

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Baltimore, Maryland 21244-1850



Center for Medicare

February 24, 2026

Eric Dunning
Director
Nebraska Department of Insurance
1526 K Street, Suite 200
Lincoln, NE 68509-5087

Dear Eric Dunning:

Thank you for your letter to the Centers for Medicare & Medicaid Services (CMS) Administrator Oz expressing concerns regarding certain Medicare Advantage (MA) organizations that have ceased paying commissions to some agents and brokers in Nebraska. I am responding on his behalf.

Section 1851(j)(2)(D) of the Social Security Act requires the Secretary of Health and Human Services to issue guidelines that ensure the use of compensation creates appropriate incentives for agents and brokers to enroll individuals in MA plans that best meet their health care needs. CMS regulation at 42 CFR § 422.2274(a), (d)(2), and (d)(3) defines compensation and limits such compensation based on CMS-established fair market value amounts. Additionally, 42 CFR § 422.2274(d)(1)(ii) provides that the specific determination of compensation amounts is governed by contractual arrangements between MA organizations and their agents and brokers, thereby permitting individual plans to establish payment schedules within regulatory limits.

Regarding the regulation at 42 CFR § 422.2274(c)(8), CMS requires MA organizations to ensure that beneficiaries are not charged marketing consulting fees when considering enrollment in MA plans. This provision, codifying prior CMS guidance and effective beginning Contract Year 2022, was finalized following public comment through the rule making process. The intent of this requirement is to ensure that agents and brokers do not charge Medicare beneficiaries for assistance related to understanding their coverage options or making enrollment decisions. CMS implemented this policy to protect beneficiaries from improper fees associated with marketing and enrollment activities.

It is important to note that this regulatory provision applies specifically to agents and brokers used by MA organizations to sell an MA plan or plans, licensed and appointed for that purpose as required by 42 CFR § 422.2274(c)(1). Accordingly, fees for providing advisory services under

Nebraska's insurance consultants licensure may not necessarily be subject to 42 CFR § 422.2274(c)(8).

Thank you for your letter. We will take this feedback into consideration in future rulemaking.

Sincerely,

Chris Klomp

Chris Klomp
Director of Medicare & Deputy Administrator,
CMS Sr Counselor to the Secretary, HHS