

(ii) Do not include information about measuring or ranking standards (for example, star ratings);

(iii) Mention benefits or cost sharing, but do not meet the definition of marketing in this section;

(iv) Are required under § 422.111, unless otherwise specified by CMS based on their use or purpose; or

(v) Are specifically designated by CMS as not meeting the definition of the marketing definition based on their use or purpose.”

[83 FR 27914, June 15, 2018]

§ 422.2262 Review and distribution of marketing materials.

(a) *CMS review of marketing materials.*

(1) Except as provided in paragraph (b) of this section, an MA organization may not distribute any marketing materials (as defined in § 422.2260 of this subpart), or election forms, or make such materials or forms available to individuals eligible to elect an MA organization unless—

(i) At least 45 days (or 10 days if using certain types of marketing materials that use, without modification, proposed model language and format, including standardized language and formatting, as specified by CMS) before the date of distribution the MA organization has submitted the material or form to CMS for review under the guidelines in § 422.2264 of this subpart; and

(ii) CMS does not disapprove the distribution of new material or form.

(2) If CMS does not approve or disapprove marketing materials within the specified review timeframe, the materials will be deemed approved. Deemed approved means that the MA organization may use the material.

(b) *File and use.* The MA organization may distribute certain types of marketing material, designated by CMS, 5 days following their submission to CMS if the MA organization certifies that in the case of these marketing materials, it followed all applicable marketing guidelines and, when applicable, used model language specified by CMS without modification.

(c) *Standardized model marketing materials.* When specified by CMS, organizations must use standardized formats and language in model materials.

(d) *Enrollee communication materials.* Enrollee communication materials may be reviewed by CMS and CMS may determine, upon review of such materials, that the materials must be modified, or may no longer be used.

[73 FR 54220, Sept. 18, 2008, as amended at 75 FR 19814, Apr. 15, 2010; 80 FR 7962, Feb. 12, 2015; 83 FR 16735, Apr. 16, 2018]

§ 422.2264 Guidelines for CMS review.

In reviewing marketing material or election forms under § 422.2262, CMS determines that the materials—

(a) Provide, in a format (and, where appropriate, print size), and using standard terminology that may be specified by CMS, the following information to Medicare beneficiaries interested in enrolling:

(1) Adequate written description of rules (including any limitations on the providers from whom services can be obtained), procedures, basic benefits and services, and fees and other charges.

(2) Adequate written description of any supplemental benefits and services.

(b) Notify the general public of its enrollment period in an appropriate manner, through appropriate media, throughout its service area and if applicable, continuation areas.

(c) Include in written materials notice that the MA organization is authorized by law to refuse to renew its contract with CMS, that CMS also may refuse to renew the contract, and that termination or non-renewal may result in termination of the beneficiary's enrollment in the plan.

(d) Ensure that materials are not materially inaccurate or misleading or otherwise make material misrepresentations.

[83 FR 16735, Apr. 16, 2018]

§ 422.2266 [Reserved]

§ 422.2268 Standards for MA organization communications and marketing.

(a) In conducting communication activities, MA organizations may not do any of the following:

(1) Provide information that is inaccurate or misleading.

(2) Engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the MA organization.

(3) Claim the MA organization is recommended or endorsed by CMS or Medicare or that CMS or Medicare recommends that the beneficiary enroll in the MA plan. It may explain that the organization is approved for participation in Medicare.

(4) Employ MA plan names that suggest that a plan is not available to all Medicare beneficiaries. This prohibition does not apply to MA plan names in effect on July 31, 2000.

(5) Display the names and/or logos of co-branded network providers on the organization's member identification card, unless the provider names, and/or logos are related to the member selection of specific provider organizations (for example, physicians, hospitals).

(6) Use a plan name that does not include the plan type. The plan type should be included at the end of the plan name.

(7) For markets with a significant non-English speaking population, provide vital materials unless in the language of these individuals. Specifically, MA organizations must translate materials into any non-English language that is the primary language of at least 5 percent of the individuals in a plan benefit package (PBP) service area.

(b) In marketing, MA organizations may not do any of the following:

(1) Provide cash or other monetary rebates as an inducement for enrollment or otherwise.

(2) Offer gifts to potential enrollees, unless the gifts are of nominal (as defined in the CMS Marketing Guidelines) value, are offered to all potential enrollees without regard to whether or not the beneficiary enrolls, and are not in the form of cash or other monetary rebates.

(3) Market non-health care related products to prospective enrollees during any MA or Part D sales activity or presentation. This is considered cross-selling and is prohibited.

(4) Market any health care related product during a marketing appointment beyond the scope agreed upon by

the beneficiary, and documented by the plan, prior to the appointment.

(5) Market additional health related lines of plan business not identified prior to an individual appointment without a separate scope of appointment identifying the additional lines of business to be discussed.

(6) Distribute marketing materials for which, before expiration of the 45-day period, the MA organization receives from CMS written notice of disapproval because it is inaccurate or misleading, or misrepresents the MA organization, its marketing representatives, or CMS.

(7) Conduct sales presentations or distribute and accept MA plan enrollment forms in provider offices or other areas where health care is delivered to individuals, except in the case where such activities are conducted in common areas in health care settings.

(8) Conduct sales presentations or distribute and accept plan applications at educational events.

(9) Display the names and/or logos of provider co-branding partners on marketing materials, unless the materials clearly indicate that other providers are available in the network.

(10) Knowingly target or send unsolicited marketing materials to any MA enrollee during the Open Enrollment Period.

(11) Engage in any other marketing activity prohibited by CMS in its marketing guidance.

(12) Engage in any discriminatory activity such as attempting to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.

(13) Solicit door-to-door for Medicare beneficiaries or through other unsolicited means of direct contact, including calling a beneficiary without the beneficiary initiating the contact.

(14) Use providers or provider groups to distribute printed information comparing the benefits of different health plans unless the providers, provider groups, or pharmacies accept and display materials from all health plans with which the providers, provider groups, or pharmacies contract. The use of publicly available comparison information is permitted if approved

by CMS in accordance with the Medicare marketing guidance.

(15) Provide meals to potential enrollees, which is prohibited, regardless of value.

[83 FR 16735, Apr. 16, 2018; 83 FR 27914, June 15, 2018]

§ 422.2272 Licensing of marketing representatives and confirmation of marketing resources.

In its marketing, the MA organization must:

(a) Demonstrate to CMS' satisfaction that marketing resources are allocated to marketing to the disabled Medicare population as well as beneficiaries age 65 and over.

(b) 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.

(c) Employ as marketing representatives only individuals who are licensed by the State to conduct marketing activities (as defined in the Medicare Marketing Guidelines) in that State, and whom the organization has informed that State it has appointed, consistent with the appointment process provided for under State law.

(d) Report to the State in which the MAO appoints an agent or broker, the termination of any such agent or broker, including the reasons for such termination if State law requires that the reasons for the termination be reported.

[73 FR 54220, Sept. 18, 2008, as amended at 73 FR 54250, Sept. 18, 2008; 76 FR 21569, Apr. 15, 2011; 83 FR 16735, Apr. 16, 2018]

§ 422.2274 Broker and agent requirements.

If an MA organization uses agents and brokers to sell its Medicare plans, the following requirements in this section are applicable.

(a) *Definitions.* For purposes of this section, the following definitions are applicable:

Compensation (1) Includes monetary or non-monetary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to—

- (i) Commissions;
- (ii) Bonuses;
- (iii) Gifts;

(iv) Prizes or Awards; or

(v) Referral or Finder fees.

(2) Does not include—

(i) Payment of fees to comply with State appointment laws, training, certification, and testing costs;

(ii) Reimbursement for mileage to, and from, appointments with beneficiaries; or

(iii) Reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials.

Like plan type means one of the following:

(1) PDP replaced with another PDP.

(2) MA or MA-PD replaced with another MA or MA-PD.

(3) Cost plan replaced with another cost plan.

Unlike plan type means one of the following:

(1) PDP replaced with an MA-PD or an MA-PD replaced with a PDP.

(2) PDP replaced with a cost plan or a cost plan replaced with a PDP.

(3) MA-PD replaced with a cost plan or a cost plan replaced with an MA-PD.

Plan year means the year beginning January 1 and ending December 31.

Renewal year means all years following the initial enrollment year in a like plan type.

(b) *Compensation rules.* An MA organization must compensate independent brokers and agents, if compensation is paid, only according to the following rules in this section.

(1) *Compensation amounts.* (i) For an initial year enrollment of a Medicare beneficiary into an MA plan, the compensation must be at or below the fair market value of such services, published annually as a cut-off amount by CMS.

(ii) For renewal years, compensation may be up to 50 percent of the current fair market value cut-off amounts published annually by CMS.

(iii) The initial compensation is paid for replacements between unlike plan types.

(iv) If the MA organization contracts with a third party entity such as a Field Marketing Organization or similar type entity to sell its insurance products, or perform services (for example, training, customer service, or agent recruitment)—