

New or Updated Marketing Rules Effective October 1, 2008

The Centers for Medicare and Medicaid Services (CMS) has recently announced new or updated marketing rules for those involved in the sale of PDP, MA-PD, MA, CCP, PFFS, RPPPO, MSA, HCPPs, EGWPs and Cost Plans. Producers and brokers may want to pay particularly close attention to these changes since they have already become effective as of October 1, 2008.

Some of the major changes for marketing purposes include:

- Plans may offer gifts to potential enrollees as long as such gifts are of nominal value and are provided whether or not the individual enrolls in the plan. Nominal value currently is defined as an item worth \$15 or less, based on the retail purchase price of the item regardless of the actual cost.
- Plans and any downstream contractors are prohibited from door-to-door solicitations and other instances of unsolicited contacts that may occur outside of advertised sales or educational events.
- For those circumstances where outbound calls are permitted, outbound scripts must be submitted for review and approval prior to use in the market place. Scripts must include a privacy statement clarifying that the beneficiary is not required to provide any information to the plan representative and that the information provided will in no way affect the beneficiary's membership in the plan.
- Plans may not market non-healthcare-related products, such as annuities and life insurance, to prospective enrollees during any Medicare Advantage Organization (MAO) or Prescription Drug benefit program (PDP) sales activity or presentation.
- Plan marketing representatives must clearly identify the types of products that will be discussed before marketing to a potential enrollee.
- Prior to any marketing appointment, the beneficiary must agree to the scope of the appointment and that agreement must be documented or recorded by the plan.
- Plans may not conduct sales activities in healthcare settings except in common areas.
- Educational events may not include sales activities, such as the distribution of marketing materials or distribution or collection of plan applications.

- Plans are prohibited from using names and/or logos of co-branded network partners on membership plan identification cards and must include a disclaimer on other marketing materials that include and logos of co-branded network partners.
- Plans may not provide or subsidize meals for prospective enrollees at any event or meeting at which plan benefits are being discussed and/or plan materials are being distributed.
- Plans that conduct marketing through independent agents must use state-licensed, certified, or registered individuals. Both independent agents and internal sales staff that perform marketing must be licensed and appointed.
- Plans must report the termination of any brokers or agents and, if required by state law, the reason for the termination to the state in which the broker or agent has been appointment by law.
- Plans must ensure that brokers and agents selling Medicare products are annually trained on Medicare rules, regulations, and plan details specific to the plan products being sold by the brokers and agents. MAOs and Part D Organizations must also ensure that brokers and agents selling Medicare products are tested annually on their knowledge of Medicare rules and regulations, as well as on the plan specific details of the plan products being sold.
- Plans must establish limits on agent and broker compensation, consistent with CMS guidance, to ensure that agents and brokers enroll individuals in the MAO or PDP plans that are intended to best meet the beneficiary's health care needs. These compensation rules are designed to minimize churning.

Questions concerning these new or updated rules can be directed to Martin Swanson, Counsel, at [***martin.swanson@nebraska.gov***](mailto:martin.swanson@nebraska.gov).