

(iv) Delegated or sub-contracted entities and downstream entities that conduct mailings on behalf of a multiple Part D sponsors must also comply with this requirement, however, they do not have to include a plan name.

(38) *Promotional Give-Away Disclaimer.* This is model content. The disclaimer consists of a statement that must make clear that there is no obligation to enroll in a plan, and must be included when offering a promotional give-away such as a drawing, prizes, or a free gift.

(39) *Provider Co-Branded Material Disclaimer.* This is model content through which Part D sponsors must:

(i) Convey, as applicable, that other pharmacies, physicians or providers are available in the plan's network.

(ii) Include the model content in disclaimer form or within the material whenever co-branding relationships with network provider are mentioned.

(40) *Limited access to preferred cost-sharing pharmacies.* This is standardized content that must—

(i) Be used on all materials mentioning preferred pharmacies when there is limited access to preferred pharmacies; and

(ii) Include the following language: “<insert organization/plan name>'s pharmacy network includes limited lower-cost, preferred pharmacies in <insert geographic area type(s) and state(s) for which plan is an outlier>”. The lower costs advertised in our plan materials for these pharmacies may not be available at the pharmacy you use. For up-to-date information about our network pharmacies, including whether there are any lower-cost preferred pharmacies in your area, please call <insert Member Services phone number and TTY> or consult the online pharmacy directory at <insert website>.”

(41) *Third-party marketing organization disclaimer.* This is standardized content. If a TPMO does not sell for all Part D sponsors in the service area the disclaimer consists of the statement: “We do not offer every plan available in your area. Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. Please contact Medicare.gov, 1-800-MEDI-

CARE, or your local State Health Insurance Program to get information on all of your options.” If the TPMO sells for all Part D sponsors in the service area the disclaimer consists of the statement: “Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. You can always contact Medicare.gov, 1-800-MEDICARE, or your local State Health Insurance Program for help with plan choices.” The Part D sponsor must ensure that the disclaimer is as follows:

(i) Used by any TPMO, as defined under § 422.2260, that sells plans on behalf of more than one Part D sponsor.

(ii) Verbally conveyed within the first minute of a sales call.

(iii) Electronically conveyed when communicating with a beneficiary through email, online chat, or other electronic means of communication.

(iv) Prominently displayed on TPMO websites.

(v) Included in any marketing materials, including print materials and television advertisements, developed, used or distributed by the TPMO.

(42) [Reserved]

(43) *Comprehensive medication review—written summary.* This is the standardized communications material Part D sponsors must provide to all MTM program enrollees who receive a comprehensive medication review, as required under § 423.153(d)(1)(vii)(B).

(44) *Safe disposal information.* This is model communications material Part D sponsors must provide to all enrollees targeted for its MTM program, as required under § 423.153(d)(1)(vii)(E).

[86 FR 6126, Jan. 19, 2021, as amended at 86 FR 29528, June 2, 2021; 87 FR 27901, May 9, 2022; 88 FR 22341, Apr. 12, 2023; 88 FR 34780, May 31, 2023]

§ 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.

(e) Establish and implement an oversight plan that monitors agent and broker activities, identifies non-compliance with CMS requirements, and reports non-compliance to CMS.

[73 FR 54222, Sept. 18, 2008, as amended at 73 FR 54253, Sept. 18, 2008; 76 FR 21577, Apr. 15, 2011; 83 FR 16755, Apr. 16, 2018; 88 FR 22341, Apr. 12, 2023]

§ 423.2274 Agent, broker, and other third-party requirements.

If a Part D sponsor uses agents and brokers to sell its Medicare Part D plans, the requirements in paragraphs (a) through (e) of this section are applicable. If a Part D sponsor makes payments to third parties, the requirements in paragraph (f) of this section are applicable.

(a) *Definitions.* For purposes of this section, the following definitions are applicable:

Compensation. (i) Includes monetary or non-monetary remuneration of any kind relating to the sale or renewal of a plan or product offered by a Part D sponsor including, but not limited to the following:

- (A) Commissions.
- (B) Bonuses.
- (C) Gifts.
- (D) Prizes or Awards.

(ii) Does not include any of the following:

(A) Payment of fees to comply with State appointment laws, training, certification, and testing costs.

(B) Reimbursement for mileage to, and from, appointments with beneficiaries.

(C) Reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials.

Fair market value (FMV) means, for purposes of evaluating agent/broker compensation under the requirements of this section only, the amount that CMS determines could reasonably be expected to be paid for an enrollment or continued enrollment into a Part D plan. Beginning January 1, 2021, the FMV is \$81. For subsequent years, FMV is calculated by adding the current year FMV and the product of the current year FMV and the Annual Percentage Increase for Part D, which is published for each year in the rate announcement issued pursuant to § 422.312 of this chapter.

Initial enrollment year means the first year that a beneficiary is enrolled in a plan versus subsequent years (c.f., *renewal year*) that a beneficiary remains enrolled in a plan.

Like plan type means one of the following:

- (i) PDP replaced with another PDP.
- (ii) MA or MA-PD replaced with another MA or MA-PD.
- (iii) Cost plan replaced with another cost plan.

Plan year and *enrollment year* mean the year beginning January 1 and ending December 31.

Renewal year means all years following the initial enrollment year in the same plan or in different plan that is a like plan type.

Unlike plan type means one of the following:

- (i) An MA or MA-PD plan to a PDP or Section 1876 Cost Plan.
- (ii) A PDP to a Section 1876 Cost Plan or an MA or MA-PD plan.
- (iii) A Section 1876 Cost Plan to an MA or MA-PD plan or PDP.

(b) *Agent/broker requirements.* Agents and brokers who represent Part D sponsors must follow the requirements in paragraphs (b)(1) through (3) of this section. Representation includes selling products (including Medicare Advantage plans, Medicare Advantage-Prescription Drug plans, Medicare Prescription Drug plans, and section 1876