

implementation specifications, and requirements of 45 CFR part 164 subparts A and C as of the initial enrollment date, or, if unable to make this attestation, provide a plan for coming into compliance with these requirements by the compliance date of the Security Rule set forth in 45 CFR part 164, subpart C.

(d) *Administrative data standards.* An endorsed sponsor must comply with any applicable standards, implementation specifications, and requirements in the Standards for Electronic Transactions under 45 CFR parts 160 and 162 subparts I through R.

(e) *Unique identifiers.* An endorsed sponsor must comply with any applicable standards, implementation specifications, and requirements regarding standard unique identifiers under 45 CFR parts 160 and 162 as of the compliance date of any final rule for standard unique identifiers.

(f) *Applicability of other regulations.* Nothing in this paragraph or in § 403.813 shall be deemed a modification of parts 160, 162 and 164 of title 45, Code of Federal Regulations or otherwise modify the applicability of such regulations to other organizations or covered entities independently subject to the mandates of HIPAA. If an endorsed sponsor is also a health plan, health care provider, or health care clearinghouse, nothing in this paragraph shall impair or otherwise affect the application of HIPAA or parts 160, 162 and 164 of title 45, Code of Federal Regulations to such entity and its performance of those functions which make such entity a health plan, health care provider, or health care clearinghouse.

§ 403.813 Marketing limitations and record retention requirements.

(a) *Marketing limitations.* (1) An endorsed sponsor may only market the following:

(i) Those products and services offered under the endorsed program that are inside the scope of endorsement defined in § 403.806(h) and permitted under § 403.812(b).

(ii) A Part D plan offered by the endorsed sponsor or an affiliated organization of the endorsed sponsor.

(2) An endorsed sponsor may not request that a drug card enrollee or an

individual seeking to enroll in its endorsed discount card program authorize the endorsed sponsor to use or disclose individually identifiable health information for purposes of marketing any product or service not allowed under paragraph (a)(1) of this section.

(3) An endorsed sponsor may not commingle any materials related to the marketing of products and services allowed under paragraph (a)(1) of this section with other marketing materials.

(4) Following termination of an endorsed sponsor's endorsement under §§ 403.820(c), (d) or (e) or termination of the Medicare Drug Discount Card and Transitional Assistance Program, a drug card enrollee's individually identifiable health information collected or maintained by an endorsed sponsor may not be used or disclosed for purposes of marketing any product or service.

(b) *Record retention standard.* (1) An endorsed sponsor must retain records that it creates, collects, or maintains while participating in the Medicare Drug Discount Card and Transitional Assistance Program as part of its operations of an endorsed program for at least 6 years following termination of such program, or, in the event the endorsed sponsor's endorsement is terminated under § 420.820(c), (d), or (e) of this chapter at least 6 years following termination of such endorsement. The Secretary may extend the six-year retention period if an endorsed sponsor's records relate to an ongoing investigation, litigation, or negotiation by the Secretary, the Department of Health and Human Services Office of Inspector General, the Department of Justice, or a State, or such documents otherwise relate to suspicions of fraud and abuse or violations of Federal or State law.

(2) For the period during which an endorsed sponsor retains records as specified in paragraph (b)(1) of this section, an endorsed sponsor must continue to apply security and privacy protections to such records and the information contained therein to the same extent endorsed sponsors are required to do so under §§ 403.812(b) and 403.812(c)(1) prior to termination.

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