

(ii) Grants opportunity to appear in the case of a Board revision.

(b) *Basis for revised decision and right to review.* (1) If a revised decision is necessary, the ALJ or the Departmental Appeals Board, as appropriate, renders it on the basis of the entire record.

(2) If the decision is revised by an ALJ, the Departmental Appeals Board may review that revised decision at the request of either party or on its own motion.

**§ 422.1094 Notice and effect of revised decision.**

(a) *Notice.* The notice mailed to the parties states the basis or reason for the revised decision and informs them of their right to Departmental Appeals Board review of an ALJ revised decision, or to judicial review of a Board reviewed decision.

(b) *Effect—(1) ALJ revised decision.* An ALJ revised decision is binding unless it is reviewed by the Departmental Appeals Board.

(2) *Departmental Appeals Board revised decision.* A Board revised decision is binding unless a party files a civil action in a district court of the United States within the time frames specified in 423.1088.

[72 FR 68726, Dec. 5, 2007, as amended at 85 FR 72909, Nov. 16, 2020]

**Subpart U [Reserved]**

**Subpart V—Medicare Advantage Communication Requirements**

SOURCE: 73 FR 54220, Sept. 18, 2008, unless otherwise noted.

**§ 422.2260 Definitions.**

The definitions in this section apply for this subpart unless the context indicates otherwise.

*Advertisement (Ad)* means a read, written, visual, oral, watched, or heard bid for, or call to attention. Advertisements can be considered communications or marketing based on the intent and content of the message.

*Alternate format* means a format used to convey information to individuals with visual, speech, physical, hearing,

and intellectual disabilities (for example, braille, large print, audio).

*Banner* means a type of advertisement feature typically used in television ads that is intended to be brief, and flashes limited information across a screen for the sole purpose of enticing a prospective enrollee to contact the MA plan (for example, obtain more information) or to alert the viewer that information is forthcoming.

*Banner-like advertisement* is an advertisement that uses a banner-like feature, that is typically found in some media other than television (for example, outdoors and on the internet).

*Communications* means activities and use of materials created or administered by the MA organization or any downstream entity to provide information to current and prospective enrollees. Marketing is a subset of communications.

*Marketing* means communications materials and activities that meet both the following standards for intent and content:

(1) Intended, as determined under paragraph (1)(ii) of this definition, to do any of the following:

(i)(A) Draw a beneficiary's attention to a MA plan or plans.

(B) Influence a beneficiary's decision-making process when making a MA plan selection.

(C) Influence a beneficiary's decision to stay enrolled in a plan (that is, retention-based marketing).

(ii) In evaluating the intent of an activity or material, CMS will consider objective information including, but not limited to, the audience of the activity or material, other information communicated by the activity or material, timing, and other context of the activity or material and is not limited to the MA organization's stated intent.

(2) Include or address content regarding any of the following:

(i) The plan's benefits, benefits structure, premiums, or cost sharing.

(ii) Measuring or ranking standards (for example, Star Ratings or plan comparisons).

(iii) Rewards and incentives as defined under § 422.134(a).

*Outdoor advertising (ODA)* means outdoor material intended to capture the