Protections for Beneficiaries in Medicare Advantage and Prescription Drug Plans

The A B C & Ds of Medicare CMS NYRO Dayle Berke June 8, 2009

# The Problem: Fraudulent Sales and Marketing of Plans

- Scenarios include:
  - Agents claiming to be "from Medicare"
  - Agents misrepresenting process
  - Agents not fully disclosing parameters of benefits

- Agents pitching multiple products
- Agents circumventing appointment process

Protections for Beneficiaries in Medicare Advantage Plans and Prescription Drug Plans

Medicare Improvements for Patients and Providers Act of 2008

• "MIPPA"—July 15, 2008

 Included provisions prohibiting and limiting certain sales and marketing activities of Medicare Advantage plans and prescription drug plans



#### New Marketing Rules Issued

- September 15, 2008
- Two rules—one final, one interimfinal
- Issued to protect beneficiaries during the 2009 MA and prescription drug open enrollment period

#### Nominal Gifts

- Organizations can offer gifts to potential enrollees if
  - Of nominal value
  - Provided if beneficiary enrolls or not
- Nominal value
  - Currently set at \$15, based on retail price

## **Unsolicited Contacts**

- Extends existing prohibition on door-to-door solicitation
  - To other instances of unsolicited contact
- Prohibited activities, examples include
  - Outbound marketing calls
    - Unless beneficiary requested the call

## **Unsolicited Contacts**

- Prohibited activities, examples include
  - Calls to former members to market plans or products
  - Calls to confirm receipt of mailed information
  - Approaching in common areas
    - Parking lots, hallways, lobbies, etc
  - Calls/visits after attendance at sales event, unless express permission given
  - Unsolicited emails

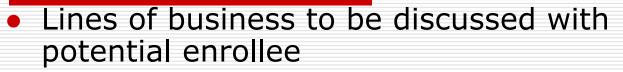
## **Unsolicited Contacts**

- Permitted activities include calls to
  - Existing members to conduct normal business related to plan
  - Former members for disenrollment survey
    - Only after disenrollment effective date
    - May not include sales or marketing information
  - Members by the agent/broker who enrolled them in the plan
  - Beneficiaries who have given express permission
    - Applies only to entity from whom beneficiary requested contact, for duration of that transaction, or as indicated by the beneficiary

## Cross-selling

- Cross-selling prohibited during any MA
  - or Part D sales activity or
  - presentation
  - Cannot market non-health care related products
    - Examples: annuities, life insurance
  - Allowed on inbound calls when requested by beneficiary

## Scope of Appointments



- Must be identified prior to marketing and/or in-home appointment
  - Must be identified on all marketing and advertising materials and announcements
- Examples: Medigap, MA, or PDP
- Additional products can only be discussed on beneficiary request

## Scope of Appointments

- Agreement to scope of appointment must be documented by plan
  - In writing or recorded by phone
- Scope of appointment form required:
  - In-home sales appointment or individual appointment with existing member
  - Appointment with new member and /or
  - Plan or agent/broker sells more than one type of product
  - Scope of appointment form <u>not</u> required:
    - Publicly advertised group sales event

# Marketing in Health Care Settings

- No plan marketing activities in healthcare setting
  - No sales activities or distribution/acceptance of enrollment forms
  - Examples: waiting rooms, exam rooms, hospital patient rooms, dialysis centers, pharmacy counter areas
- Marketing allowed
  - In common areas, such as: hospital or nursing home cafeterias, community or recreational rooms, conference rooms
  - By providers, per current CMS Marketing Guidelines

# Marketing at Educational Events

- No plan marketing activities at educational events
  - Event advertising materials must include disclaimer
  - No sales activities, or distribution/acceptance of enrollment forms and/or business reply cards
- Plans may distribute
  - Medicare and/or health educational materials
  - Agent/broker business cards, upon beneficiary request
    - Containing no marketing information

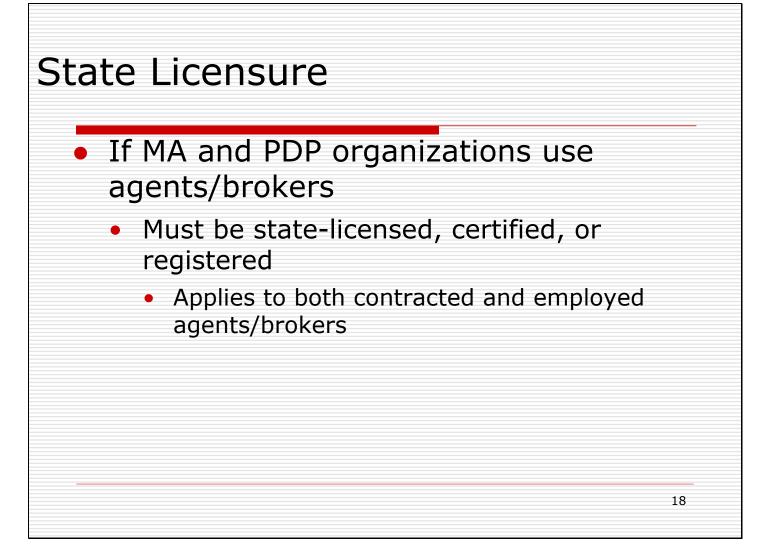


## **Prohibition of Meals**

- Prospective enrollees may not
  - Be provided meals
  - Have meals subsidized
- Applies at any event or meeting where
  - Plan benefits are being discussed, or
  - Plan materials are being distributed

## **Prohibition of Meals**

- Agents and/or Brokers may provide
  - Beverages
  - Light snacks
    - Similar to: fruit, raw vegetables, pastries, cookies or other small dessert items, crackers, muffins, cheese chips, yogurt, nuts
    - Cannot be "bundled" and provided like a meal



#### Agent/Broker Compensation

- Compensation rules for MA and PDPs that market through agents/brokers
  - Both contracted and employed
  - Designed to eliminate inappropriate moves



# Agent/Broker Training and Testing

- All agents/brokers must be trained and tested annually
  - Medicare rules and regulations
  - Plan details specific to plan products being sold



# CMS Compliance Efforts

- Need detailed complaint information
- Complaint goes to account manager
- Starts with informal contact and moves to enforcement depending on severity
- CMS responsible for actions involving plans
- State Departments of Insurance responsible for actions involving agents/brokers

#### New Regulations

- Call 1-800-MEDICARE with complaints Need
- regulationquestions@cms.hhs.gov
- <u>www.cms.hhs.gov/HealthPlansGenInfo/</u>
  - (2008-21674\_PI) Final Marketing Provisions 4131-F
  - (2008-21686\_PI) Revisions to MA & PDP - 4138-IFC