

§ 422.2274

42 CFR Ch. IV (10–1–10 Edition)

(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]

§ 422.2274 Broker and agent requirements.

For purposes of this section "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to, commissions, bonuses, gifts, prizes, awards and finders fees. "Compensation" does not include the payment of fees to comply with State appointment laws, training, certification, and testing costs; reimbursement for mileage to, and from, appointments with beneficiaries; or reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials. If a Medicare Advantage organization markets through independent (i.e., non-employee) brokers or agents, the following requirements must be met:

(a) Agents and brokers must be compensated as follows:

(1) An MA organization (or other entity on its behalf) may provide compensation to a broker or agent for the sale of an MA product if the following requirements are met:

(i) The compensation amount paid to the broker or agent for an initial enrollment of a Medicare beneficiary into an MA plan in 2009 is one of the following:

(A) The compensation paid by the MA organization in the geographic area for initial enrollment for the plan type in question in 2006, adjusted by the average change in MA rates as published by CMS in the MA rate announcement; or

(B) A compensation amount commensurate with the market rate for initial enrollments paid by (or on behalf of) MA organizations offering plans in the geographic area for the plan type in question during 2006 and 2007, adjusted by the average change in MA rates as published by CMS in the MA rate announcement.

(ii) For 2010 and subsequent years, the compensation amount paid to an agent or broker for enrollment of a Medicare beneficiary into an MA plan is:

(A) For an initial enrollment, the prior year's initial compensation adjusted by the change in MA rates that CMS announces each year.

(B) For renewals, an amount equal to 50 percent of the initial compensation in (A) above.

(iii) The broker or agent is paid a renewal compensation for each of the next 5 years the enrollee remains in the plan in an amount equal to 50 percent of the initial year compensation amount (creating a 6-year compensation cycle). For purposes of paragraph (a)(1)(i), individuals enrolling in an MA plan in 2009 are initially deemed to be in the first renewal year (the second year) in the 6-year cycle. With respect to an individual identified by the MA organization as in an Initial Coverage Election Period (ICEP) or subsequently identified by CMS as in an ICEP or new to the MA program, the individual is considered to be in the initial year of the 6-year cycle. The MA organization must adjust the compensation paid for these new enrollees from renewal compensation to the amount that would have been paid for an initial enrollment under the 6-year compensation structure initiated in the year the enrollment occurred.

(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), the amount paid to the third party must be fair-market value and must not exceed an amount that is commensurate with the amounts paid by the MA organization to a third party for similar services during each of the previous 2 years.

(2) [Reserved]

(3) No entity shall provide aggregate compensation to its agents or brokers and no agent or broker shall receive aggregate compensation greater than the renewal compensation payable by the replacing plan on renewal policies if an existing policy is replaced with a like plan type during the first year and 5 renewal years (6-year compensation cycle).

(1) For purposes of this section, “like plan type” means PDP replaced with another PDP, MA or MA-PD replaced with another MA or MA-PD, or cost plan replaced with another cost plan.

(ii) Replacements between different plan types (for which a new compensation is paid) include—PDP and MA-PD, PDP and cost plans, or MA-PD and cost plans.

(4) Compensation shall be earned for months 4 through 12 of the enrollment year.

(i) Plans may pay agents and brokers up-front or prorate compensation payments over 12 months or over months 4 through 12, but

(ii) When a beneficiary disenrolls from the plan, the plan must recover all compensation paid: for months in which the beneficiary is not enrolled; and during months 1 through 3 if the beneficiary disenrolls during the first three months.

(5) Organizations and sponsors must establish a compensation structure for new and replacement enrollments and renewals effective in a given plan year. Compensation structures must be in place by the beginning of the plan marketing period, October 1.

(6) Compensation structures must be available upon CMS request including for audits, investigations, and to resolve complaints.

(b) It must ensure agents selling Medicare products are trained annually on Medicare rules and regulations specific to the plan products they intend to sell.

(c) It must ensure agents selling Medicare products are tested annually, as specified in CMS guidance.

(d) Upon CMS’ request, the organization must provide to CMS, in a form consistent with current CMS guidance, the information necessary for it to conduct oversight of marketing activities.

(e) It must comply with State requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual’s conduct. CMS will establish and maintain a memorandum of understanding (MOU) to share compliance and oversight information with States that agree to the MOU.

[73 FR 54250, Sept. 18, 2008, as amended at 73 FR 67412, Nov. 14, 2008]

§ 422.2276 Employer group retiree marketing.

MA organizations may develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the MA organization, and furnish these materials only to the group members. These materials are not subject to CMS prior review and approval.

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

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