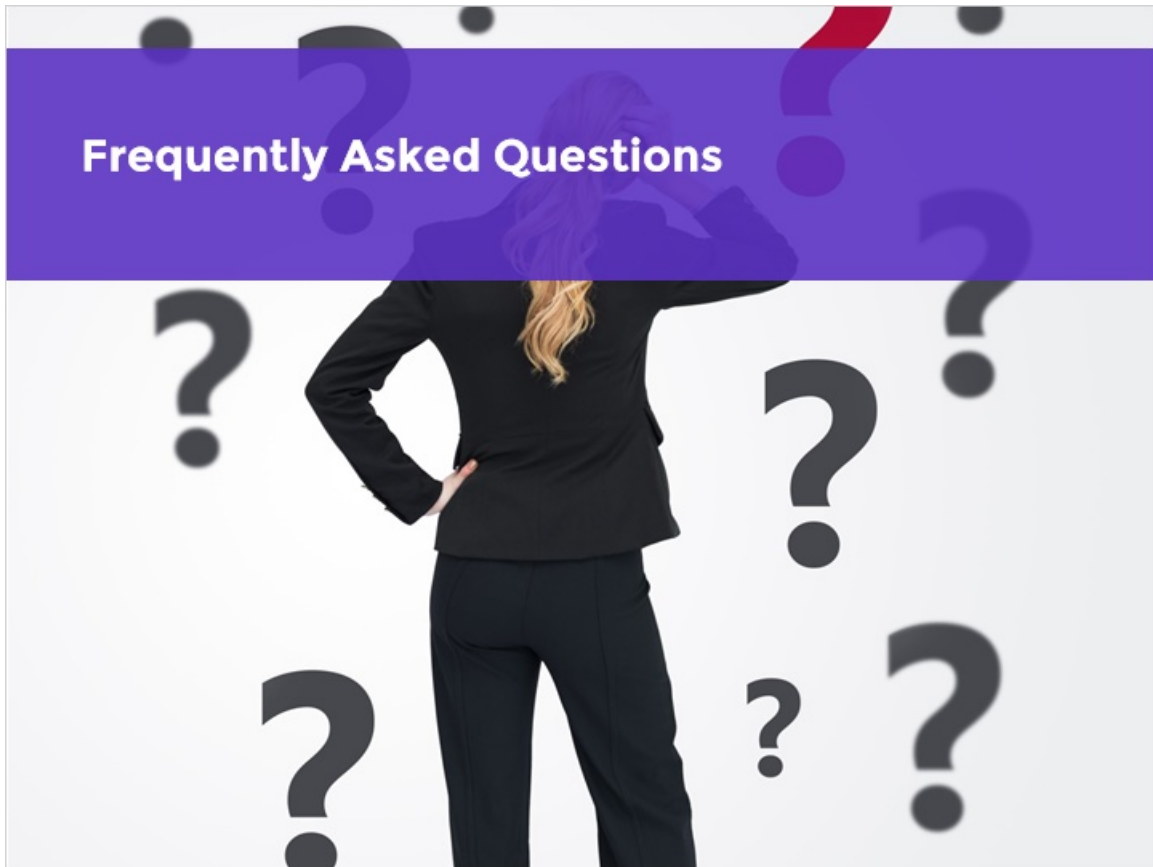
Example of rapid disenrollment: An Agent assisted Ms. Spalding in enrolling in a Medicare Advantage plan during the Annual Enrollment Period. Her effective date is January 1st. On February 10th, Ms. Spalding disenrolls because she did not understand that the plan did not cover services furnished by non-network providers. The plan must recoup all compensation payments paid to the Agent for Ms. Spalding's enrollment.



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1.121 Frequently Asked Questions

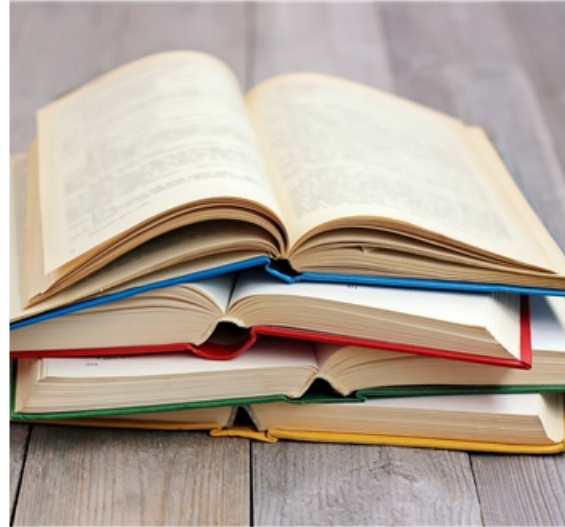


1.122 Frequently Asked Questions (FAQ) #1

Frequently Asked Questions (FAQ) #1

Q: We purchased books on health maintenance that we plan to give away to anyone attending one of our marketing presentations, regardless of whether they enroll in our plan. Because we purchased many these books, we were able to buy them at a cost of \$14.99 per book. However, on the inside jacket, the retail price is shown as \$19.99. May we give these books away at our marketing presentation?

A: No. The retail purchase price of the book is \$19.99, which exceeds CMS's definition of nominal value.



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1.123 Frequently Asked Questions (FAQ) #2

Frequently Asked Questions (FAQ) #2

Q: We would like to offer gifts of nominal value to potential enrollees who call for more information about our plan. We would then like to offer additional gifts if they come to a separate marketing event. Each of the gifts meets CMS's definition of nominal value, but taken together, the gifts are more than the nominal value. Is this permissible?

A: Yes, if the total of all nominal value gifts given to an enrollee does not exceed \$75.



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1.124 Frequently Asked Questions (FAQ) #3

Frequently Asked Questions (FAQ) #3

Q: Listed below are some possible promotional items to encourage potential enrollees to attend marketing presentations. Are these types of promotions permissible?

- Light Snacks (no meals)
- Day trips
- Magazine subscriptions
- Event tickets
- Coupon book (total value of discounts is less than \$15)

A: Yes. All these promotional items are permissible if they are offered to everyone who attends the event, regardless of whether they enroll and as long as the gifts have a retail value of \$15 or less per marketing event. Cash gifts are prohibited, including gift certificates and gift cards that can be readily converted to cash, regardless of the dollar amount.



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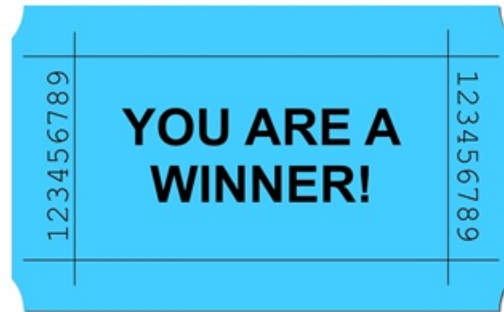


1.125 Frequently Asked Questions (FAQ) #4

Frequently Asked Questions (FAQ) #4

Q: Can a marketing representative hold a raffle or offer a door prize of more than nominal value for those who attend a marketing presentation if the total value of the item is less than \$15 per person attending?

A: Yes. However, the total fair market value must not exceed the nominal per person value based on attendance. For example, if 10 people are expected to attend an event, the nominal gift may not be worth more than \$150 (\$15 for each of the 10 anticipated attendees). For planning purposes, anticipated attendance may be used, but must be based on actual venue size, response rate, or advertisement circulation.



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1.126 Frequently Asked Questions (FAQ) #5

Frequently Asked Questions (FAQ) #5

Q: Can a marketing representative take people to a casino or sponsor a bingo night at which the enrollee's earnings may exceed the \$15 nominal value limit?

A: No. The total value of the winnings may not exceed \$15 and the winnings cannot be in cash or an item that may be readily converted to cash.



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1.127 Frequently Asked Questions (FAQ) #6

Frequently Asked Questions (FAQ) #6

Q: Can marketing representatives use providers to identify Medicare beneficiaries with certain illness or diseases for marketing purposes?

A: No, not unless each individual has completed a HIPAA authorization that explicitly gives the provider authorization to disclose the individual's health care information for purposes of marketing (which is highly unlikely).



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1.129 For More Information

For More Information

- Medicare Marketing Guidelines:
<http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>
- CMS Marketing Website:
<http://www.cms.gov/ManagedCareMarketing/>
- CMS PFFS Addendum: Model Language for Sales Presentation
<http://www.cms.gov/PrivateFeeforServicePlans/>
- Medicare Beneficiary Website:
www.medicare.gov

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