



Date: December 4, 2025

To: State Departments of Insurance

Subject: Important Communication from the Centers for Medicare & Medicaid Services

The Centers for Medicare & Medicaid Services (CMS) has been made aware of recent actions taken by various states regarding the Medicare Advantage (MA) program, including actions related to agent and broker compensation, communication and marketing requirements, and enrollment standards. CMS is issuing this memo to remind all parties of the statutory and regulatory framework applicable to MA, and to notify parties that federal law likely preempts state law in such areas. The Social Security Act (the Act), section 1856(b)(3), states as follows: “Relation to state laws. The standards established under this part shall supersede any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to MA plans which are offered by MA organizations under this part.” CMS’s regulation, under 42 C.F.R. 422.402, closely mirrors this statutory language.

CMS has adopted standards that govern most, if not all, of the areas listed above. Under section 1851(j)(2)(D) of the Act, CMS is given broad authority to regulate the use of agent and broker compensation. CMS has expressly addressed compensation standards in 42 C.F.R. 422.2274, defining compensation as well as setting limits on compensation. MA organizations are required to submit specific rates or a range of compensation to CMS on a yearly basis, which must include a minimum amount (which may be \$0), and a maximum amount (up to the limit published by CMS). MA compensation payments, provided they are within the range of their submissions, are a matter of negotiation between the MA organization and its first tier, downstream, and related entities, including agents and brokers. Under Sections 1851(h)(1)-(4) of the Act, CMS likewise is provided with broad authority to review marketing materials and application forms. Subpart V of 42 CFR Part 422 extensively addresses marketing, including permitted and non-permitted activities. Finally, enrollment forms are also addressed in Subpart V of the regulations, including the express requirement that enrollment forms are made available on MA organizations’ websites.

CMS appreciates its longstanding partnership with state insurance commissioners in ensuring that all MA organizations, across all lines of business, function well and meet the needs of beneficiaries. CMS both welcomes and appreciates feedback and conversation on any concerns that State Departments of Insurance may have related to MA organization activities in your state. CMS welcomes additional engagement on improvements to the MA program.