

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 Regulations

New Marketing Rules Issued

- September 15, 2008
- Two rules—one final, one interim-final
- 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

- Lines of business to be discussed with potential enrollee
 - 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 not 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

State Licensure

- If MA and PDP organizations use agents/brokers
 - Must be state-licensed, certified, or registered
 - Applies to both contracted and employed agents/brokers

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
- www.cms.hhs.gov/HealthPlansGenInfo/
 - (2008-21674_PI) Final Marketing Provisions 4131-F
 - (2008-21686_PI) Revisions to MA & PDP – 4138-IFC