

**§ 423.2264**

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) *Ad hoc enrollee communication materials.* Ad hoc enrollee communication materials may be reviewed by CMS, which may upon review determine that such materials must be modified, or may not longer be used.

[70 FR 4525, Jan. 28, 2005, as amended at 75 FR 19826, Apr. 15, 2010]

**§ 423.2264 Guidelines for CMS review.**

In reviewing marketing material or enrollment forms under § 423.2262, CMS determines (unless otherwise specified in additional guidance) that the marketing 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 explanation of the grievance and appeals process, including differences between the two, and when it is appropriate to use each; and

(3) Any other information necessary to enable beneficiaries to make an informed decision about enrollment.

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

(c) Include in the written materials notice that the Part D plan 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 Part D plan. In addition, the Part D plan may reduce its service area and no longer be offered in the area where a beneficiary resides.

(d) Ensure that materials are not materially inaccurate or misleading or

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otherwise make material misrepresentations.

(e) For markets with a significant non-English speaking population, provide materials in the language of these individuals.

**§ 423.2266 Deemed approval.**

If CMS has not disapproved the distribution of marketing materials or forms submitted by a Part D sponsor for a Part D plan in a Part D region, CMS is deemed to not have disapproved the distribution of the marketing material or form in all other Part D regions covered by the Part D plan, with the exception of any portion of the material or form that is specific to the Part D region.

**§ 423.2268 Standards for Part D marketing.**

In conducting marketing activities, a Part D plan may not—

(a) Provide cash or other remuneration as an inducement for enrollment or otherwise.

(b) 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.

(c) Engage in any discriminatory activity such as, for example, attempts to recruit Medicare beneficiaries from higher income areas without making comparable efforts to enroll Medicare beneficiaries from lower income areas.

(d) 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.

(e) Engage in activities that could mislead or confuse Medicare beneficiaries, or misrepresent the Part D sponsor or its Part D plan. The Part D organization may not claim that it is recommended or endorsed by CMS or Medicare or that CMS or Medicare recommends that the beneficiary enroll in the Part D plan. The Part D organization may explain that the organization is approved for participation in Medicare.

(f) 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.

(g) 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.

(h) Market additional health related lines of plan business not identified prior to an in-home appointment without a separate appointment that may not be scheduled until 48 hours after the initial appointment.

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

(j) Use providers, provider groups, or pharmacies to distribute printed information for beneficiaries to use when comparing the benefits of different Part D plans unless providers, provider groups or pharmacies accept and display materials from all Part D plan sponsors 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 guidelines.

(k) Conduct sales presentations or distribute and accept Part D plan enrollment forms in provider offices, pharmacies 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.

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

(m) Employ Part D plan names that suggest that a plan is not available to all Medicare beneficiaries.

(n) Display the names and/or logos of co-branded network providers on the organization's member identification card. Other marketing materials (as defined in § 423.2260) that include names and/or logos of provider co-branding partners must clearly indicate that

other providers are available in the network.

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

(p) Provide meals for potential enrollees, which are prohibited, regardless of value.

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

[73 FR 54222, Sept. 18, 2008, as amended at 73 FR 54253, Sept. 18, 2008]

**§ 423.2272 Licensing of marketing representatives and confirmation of marketing resources.**

In its marketing, the Part D organization must—

(a) Demonstrate to CMS's 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 PDP and understand the rules applicable under the plan.

(c) Employ as marketing representatives only individuals who are licensed by the State to conduct direct marketing activities (as defined in the Medicare Marketing Guidelines) in that State, and whom the sponsor 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 54222, Sept. 18, 2008, as amended at 73 FR 54253, Sept. 18, 2008]

**§ 423.2274 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