



Policy Title: Marketing Terminology and TPMO

Original Pub. Date: 5.23.16

Accountable Dept: Compliance

Last Review & Approval

Date: 08.19.2023

New Review Date: 08.19.2024

Policy: Prohibited Terminology

Scope: All licensed employees and independent agents must be aware of the Medicare Marketing Regulations, which are reviewed and updated each year by CMS. This policy will be amended as necessary upon reviewing new Regulations.

Policy Statement: Agents must be mindful of CMS regulations pertaining to statements they make, either written or verbal, regarding MAPD and PDP. Agents may not:

Claim that they represent Medicare or are recommended, endorsed by CMS, Medicare, or the Department of Health & Human Services (DHHS).

Imply that Medicare endorses or recommends the plan.

Use absolute superlatives (e.g., “the best,” “highest ranked,” “rated number 1”) and/or qualified superlatives (e.g., “one of the best,” “among the highest rank”) unless they are substantiated with supporting data provided to CMS as part of the marketing review process or, they are used in logos/taglines. The superlatives used and the data provided must be in context and may not mislead consumers. For example, a plan that is the only plan in the area that received a 5-star rating in customer service, but received an overall rating of 3 stars, may not promote itself as the highest ranked plan in a service area where other plans have a higher overall rating.

Other than the exceptions noted in section 40.3, (of the Medicare Marketing Guidelines) compare their Plan/Part D Sponsor to another Plan/Part D Sponsor by name without written concurrence from all Plans/Part D Sponsors being compared.

Market that they will not disenroll members due to failure to pay premiums.

Use the term “free” to describe 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.

Agents Marketing MSA plans may not imply that the plan operates as a supplement to Medicare or use the term “network” to describe a list of contracted preferred providers.

Agents may:

State that the plan they are representing is approved for participation in Medicare programs and is contracted to administer Medicare benefits.

Use the term “Medicare approved” to describe the benefits and services contained within the marketing materials.

When discussing benefits, use the term “free” in conjunction with mandatory supplemental benefits that are provided at a zero dollar cost share for all enrollees. 42 CFR 422.2262, 422.2264, 423.2262, 423.2264, 422.2268(e), 423.2268(e)

TPMO Disclaimer

CMS changed the TPMO Disclaimer in three (3) ways:

- First, TPMOs that sell for all Carriers in a service area, even if a TPMO sells all commercially available Plans in the service area, must also use the TPMO Disclaimer.
- Second, the TPMO Disclaimer language now includes a reference to the local SHIP as a source of information for beneficiaries.
- Third, the TPMO Disclaimer language now requires TPMOs to state the total number of MA organizations or PDP sponsors they represent and the total number of products offered by those MA organizations or PDP sponsors in the service area.

The TPMO Disclaimer is a standardized disclaimer. There is no longer one TPMO Disclaimer. There are now two different TPMO Disclaimers, and which one you should use depends on whether you represent all MA organizations or PDP sponsors within a service area. If you do not sell for all MA organizations or PDP sponsors in the service area, you must use the following TPMO Disclaimer:

“We do not offer every plan available in your area. Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. Please contact *Medicare.gov*, 1-800-MEDICARE, or your local State Health Insurance Program to get information on all of your options.”

If you do sell for all MA organizations or PDP sponsors in the service area, you must use the following TPMO Disclaimer:

“Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. You can always contact *Medicare.gov*, 1-800-MEDICARE, or your local State Health Insurance Program for help with plan choices.”

TPMOs must continue to use the applicable TPMO Disclaimer in all of the following scenarios:

- Verbally within the first minute of a sales call.
- Electronically when communicating with a beneficiary through email, online chat, or other electronic means of communication.
- Prominently on TPMO websites.
- All marketing materials, including print materials and TV ads, that the TPMO developed, used, or distributed.

TPMOs are still not required to use the TPMO Disclaimer:

- When meeting with a beneficiary in person.
- If the TPMO only sells Plans on behalf of one Carrier.

Agents and brokers do not need to include the TPMO Disclaimer on communications materials where there is not any marketing content in the materials. Please see the FAQs about CMS's expanded interpretation of what constitutes marketing content.

Key Takeaway: Except for TPMO websites and electronic communications, the TPMO Disclaimer is only required on advertisements that are marketing. If you want to avoid calculating and including the number of Carriers represented and Plans offered on advertisements, such as mailers, billboards, banners, online ads, TV ads, and radio ads, do not include any marketing content.

Related Documents: Authoritative Sources

Medicare Marketing Guidelines (7.02.16)

Policy Owner: Compliance Officer

Accountable VP/ Director: Anthony Vegnani