

in marketing materials, with the exception of when Star Ratings are published on small objects (that is, a giveaway items such as a pens or rulers).

(36) *Accommodations Disclaimer.* This is model content through which plans must:

(i) Convey that accommodations for persons with special needs is available

(ii) Provide a telephone number and TTY number

(iii) Include the model content in disclaimer form or within the body of the material on any advertisement of invitation to all events as described under § 423.2264(c).

(37) *Mailing Statements.* This is standardized content. It consists of statements on envelopes that Part D sponsor must include when mailing information to current members, as follows:

(i) Part D sponsors must include the following statement when mailing information about the enrollee's current plan: "Important [Insert Plan Name] information."

(ii) Part D sponsors must include the following statement when mailing health and wellness information "Health and wellness or prevention information."

(iii) The Part D sponsor must include the plan name; however, if the plan name is elsewhere on the envelope, the plan name does not need to be repeated in the disclaimer.

(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-MEDICARE, 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

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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; 89 FR 30842, Apr. 23, 2024]

§ 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

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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, renewal, or services related to 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.

(E) Beginning with contract year 2025, payment of fees to comply with state appointment laws, training, certification, and testing costs.

(F) Beginning with contract year 2025, reimbursement for mileage to, and from, appointments with beneficiaries.

(G) Beginning with contract year 2025, reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials.

(H) Beginning with contract year 2025, any other payments made to an agent or broker that are tied to enrollment, related to an enrollment in a Part D plan or product, or for services conducted as a part of the relationship associated with the enrollment into a Part D plan or product.

(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 or 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 national FMV is 81. In contract year 2025, there will be a one-time increase of \$100 to the FMV to account for administrative payments included under the compensation rate. For subsequent years, FMV is calculated by adding the current year FMV and the produce of the current year FMV and Annual Percentage Increase for Part D, which is published for each year in the rate announcement issued under § 422.312.

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 Ad-

vantage plans, Medicare Advantage-Prescription Drug plans, Medicare Prescription Drug plans, and section 1876 Cost plans) as well as outreach to existing or potential beneficiaries and answering or potentially answering questions from existing or potential beneficiaries.

(1) Be licensed and appointed under State law (if required under applicable State law).

(2) Be trained and tested annually as required under paragraph (c)(4) of this section, and achieve an 85 percent or higher on all forms of testing.

(3) Secure and document a Scope of Appointment prior to meeting with potential enrollees.

(c) *Part D sponsor oversight.* Part D sponsors must oversee first tier, downstream, and related entities that represent Part D sponsor to ensure agents and brokers abide by all applicable State and Federal laws, regulations, and requirements. Part D sponsors must do all of the following:

(1) As required under applicable State law, employ as marketing representatives only individuals who are licensed by the State to conduct marketing (as defined in this subpart) of health insurance in that State, and whom the Part D sponsor has informed that State it has appointed, consistent with the appointment process for agents and brokers provided for under State law.

(2) As required under applicable State law, report the termination of an agent or broker to the State and the reason for termination if required by state law.

(3) Report to CMS all enrollments made by unlicensed agents or brokers and for-cause terminations of agents or brokers.

(4) On an annual basis, provide training and testing to agents and brokers on Medicare rules and regulations, the plan products that agents and brokers will sell including any details specific to each plan product, and relevant State and Federal requirements.

(5) On an annual basis for plan years through 2024, by the last Friday in July, report to CMS whether the MA organization intends to use employed, captive, or independent agents or brokers in the upcoming plan year and the specific rates or range of rates the plan

will pay independent agents and brokers. Following the reporting deadline, MA organizations may not change their decisions related to agent or broker type, or their compensation rates and ranges, until the next plan year.

(6) On an annual basis by October 1, have in place full compensation structures for the following plan year. The structure must include details on compensation dissemination, including specifying payment amounts for initial enrollment year and renewal year compensation.

(7) Submit agent or broker marketing materials to CMS through HPMS prior to use, following the requirements for marketing materials in this subpart.

(8) Ensure beneficiaries are not charged marketing consulting fees when considering enrollment in Part D plans.

(9) Establish and maintain a system for confirming that:

(i) Beneficiaries enrolled by agents or brokers understand the product, including the rules applicable under the plan.

(ii) Agents and brokers appropriately complete Scope of Appointment records for all marketing appointments (including telephonic and walk-in).

(10) Demonstrate that marketing resources are allocated to marketing to the disabled Medicare population as well as to Medicare beneficiaries age 65 and over.

(11) 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.

(12) Ensure that, prior to an enrollment CMS' required questions and topics regarding beneficiary needs in a health plan choice are fully discussed. Topics include information regarding pharmacies (that is, whether or not the beneficiary's current pharmacy is in the plan's network), prescription drug coverage and costs (including whether or not the beneficiary's current pre-

scriptions are covered), premiums, and other services or incentives.

(13) Beginning with contract year 2025, ensure that no provision of a contract with an agent, broker, or other TPMO has a direct or indirect effect of creating an incentive that would reasonably be expected to inhibit an agent or broker's ability to objectively assess and recommend which plan best fits the health care needs of a beneficiary.

(d) *Compensation requirements.* Part D sponsors must ensure they meet the requirements in paragraphs (d)(1) through (5) of this section in order to pay compensation. These compensation requirements only apply to independent agents and brokers.

(1) *General rules.* (i) MA organizations may only pay agents or brokers who meet the requirements in paragraph (b) of this section.

(ii) For contract years through contract year 2024, Part D sponsors may determine, through their contracts, the amount of compensation to be paid, provided it does not exceed limitations outlined in this section. Beginning with contract year 2025, Part D sponsors are limited to the compensation amounts outlined in this section.

(iii) Part D sponsors may determine their payment schedule (for example, monthly or quarterly). Payments (including payments for AEP enrollments) must be made during the year of the beneficiary's enrollment.

(iv) Part D sponsors may only pay compensation for the number of months a member is enrolled.

(2) Initial enrollment year compensation. For each enrollment in an initial enrollment year for contract years through contract year 2024, Part D sponsors may pay compensation at or below FMV.

(i) Part D sponsors may pay either a full or pro-rated initial enrollment year compensation for:

(A) A beneficiary's first year of enrollment in any plan; or

(B) A beneficiary's move from an employer group plan to a non-employer group plan (either within the same parent organization or between parent organizations).

(ii) Part D sponsors must pay pro-rated initial enrollment year compensation for:

(A) A beneficiary's plan change(s) during their initial enrollment year.

(B) A beneficiary's selection of an "unlike plan type" change. In that case, the new plan would only pay the months that the beneficiary is enrolled, and the previous plan would recoup the months that the beneficiary was not in the plan.

(3) *Renewal compensation.* For each enrollment in a renewal year for contract years through contract year 2024, Part D sponsors may pay compensation at a rate of up to 50 percent of FMV. For contract years beginning with contract year 2025, for each enrollment in a renewal year, MA organizations may pay compensation at 50 percent of FMV.

(i) Part D sponsors may pay compensation for a renewal year:

(A) In any year following the initial enrollment year the beneficiary remains in the same plan; or

(B) When a beneficiary enrolls in a new "like plan type".

(ii) [Reserved]

(4) *Other compensation scenarios.* (i) When a beneficiary enrolls in a PDP, the Part D sponsor may pay only the PDP compensation (and not compensation for MA enrollment under § 422.2274 of this chapter).

(ii) When a beneficiary enrolls in both a section 1876 Cost Plan and a stand-alone PDP, the 1876 Cost Plan sponsor may pay compensation for the cost plan enrollment and the Part D sponsor must pay compensation for the Part D enrollment.

(iii) When a beneficiary enrolls in a MA-only plan and a PDP, the MA plan may pay for the MA plan enrollment and the Part D sponsor may pay for the PDP enrollment.

(5) *Additional compensation, payment, and compensation recovery requirements (Charge-backs).* (i) Part D sponsors must retroactively pay or recoup funds for retroactive beneficiary changes for the current and previous calendar years. Part D sponsors may choose to recoup or pay compensation for years prior to the previous calendar year, but they must do both (recoup amounts owed and pay amounts due) during the same year.

(ii) Compensation recovery is required when:

(A) A beneficiary makes any plan change (regardless of the parent organization) within the first three months of enrollment (known as rapid disenrollment), except as provided in paragraph (d)(5)(iii) of this section.

(B) Any other time period a beneficiary is not enrolled in a plan, but the plan paid compensation based on that time period.

(iii) Rapid disenrollment compensation recovery does not apply when:

(A) A beneficiary enrolls effective October 1, November 1, or December 1 and subsequently uses the Annual Election Period to change plans for an effective date of January 1.

(B) A beneficiary's enrollment change is not in the best interests of the Medicare program, including for the following reasons:

(1) Other creditable coverage (*for example*, an employer plan).

(2) Moving into or out of an institution.

(3) Gain or loss of employer/union sponsored coverage.

(4) Plan termination, non-renewal, or CMS imposed sanction.

(5) To coordinate with Part D enrollment periods or the State Pharmaceutical Assistance Program.

(6) Becoming LIS or dually eligible for Medicare and Medicaid.

(7) Qualifying for another plan based on special needs.

(8) Due to an auto, facilitated, or passive enrollment.

(9) Death.

(10) Moving out of the service area.

(11) Non-payment of premium.

(12) Loss of entitlement or retroactive notice of entitlement.

(13) Moving into a 5-star plan.

(14) Moving from an LPI plan into a plan with three or more stars.

(iv)(A) When rapid disenrollment compensation recovery applies, the entire compensation must be recovered.

(B) For other compensation recovery, plans must recover a pro-rated amount of compensation (whether paid for an initial enrollment year or renewal year) from an agent or broker equal to the number of months not enrolled.

(1) If a plan has paid full initial compensation, and the enrollee disenrolls prior to the end of the enrollment year,