



**MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP**

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Date: October 8, 2021  
To: Medicare Advantage Organizations  
From: Kathryn A. Coleman  
Director  
Subject: Third Party Marketing

CMS reminds Medicare Advantage Organizations (MAOs) that, under 42 CFR §§ 422.504(i), they are responsible for first tier, downstream or related entities (FDRs) adherence to all terms and conditions of the organization's contract with CMS, including compliance with all applicable Medicare laws and regulations, when acting on the plan's behalf. This includes, but is not limited to, the requirements that all marketing materials be submitted to CMS prior to use, pursuant to 42 CFR § 422.2261(a), and that Medicare Advantage (MA) plans may not mislead, confuse, or provide materially inaccurate information to current or potential enrollees, pursuant to 42 CFR 422.2262.

Advertisements intended to draw a beneficiary's attention to an MA plan or plans and include or address content regarding plan premiums, cost sharing, or benefit information, including those not mentioning a specific plan by name (as well as instances where such advertisements are made on behalf of multiple MA organizations), are marketing as defined under 42 CFR §422.2260. Thus, these advertisements, as marketing materials, must be submitted to CMS prior to their use.

CMS is particularly concerned with national advertisements promoting MA plan benefits and cost savings, which are only available in limited service areas or for limited groups of enrollees, as well as using words and imagery that may confuse beneficiaries or cause them to believe the advertisement is coming directly from the government. In addition, CMS receives complaints from beneficiaries and caregivers that highlight sales tactics designed to rush or push beneficiaries into enrolling into a plan.

MA organizations are accountable and responsible for their marketing materials and activities, including marketing completed on a MA plan's behalf by an FDR. Where such marketing materials and activities fail to meet our requirements, the MA plan may be subject to compliance or enforcement actions. CMS has identified and strongly encourages MAOs to adopt the following best practices:

- Utilizing outbound phone calls to beneficiaries, as opposed to letters, when complying with 42 CFR §422.2272(b) to establish and maintain a system for confirming that

enrolled beneficiaries have, in fact, enrolled in the MA plan, and understand the rules applicable under the plan.

- Reviewing rapid disenrollments to identify trends associated with “bad players.” In addition to recouping agent/broker compensation for rapid disenrollments as required under 42 CFR §422.2274(d)(5)(ii)(A), recouping any administrative payments paid to an FDR where rapid disenrollment occurs.
- Reviewing actual marketing and enrollment calls between beneficiaries and call centers/agents to ensure compliance with the communications and marketing requirements under 42 CFR Subpart V.
- Requiring FDRs to identify the origin of the enrollment lead (e.g., call in based on TV ad, response to mailing).
- Recording the entire sales call in addition to all telephonic enrollments, as described under Section 40.1.3 (Enrollment via Telephone) of Chapter 2 - Medicare Advantage Enrollment and Disenrollment of the Managed Care Manual.
- Requiring FDRs to disclose all contracted third-party relationships.

CMS is monitoring the “chain of enrollment,” which includes the marketing materials, lead generating activities, sales talks, and enrollment process to ensure these activities are completed in accordance with all applicable requirements. We are also working with other federal agencies regarding the appropriateness of the content of certain advertisements.