



Policy Title: Agent Sales and Marketing Practices

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Accountable Dept: Compliance

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Policy: Sales and Marketing Practices

Scope: All agents, regardless at which level they are contracted at, must be aware and comply with CMS "Medicare Marketing Regulations," as well as any applicable State laws and regulations. This policy applies to any agent marketing MAPD or PDP plans. These guidelines are revisited and updated annually by CMS.

Policy Statement: Each year CMS reissues the Medicare Marketing Guideline for the coming year. These revisions are usually issued in late June or early July. This policy will be amended as necessary.

- 1) **Anti-Discrimination.** Agents may not discriminate based on race, ethnicity, national origin, religion, gender, age, mental or physical disability, health status, claims experience, medical history, genetic information, evidence of insurability or geographic location. Agents may not target beneficiaries from higher income areas or state/ imply that plans are only available to seniors rather than to all Medicare beneficiaries. Agents may only inquire about a beneficiary's health or income status in order to determine whether the beneficiary may be eligible to enroll in a Special Needs Plan (SNP) that has specific eligibility requirements. 42 CFR 422.110, 422.2268(c), 423.2268(c).

- 2) **Unsolicited Contact.** Agents may not market through unsolicited direct contact, including:

Door-to-door solicitation, including leaving information such as a leaflet or flyer at a residence or car

Approaching beneficiaries in common areas as stipulated by CMS guidelines.

Telephonic or electronic solicitation, including leaving electronic voicemail messages or text messaging:

Note: Agents/brokers who have a pre-scheduled appointment that becomes a "no-show" may leave information at the no-show beneficiary's/individual's residence.

The prohibition on marketing through unsolicited contacts does not extend to conventional mail and other print media (e.g., advertisements, direct mail).

In addition, permission given to be called or otherwise contacted must be event-specific, and may not be treated as open-ended permission for future contacts. 42 CFR 422.2268(d), 423.2268(d)

- 3) **Telephonic Contact.** Agents may contact their own clients at any time to discuss plan business. Prohibited telephonic activities include, but are not limited to, the following:

Bait-and-switch strategies - making unsolicited calls about other business as a means of generating leads for Medicare plans.

Calls based on referrals - if an individual would like to refer a friend or relative to an agent, the agent may provide contact information such as a business card that the individual may give to a friend or relative. Otherwise, a referred individual needs to contact the plan or agent/broker directly.

Calls to former enrollees who have disenrolled, or to current enrollees who are in the process of voluntarily disenrolling to market plans or products. Enrollees who are voluntarily disenrolling from a plan should not be contacted for sales purposes or be asked to consent in any format to further sales contacts.

Calls to beneficiaries who attended a sales event, unless the beneficiary gave express permission at the event for a follow-up call. The agent must have documentation of permission to be contacted.

Calls to beneficiaries to confirm receipt of mailed information

Agents may call individuals who have expressly given permission for the agent to contact them, for example, by filling out a business reply card (BRC) or asking a customer service representative (CSR) to have an agent contact them. This permission applies only to the entity from which the individual requested contact, for the duration of that transaction, for the scope of product, (e.g., MA-PD plan or PDP), previously discussed or indicated in the reply card.

Agents may return phone calls or messages from individuals or enrollees, as these are not considered unsolicited contacts. 42 CFR 422.2268(d), (e), and (f), 423.2268(d), (e), and (f)

- 4) **Marketing in the Health Care Setting.** Agents may not conduct sales activities in healthcare settings except in common areas. Common areas where marketing activities are allowed include areas such as hospital or nursing home cafeterias, community, recreational, or conference rooms. If a pharmacy counter area is located within a retail store, common areas would include the space outside of where individuals wait for services from or interact with pharmacy providers and obtain medications.

Agents are prohibited from conducting sales presentations, distributing and accepting enrollment applications, and soliciting beneficiaries in areas where individuals primarily receive health care services. These restricted areas generally include, but are not limited to exam rooms, hospital patient rooms, dialysis center treatment areas (where individuals interact with their clinical team and receive treatment), and pharmacy counter areas (where patients interact with pharmacy providers and obtain medications). The prohibition against conducting marketing activities in health care settings extends to activities planned in health care settings outside of normal business hours.

Agents are only permitted to schedule appointments with beneficiaries residing in long-term care facilities (including nursing homes, assisted living facilities, board and care homes, etc.) upon request by the beneficiary. 42 CFR 422.2268(e), (j), and (k), 423.2268(e), (j), and (k)

- 5) **Marketing/Sales Events.** Marketing/sales events are events designed to steer, or attempt to steer, potential enrollees toward a plan or limited set of plans. At marketing/sales events, agents may discuss plan specific information and collect applications.

There are two main types of marketing/sales events: formal and informal.

Formal marketing/sales events are typically structured in an audience/presenter style with an agent formally providing specific plan information via a presentation on the products being offered.

Informal marketing/sales events are conducted with a less structured presentation or in a less formal environment. They typically utilize a table, kiosk or a recreational vehicle (RV) with a sales person or Plan/Part D Sponsor representative who can discuss the merits of the plan's products. For agents participating in a Retail Program, these are Informal Sales Events.

Agents conducting Marketing/Sales Events **must** use the carriers CMS approved sales presentation!

Agents may not:

Conduct health screening or other like activities that could give the impression of "cherry picking."

Require beneficiaries to provide any contact information as a prerequisite for attending the event. This includes requiring an email address or any other contact information as a condition to RSVP for an event online or through mail. Plans/Part D Sponsors should clearly indicate on any sign-in sheets that completion of any contact information is optional.

Use personal contact information obtained to notify individuals of raffle or drawing winnings for any other purpose.

All Marketing/Sales Events must be filed with CMS prior to their occurrence. These filings must be done by the carrier for whom they are being conducted. Refer to the specific carrier's time requirements for filing. 42 CFR 422.2268, 423.2268

- 6) **Sales Appointments.** All Plan/Part D Sponsor one-on-one appointments with beneficiaries, regardless of the venue (e.g., in home, conference call, library), are considered sales/marketing events and the agent must obtain a Scope of Appointment for each individual in attendance, prior to the appointment. One-on-one Sales Appointments do not need to be filed with CMS.

During an individual sales appointment, agents **may not:**

Discuss plan options that were not agreed to by the beneficiary

Market non-healthcare related products.

Ask a beneficiary for referrals

Charge beneficiary a marketing fee

Solicit/accept an enrollment request (application) for a January 1st effective date prior to the start of the Annual Enrollment Period (AEP) unless the beneficiary is entitled to another enrollment period. 42 CFR 422.2268(f)-(h), 423.2268(f)-(h)

- 7) **Scope of Appointment.** When conducting marketing activities, an agent may not market any health care related product during a marketing appointment beyond the scope that the beneficiary agreed before the meeting with that individual. The agent must document the scope of the agreement 48 hours prior to the appointment, when practicable. Distinct lines of plan business include MA and PDP. If an agent would like to discuss additional products during the appointment in which the beneficiary indicated interest, but did not agree to discuss in advance, the agent must document a second scope of appointment (SOA) for the additional product type to continue the marketing appointment.

Agents must obtain a separate SOA form for each meeting with a prospect.

Agents must obtain a SOA form when meeting with existing clients to discuss Medicare Advantage or Medicare Prescription Drug Plans.

SOA forms are required for presentations made over the phone or internet.

SOA forms must be retained by the agent for a minimum of 10 years.

SOA documentation must meet the following requirements:

The documentation may be in writing, in the form of a signed agreement 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.

Date of appointment

Beneficiary contact information (e.g., name, address, telephone number)

Documentation of beneficiary or appointed/authorized representative agreement

The product type(s) (e.g., MA, PDP) the beneficiary has agreed to discuss during the scheduled appointment

Agent information (e.g., name and contact information)

An explanation why the SOA was not documented 48 hours prior to the appointment, if applicable

A statement clarifying that: - beneficiaries are not obligated to enroll in a plan, current or future Medicare enrollment status will not be impacted and that the beneficiary is not automatically enrolled in the plan(s) discussed.

A beneficiary may sign an SOA at a marketing/sales event for a future appointment. Marketing/sales events do not require documentation of beneficiary agreement.

CMS has approved, generic Scope of Appointment forms but, agents should check with each specific carrier. Some carriers require that agents use specific SOA forms. 42 CFR 422.2262, 422.2268(g) and (h), 423.2262, 423.2268 (g) and (h)

8)Marketing Time Periods:

Annual Enrollment Period: Agents cannot market for an upcoming plan year prior to October 1. Plans/Part D Sponsors are permitted to concurrently marketing the current year with prospective year starting on October 1, provided marketing materials make it clear what plan year is being discussed.

Open Enrollment Period: Agents are prohibited from knowingly targeting or sending unsolicited marketing materials to any MA enrollee or Part D enrollee during the continuous Open Enrollment

Period (OEP) (January 1 to March 31). “Knowingly” takes into account the intended recipient as well as the content of the message.

What agents CAN do during OEP

Conduct marketing activities that focus on enrollment opportunities for individuals such as age-ins, dual eligible, and LIS beneficiaries.

Send marketing materials to beneficiaries who have made a proactive request.

What agents CANNOT do during OEP

Conduct sales activities that promote or intend to target the OEP as an opportunity to make sales.

Solicit or target with materials that advertise the ability to make a plan change due to OEP in any way.

Target individuals who are in the OEP because they made a specific choice during the Annual Enrollment Period.

Call or otherwise contact former enrollees who have selected a new plan during the AEP.

Information collected in the application process is personal information and must be kept secure and protected. All HIPPA and CMS guidelines must be followed to ensure that all private information both in paper form and digitally are not accessible to the public.

Related Documents: Medicare Marketing Regulations (6/10/2016)

- 42 CFR 422.2272(c)-(e)
- 422.2274(f)
- 423.2272(c)-(e)
- 423.2274(f)
- 42 CFR 422.2274(c) and (d)
- 423.2274(c) and (d)

Policy Owner: Compliance Officer

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