

(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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