

## Module 4-Marketing Medicare Advantage and Part D Plans

### 1. Module 4-Communications and Marketing Rules for Medicare Advantage and Part D Plans

#### *1.1 Communications and Marketing Rules for Medicare Advantage and Part D Plans*



## 1.2 Navigation Instructions

### Navigation Instructions

- The "PREV" and "NEXT" buttons at the bottom of each page will take you backwards and forward through the course one page at a time.
- Please note: Students are required to view each slide. Users can view the current slide and any slide they previously viewed but will be unable to skip and or jump ahead within the menu.
- Click the menu icon (≡) to expand and or collapse the table of contents.
- You may download content material by clicking on "Download Slides" located on the left hand side under "Download Content Materials".

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## 1.4 LEARNING OBJECTIVES

### LEARNING OBJECTIVES




- |   |   |
|---|---|
| <b>01</b> What are communications   | <b>05</b> Prohibited marketing and communications practices       |
| <b>02</b> What activities constitute marketing and what materials are marketing materials | <b>06</b> Permitted promotional and marketing activities          |
| <b>03</b> The special rules for marketing Medicare health plans and Part D plans          | <b>07</b> The difference between educational and marketing events |
| <b>04</b> Rules for making marketing appointments   | <b>08</b> Rules regarding agent compensation                      |
|   | <b>09</b> Plan enforcement of the marketing rules                 |

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## 1.5 Training Roadmap: Part 1

A graphic showing a winding road with four location pins: yellow, green, blue, and red. A purple banner across the road reads "Training Roadmap: Module 4".

- ☐ Key terms and general background information
- ☐ Regulation of communications materials and activities
- ☐ Marketing representatives: identification, state licensure, and training
- ☐ Marketing and communications permissible activities: permitted contacts
- ☐ Rules related to sales and educational events
- ☐ Marketing at individual appointments
- ☐ Marketing: general audience and e-mail
- ☐ Required and prohibited marketing practices
- ☐ Accessing and using certain plan materials
- ☐ Plan ratings: background, required practices, and prohibitions
- ☐ Further information on prohibited practices
- ☐ Discussion of marketing activities

The AHIP logo, featuring the letters "AHIP" in a bold, sans-serif font with a stylized star or arrow graphic above the "P".



## 1.6 Regulation of Marketing and Communication - In General

### Regulation of Marketing and Communication - In General

- **Communications** are materials and activities that promote and/or provide information to current and prospective enrollees on Medicare Health Plans and Part D Plans.
- Marketing is a subset of communications.
  - However, for purposes of CMS regulation, CMS refers to materials that are communications only (i.e., those that lack marketing content and intent) as “communications” and communications that include marketing intent and content as “marketing.”
- CMS regulates activities and materials based on whether they are “marketing” or “communications.”
- Marketing activities and materials are generally subject to a higher degree of regulation and oversight than communications activities and materials.



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## 1.7 Medicare Marketing and Communications Rules

### Medicare Marketing and Communications Rules

The Medicare marketing and communications rules apply to the following types of Medicare health plans and Part D plans:

- Medicare Advantage (MA) only plans
- Medicare Advantage Prescription Drug (MA-PD) plans
- Prescription Drug Plans (PDPs)
- Section 1876 Cost plans
- Medicare-Medicaid Plans (MMPs)
  - For MMPs, marketing requirements may be modified by state-specific requirements. Each state in which MMPs are offered has state-specific marketing guidelines and CMS-approved model documents. Those guidelines and documents can be accessed at <https://www.cms.gov/Medicare-Medicaid-Coordination/Medicare-and-Medicaid-Coordination/Medicare-Medicaid-Coordination-Office/FinancialAlignmentInitiative/MMPInformationandGuidance/MMPMarketingInformationandResources.html>

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## 1.8 What is Marketing?

### What is Marketing?

Marketing is activities and materials that provide information to current and prospective enrollees that include both marketing intent and marketing content.

- **Marketing Intent** - the purpose of marketing activities and materials is to draw a prospective or current enrollee's attention to a plan or group of plans to influence a beneficiary's plan choice, including a decision to remain enrolled in his/her plan.
- **Marketing Content** - Marketing activities and materials include:
  - Information about benefits or benefit structure
  - Information about premiums and cost-sharing
  - Comparisons to other Plan(s)/Part D sponsor(s)
  - Rankings or measurements about other Plan(s)/Part D sponsor(s)
  - Information about Star Ratings



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## 1.9 What is Communication?

### What is Communication?

Communication only (referred to as communication) is activities and material that provide information to current and prospective enrollees that:

- Contain no marketing content; or
- Are a material that includes marketing content but is explicitly designated by CMS as communication because it does not have marketing intent.
  - For example, CMS designates the Evidence of Coverage as a communication material, while the summary of benefits and an annual notice of change are marketing material.



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## 1.10 Regulation of Communications Materials

### Regulation of Communications Materials

- Content -- While CMS does not generally require communications-only materials to be submitted to CMS for review and approval; it may review such materials and does require certain disclaimers to be used in those materials. CMS also prohibits the use of certain claims or language in communications materials.
  - CMS does require certain designated communication materials critical to beneficiaries understanding or accessing their benefits to be reviewed (e.g., the evidence of coverage).
  - CMS may require prior review of communication materials that, based on feedback such as complaints or data gathered through reviews, warrant additional oversight to ensure accuracy.



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## ***1.11 Regulation of Communications Activities***

### **Regulation of Communications Activities**

Contact - CMS regulates how marketing representatives can contact potential enrollees.

Content - CMS regulates what marketing representatives may say to enrollees and potential enrollees.



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## ***1.12 What are Examples of Communication Only Materials***

### **What are Examples of Communication Only Materials**

- A flyer that says “Superior Health Care Co. offers many Medicare Advantage plan choices. One may be right for you! To find out more, call us at 1-800-888-8888.” (Does not include benefit, cost-sharing, premium, star rating or comparison information).
- A letter sent to enrollees of Superior Health Care Co. to remind them to get their flu shot. The letter says, “Superior Health Care Co. enrollees can get their flu shot for \$0 copay at any network pharmacy...” (The intent of the letter is not to steer enrollees into staying with the Plan, but instead to encourage them to get a flu shot.)
- Materials specifically designated by CMS as communications because they do not meet the “intent” standard, such as the Evidence of Coverage, formulary or provider directory.

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### ***1.13 What are Communications Activities - Case Study***

## **What are Communications Activities - Case Study**

Agent Watson hands out flyers for his insurance agency at a senior expo. The brochures state that his agency can help seniors find the health plan that is correct for them and lists the eight different Medicare Advantage organizations with which his agency contracts. The flyer also includes a telephone number that beneficiaries can call if they would like additional information. This activity is communication only and not marketing.



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## 1.14 Regulation of Marketing Materials in General

### Regulation of Marketing Materials in General

CMS regulates marketing activities in a variety of ways, including:

- **Setting** - CMS has rules regarding marketing in a health care setting versus marketing in other settings and marketing at educational versus marketing events.
- **Who may market** - CMS requires marketing representatives to comply with state laws concerning licensure; CMS places strict limits on marketing by health care providers.
- **Timing** - CMS regulates when marketing representatives can begin marketing the next year's plans.
- **Contact** - CMS regulates how marketing representatives can contact potential enrollees.
- **Content** - CMS regulates what marketing representatives may say to enrollees and potential enrollees.



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### ***1.15 What are Examples of Marketing Activities?***

## **What are Examples of Marketing Activities?**

Examples of marketing activities include:

- Talking to a Medicare beneficiary about how a particular plan offers a higher level of coverage for the services the beneficiary uses most often.
- Handing out health plan brochures and a summary of benefits at an event.
- Calling current clients who are Medicare beneficiaries to discuss upcoming premium and benefit changes to their plans and encourage them to remain enrolled in those plans.
- Passing out plan-specific benefits information and agent business cards after a health management seminar.



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## 1.16 What are Examples of Marketing Materials?

### What are Examples of Marketing Materials?

Examples of marketing materials include the following if they contain marketing content:

- General audience materials such as brochures, direct mail, newspapers, or websites that promote specific plans and discuss their star ratings.
- Marketing representative scripts or outlines for telemarketing, enrollment or other presentations that discuss plan benefits.
- Presentation materials such as slides and charts that explain the benefits of enrolling in a particular plan.
- Social media posts (e.g., Facebook, Twitter, YouTube, etc.) that mention a plan's star rating, note its low premium, or promote its benefits.



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## 1.17 Regulation of Marketing Materials

### Regulation of Marketing Materials

CMS regulates materials that qualify as marketing materials as follows:

- **Content:** CMS may require that certain disclaimers or other information be included in marketing materials. CMS also prohibits the use of certain claims or language.
- **Review and Approval:** CMS requires that all marketing materials be submitted to CMS for approval and/or review.
  - Unless specified by CMS, third party and downstream entities are not permitted to submit materials directly to CMS, only the plan sponsor may do so.
  - Materials developed for use with employer/union group members do not have to be submitted to CMS.



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## ***1.18 Rules That Apply to all Communication and Marketing Materials and Activities***

### **Rules That Apply to all Communication and Marketing Materials and Activities**

Plans and their marketing representatives may not:

- Mislead, confuse, or provide materially inaccurate information to beneficiaries.
- Target enrollees based on income levels (except in the case of Dual Eligible SNPs).
- Target enrollees based on health status (except in the case of a chronic care SNP).
- State or imply that the plans are only available to seniors, rather than all eligible Medicare beneficiaries (e.g., younger disabled individuals).



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## ***1.19 Applicability of Medicare Communications and Marketing Rules to Marketing Representatives***

### **Applicability of Medicare Communications and Marketing Rules to Marketing Representatives**

Plan marketing representatives are subject to the same requirements related to marketing and communications as the plans. Plans are responsible for ensuring compliance with Medicare rules by their marketing representatives.

Plan marketing representatives include:

- individuals employed by a plan
- individuals or entities under contract to the plan through a direct or downstream contract.
  - This would include brokers and agents (contracting directly with the plan or through an agency or other entity), third-party marketing organizations (TMOs) such as a field marketing organization (FMOs), general agents (GAs), or other marketing contractors).



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## 1.20 Requirements to Act as Plan Marketing Representatives

### Requirements to Act as Plan Marketing Representatives

- Plan sponsors must contract with or employ as marketing representatives only individuals who are licensed by the state to conduct the relevant activities in that state.
- The marketing representatives must be appointed by the plan if required under State law.
- MA and Part D plans are required by law to ensure that all employed and contracted marketing representatives complete training at least annually that includes all content specified by CMS.
  - They also must pass a written test each year that demonstrates thorough familiarity with both the Medicare program and the products they are selling.
  - Agents/brokers marketing only employer/union group plans are not required to be tested. However, plans may choose to require testing.



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## 1.21 Marketing Representatives - State Licensure Case Study

### Marketing Representatives - State Licensure Case Study

Agent King is employed by an agency under contract with HealthMax health plan, a Medicare Advantage organization that offers plans in multiple states. The agency maintains a website marketing the Medicare Advantage plans with which it has contracts. Agent King follows up with individuals who request more information about HealthMax via the agency's website and tries to persuade them to enroll in HealthMax. Agent King is a marketing representative of HealthMax. Thus, he must be licensed and appointed in every state in which beneficiaries to whom he markets HealthMax are located. He may not submit enrollment applications or receive commissions for enrollees residing in states in which he is not licensed and appointed.



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## 1.22 Marketing and Communication Prohibitions- Unsolicited Contacts

### Marketing and Communication Prohibitions- Unsolicited Contacts

Marketing representatives are prohibited from making unsolicited contact with beneficiaries, including through:

- Door-to-door solicitation, including leaving leaflets, flyers, or door hangers at a residence or on someone's car
- Approaching beneficiaries in common areas such as parking lots, hallways, lobbies, or sidewalks
- Telephone calls
- Text messages and other forms of electronic direct messaging (e.g., through social media platforms, like Facebook instant messaging)
- The prohibition on making unsolicited contact does not extend to e-mail, conventional mail, and other print media such as advertisements.



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### 1.23 Unsolicited Contacts, Continued

## Unsolicited Contacts, Continued

- Marketing representatives may not make unsolicited calls about other business as a means of generating leads for Medicare plans (e.g., bait and switch strategies).
- Marketing representatives may not make unsolicited contact based on referrals provided by enrollees or other sources. However, they may leave business cards with beneficiaries for distribution to friends they are referring.
- Enrollees who are voluntarily disenrolling may not be contacted for sales purposes or be asked to consent to sales contacts.
- Marketing representatives may not make calls to beneficiaries who attended an event unless the beneficiary gave express permission at the event for a follow-up call (there must be documentation of permission to be contacted).



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## 1.24 Unsolicited Contacts Example

### Unsolicited Contacts Example

**Example 1:** Agent Jackson is involved in a health fair that offers a raffle. After the fair, Agent Jackson takes the telephone numbers on the raffle entries and calls each individual to see if they would be interested in discussing MA plans. Agent Jackson has violated the prohibition on unsolicited contacts.

**Example 2:** Agent Lopez's aunt tells him that her neighbor was recently telling her that she was having trouble understanding her Medicare choices and wanted to know if it made sense to enroll in an MA plan. His aunt offers the neighbor's telephone number, but agent Lopez gives his aunt his card and says that the neighbor should call him. Agent Jackson has wisely avoided making an unsolicited call based on a referral.



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## 1.25 Permitted Contacts

### Permitted Contacts

Marketing representatives may:

- Initiate electronic contact through e-mail. However, they must provide an opt-out process to no longer receive electronic communications.
- Call a beneficiary who the marketing representative enrolled in a plan while the beneficiary is an enrollee of that organization.
- Return calls or messages from individuals who initiate contact and request information.
- Call beneficiaries who have expressly given permission for the contact, for example by filling out a business reply card or asking a plan customer service representative to have an agent contact them.
- Call beneficiaries to confirm an appointment that has already been agreed to by a beneficiary.
- Call beneficiaries who submit enrollment applications to conduct business related to enrollment.



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## 1.26 Permitted Contacts, continued

### Permitted Contacts, continued

Marketing representatives may:

- Call current enrollees, including those in non-Medicare products, to discuss plan business, for example, they may:
  - Contact individuals enrolled in one of the MA organization's commercial products when the individual is aging into Medicare,
  - Contact the MA organization's Medicaid plan enrollees to discuss Medicare products,
  - Contact current MA enrollees to promote other Medicare plan types or to discuss plan options/benefits, and
  - Contact the MA organization's Medigap enrollees regarding MA, PDP, or cost plan options.
- Call current enrollees of a plan to discuss/inform them about general plan information such as Annual Enrollment Period dates, availability of flu shots, upcoming plan changes, educational events, and other important plan information.



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## ***1.27 Rules Related to Sales and Educational Events***



## 1.28 Marketing and Educational Events

### Marketing and Educational Events

- Marketing/sales events are events designed to steer potential enrollees toward a plan or limited set of plans or to encourage current enrollees to remain in their plans.
- Educational events are events designed to inform potential enrollees about Medicare, including MA, Part D, or other Medicare programs and do not include marketing activities.
- Sales representatives may conduct a marketing event immediately following an educational event in the same general location (e.g., the same hotel).
  - If a marketing event directly follows an educational event, beneficiaries must be made aware of the change and given the opportunity to leave before marketing begins.
- Advertisements and invitations (in any form of media) that are used to invite beneficiaries to a marketing or educational event must include the following statement: "For accommodation of persons with special needs at meetings call <insert phone and TTY number>."

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## 1.29 Medicare Communications and Marketing Rules: Sales Events

### Medicare Communications and Marketing Rules: Sales Events

- Plans must submit agent talking points and presentations to CMS before use at a sales event.
- At marketing/sales events agents may:
  - ☐ Discuss plan-specific information such as premiums and benefits.
  - ☐ Discuss plan star ratings.
  - ☐ Distribute and collect enrollment applications.
  - ☐ Distribute plan-specific advertisements, explanatory information, and general information about Medicare.
  - ☐ Provide refreshments and light snacks of nominal value as long as they are not bundled and provided as if a meal.



The image shows a close-up of a red pen with a silver tip resting on a Medicare Enrollment Form. The form is titled "Medicare Enrollment Form" and contains various fields for personal information, including "GROUP HEALTH PLAN (SSN or ID)", "PATIENT'S BIRTH DATE", "SEX", "PATIENT RELATIONSHIP TO INSURED", and "PATIENT STATUS". The form is partially filled out with handwritten information.

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### 1.30 Sales Events, Prohibited Activity

## Sales Events, Prohibited Activity

At marketing/sales events agents may not:

- Require beneficiaries to provide contact information as a prerequisite for attending the event.
  - This includes requiring an email address or other contact information as a condition to RSVP for an event online or through the mail.
  - Sign-in sheets must be labeled as optional.
- Conduct health screenings or other activities that could give the impression of “cherry-picking.”
- Provide meals or multiple snacks/refreshments bundled and provided as if a meal, regardless of value.
- Use information collected for raffles and drawings for other purposes.



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### 1.31 Light Snacks Versus Meals

## Light Snacks Versus Meals

**Example 1:** The Super Agency puts out pretzels, chips, cookies, and soda during its marketing seminar to promote the MA plans it represents. Such food offerings qualify as light snacks, which may be offered at marketing events.

**Example 2:** To promote an early morning marketing seminar, Super Agency provides pastries, muffins, bagels, cream cheese, yogurt, fruit, juice, and coffee. Super Agency has bundled several items that might have been considered snacks as a continental breakfast (i.e., a meal), which is prohibited at a marketing event, but allowable at an educational event if they meet nominal value requirements.



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## 1.32 Educational Events

### Educational Events

Educational events must be explicitly advertised as “educational.” At educational events, marketing representatives may:

- Engage in communications activities and distribute communication materials.
- Use a banner with the plan name and/or logo displayed.
- Distribute promotional items, including those with the plan name, logo, and toll-free number and/or website. These items must be free of benefits information and consistent with nominal gift rules.
- Provide an objective presentation to educate beneficiaries about the different ways they can get their Medicare benefits.
- Have a health care provider make an educational presentation on wellness or another health care related topic.



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### ***1.33 Educational Events, Permitted Activities***

## **Educational Events, Permitted Activities**

At educational events, marketing representatives may:

- Answer beneficiary-initiated questions about MA plans.
- Set up future personal marketing appointments.
- Obtain beneficiary contact information including completed Scope of Appointment (SOA) forms).
- Distribute business cards and contact information for beneficiaries to initiate contact.
- Provide meals, refreshments, or snacks as long as they comply with the nominal gift requirements.



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### 1.34 Educational Events, Impermissible Activities

## Educational Events, Impermissible Activities

When an event has been advertised as “educational,” marketing representatives may NOT:

- Conduct sales presentations
- Discuss, display, or distribute plan-specific premiums, benefits, or marketing materials
- Engage in marketing activities
- Distribute or collect enrollment applications



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### 1.35 Gifts and Promotional Items

## Gifts and Promotional Items

Marketing representatives may provide gifts, prizes, or promotional items to beneficiaries as part of an event or for marketing purposes as long as the gifts are of nominal value and provided regardless of enrollment and without discrimination.

- Gifts are of nominal value if an individual item is worth \$15 or less based on the retail purchase price of the item (it does not matter if the plan or representative pays less for the item).
- When more than one gift is offered on one occasion, the combined value of all items must not exceed \$15.
- Multiple gifts given to a beneficiary on different occasions may not exceed \$75 aggregate, per person, per year.



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### 1.36 Gifts and Promotional Items, Continued

## Gifts and Promotional Items, Continued

- Gifts or prizes must not be in the form of cash or cash equivalents or other monetary reward or rebate even if their worth is less than \$15.
- Cash equivalents include:
  - gift certificates or cards that can be readily converted to cash
  - gift cards that may be used anywhere for anything, such as VISA gift cards
  - debit cards.
- Rebates would include, for example, a discount on the first month's premium or on a copayment. Gifts or prizes may not be charitable contributions.



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### 1.37 Promotional Activities: Drawings, Prizes, Giveaways

## Promotional Activities: Drawings, Prizes, Giveaways

- Plan sponsors must include a disclaimer on all marketing materials promoting a prize, drawing, communal experience (e.g., a concert), or any promise of a gift that there is no obligation to enroll in the plan.
- 1128A (a) (5) of the Social Security Act prohibits offering or giving anything of value to a Medicare or Medicaid beneficiary that is likely to influence the beneficiary to order or receive from a particular provider, practitioner, or supplier any item or service covered under Medicare or Medicaid.
  - There is a nominal value (\$15) exception to this rule.



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### ***1.38 Marketing at Individual Appointments***





### 1.39 What are Individual Marketing Appointments?

## What are Individual Marketing Appointments?

- Personal/Individual marketing appointments are those tailored to an individual or small group (e.g., husband and wife). They are not defined by the location.
- Before the personal marketing appointment begins, the agent and beneficiary must complete a scope of appointment.
- During a personal/individual appointment, representatives may market only health care related products during any MA or Part D sales activity or presentation.
  - Such products include Medicare health plans, Medigap plans, and dental plans, but not accident-only plans.



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## 1.40 Required Practices: Scope of Appointment

### Required Practices: Scope of Appointment

Before any marketing appointment, marketing representatives must identify the types of product(s) that will be discussed, obtain agreement from the beneficiary, and document that agreement (known as a “scope of appointment”).

- Types of products include, for example, MA, PDP, Cost plans, and Medicare-Medicaid plans.
- This includes when a beneficiary unexpectedly initiates contact, for example, by unexpectedly walking into a marketing representative's office, or attending a sales appointment properly set up for another individual.



Service	Cost
Ground ambulance	\$200
Air ambulance	\$1,500
PHYSICAL THERAPY	\$60/visit
AMBULANCE	\$200
HOSPITAL ADMISSION	\$1,500
HOSPITAL CONFINEMENT	\$390/day
HOSPITAL INTENSIVE CARE	\$600/day

Additional text visible on the card includes: "Therapy must begin with a licensed physical therapist on the same visit that the Follow-up visit must be received. Limited to 6 visits per benefit.", "Ground ambulance (within 30 miles of hospital or between medical facilities)", "Admitted to a hospital as a resident. Payable only once per confinement.", "Confined in a hospital as a resident. up to 365 days per accident.", "Confinement under..."

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### ***1.41 Required Practices: Scope of Appointment, continued***

#### **Required Practices: Scope of Appointment, continued**

- A scope of appointment may be in writing, in the form of a signed agreement (including electronic signature) by the beneficiary, or a recorded oral agreement. Any technology (e.g., conference calls, fax machines, designated recording lines, pre-paid envelopes, and email) can be used to document the scope of appointment.
- For appointments made over the phone, documentation is generally a recording of the call. However, if the agent does not have a recording mechanism, the agent must obtain a written agreement signed by the beneficiary or authorized representative. This can happen immediately before conducting the appointment.
- A plan sponsor or agent may not agree to the scope of appointment on behalf of the beneficiary.

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## ***1.42 Scope of Appointment: Documentation***

### **Scope of Appointment: Documentation**

Plans/Part D Sponsors are expected to include the following when documenting the SOA:

- Product type (e.g., MA, PDP) that the beneficiary has agreed to discuss during the appointment,
- Date of appointment,
- Beneficiary contact information (e.g. name, address, telephone number),
- Written or verbal documentation of beneficiary or appointed/authorized representative agreement,
- A statement that beneficiaries are not obligated to enroll in a plan; their current or future Medicare enrollment status will not be impacted and clearly explain that the beneficiary is not automatically enrolled in the plan(s) discussed.

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### 1.43 Individual Marketing Appointments, Allowed Activities

## Individual Marketing Appointments, Allowed Activities

During individual appointments, marketing representatives may:

- Distribute plan materials such as an enrollment kit or marketing materials.
- Provide educational information.
- Conduct marketing presentations.
- Provide and collect enrollment forms.



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## 1.44 Individual Marketing Appointments, Prohibited Activities

### Individual Marketing Appointments, Prohibited Activities

During individual appointments, marketing representatives may not:

- Market any health care related product beyond the scope agreed upon before the appointment.
- Market additional health-related lines of plan business not identified before the appointment without a separate scope of appointment identifying the additional lines to be discussed.
- Market non-health care related products.
- Solicit/accept an enrollment request for a January 1st effective date before the start of the Annual Election Period on October 15 unless the beneficiary is entitled to another enrollment period (for example, an initial enrollment period or special enrollment period).



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## ***1.45 Marketing: General Audience and E-mail***



## 1.46 General Audience Marketing

### General Audience Marketing

- General audience marketing includes direct mail, newspapers, magazines, television, radio, yellow pages, and the Internet.
- Rules regarding unsolicited contacts do not apply to marketing through these materials.
- These materials are subject to CMS approval and content requirements if they meet the definition of marketing.
  - For example, if an agency wishes to place an ad in a newspaper that says “We sell Medicare Advantage plans offered by BestHealth and TopChoice. Contact us if you would like to learn more,” the ad would not meet the definition of marketing materials and would not be subject to CMS review/approval requirements. (It does not include marketing content such as Information about the plans’ benefit structure or cost sharing or information about measuring or ranking standards).



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## 1.47 Use of Social Media to Market

### Use of Social Media to Market

- Plans/Part D Sponsors must submit to CMS social media (e.g., Facebook, Twitter, YouTube, LinkedIn, Scan Code, or QR Code) posts that meet the definition of marketing materials, specifically those that contain marketing content such as plan-specific benefits, premiums, cost-sharing, or Star Ratings. This includes such posts by agents.
- Social media posts are generally subject to marketing/communications content requirements, such as prohibitions on using certain language.
- Re-publication (or re-post) of an individual's post, content or comment that promotes a Plan's/Part D Sponsor's product from social media sites (e.g., Facebook, Twitter, YouTube, LinkedIn, Scan Code, or QR Code) is considered a product endorsement/testimonial and must adhere to the guidance on testimonials.



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## 1.48 Social Media Example

### Social Media Example

**Example 1:** Agent Snyder is excited about the 2022 Medicare Advantage plan that will be offered by FabulousCare. She would like to send out a tweet stating, "Call me to learn more about FabulousCare's Medicare Advantage Plan offering comprehensive dental benefits at only \$10 per month." Unless FabulousCare has submitted this language to CMS for review/approval, Agent Snyder may not send it, because it contains marketing content.

**Example 2:** Agent LaVette sees a Twitter post from an enrollee of one of the plans she sells stating that the enrollee was finally able to quit smoking thanks to a great smoking cessation program offered by IncrediCare's MA plan. If Agent LaVette shares (by retweeting or otherwise) that tweet with her followers, it would be considered a product endorsement or testimonial and would be subject to the rules concerning testimonials.



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## ***1.49 Required and Prohibited Marketing Practices***



## 1.50 Required Practices: Marketing Activities

### Required Practices: Marketing Activities

Marketing representatives must:

- Provide to prospective enrollees only CMS-approved/submitted marketing materials or CMS created marketing materials.
- Use only CMS-approved/submitted talking points and presentations if they are marketing.



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## **1.51 Required Practices: HIPAA and Confidentiality of Enrollee Information**

### **Required Practices: HIPAA and Confidentiality of Enrollee Information**

Marketing representatives are business associates of the health plans they sell. As such, they must comply with Federal and state law regarding the confidentiality of individually identifiable health information (known as protected health information or PHI) and any confidentiality obligations in their business associate contracts with plans.

- PHI includes any information about an individual's health care coverage, payment for health care, or health care condition. PHI includes the name and address of health plan enrollees when used in conjunction with the fact they are health plan members and applying for health plan membership.
- HIPAA regulates both the use and disclosure of PHI. Marketing representatives may only use and disclose PHI on behalf of the plans they represent.
- Plans may further restrict the use and disclosure of information obtained on their behalf about enrollees or potential enrollees through their contracts with agents or their agencies.
- If a marketing representative subcontracts with another individual or entity to assist in their marketing or enrollment responsibilities, they must enter into a business associate agreement with the individual or entity requiring the same protections to the PHI.



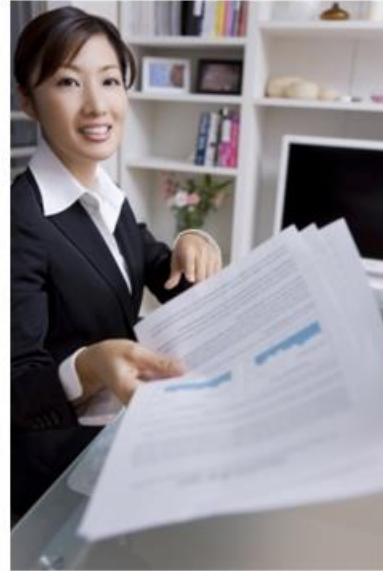
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## 1.52 Required Practices: Marketing & Non-Health Related Activities

### Required Practices: Marketing & Non-Health Related Activities

- Plans/Part D Sponsors must obtain HIPAA compliant authorization from an enrollee before the Plan or Part D sponsor may use (or may request a marketing representative to use on their behalf) information about the enrollee to market non-health related items or services such as accident-only policies, life insurance policies, or annuities.
- The HIPAA authorization must specify that the individual's information may be used by the Plan/Part D sponsor for marketing purposes.



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## ***1.53 Accessing and Using Certain Plan Materials***

### **Accessing and Using Certain Plan Materials**

Plans are required to post on their website certain documents in a downloadable format. Beneficiaries and marketing representatives may access the following materials, as applicable to the plan, through each plan's website:

- Evidence of Coverage
- Summary of Benefits
- Annual Notice of Change
- Provider Directory
- Pharmacy Directory
- Formulary

Such documents are important tools to be used by marketing representatives in determining issues such as:

- Whether a beneficiary's providers or pharmacies are in the plan network
- Whether the drugs a beneficiary takes are on the plan's formulary
- Whether the plan covers other benefits that are important to a beneficiary
- Whether or the extent to which the plan covers out-of-network services

Many plans provide their provider/pharmacy directories and formularies in a searchable format. Plans will also provide these materials to beneficiaries after they enroll.

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## 1.54 Required Materials with an Enrollment Form

### Required Materials with an Enrollment Form

- When a beneficiary is provided with enrollment instructions/form, he/she must also receive:
  - Plan ratings information
  - Summary of Benefits
  - Pre-enrollment checklist
- For Dual Eligible Special Needs Plans, if Medicaid benefits are not included in the summary of benefits, a separate document including the Medicaid benefits must be included with the enrollment form.
- When a beneficiary enrolls in a plan online, the plan sponsor must make these materials available electronically, (e.g., via website links) to the potential enrollee before the completion and submission of the enrollment request.
- For telephonic enrollments, the beneficiary must be told verbally where the summary of benefits and star ratings documents may be accessed.



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## 1.55 Plan Ratings: Backgrounds

### Plan Ratings: Backgrounds

- CMS releases star ratings that allow beneficiaries to compare MA plans and Part D plans. These ratings include topics such as access to care, whether members got various screening tests, vaccines, and other check-ups to help them stay healthy, how members rate the plan, and customer service.
- Marketing representatives and beneficiaries who have access to the Internet may obtain plan rating information at <http://www.medicare.gov/>.
  - Click the “Find Health & Drug Plans” button on the left.
- The Star Ratings information document must also be prominently posted on each plan’s website.



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## 1.56 Plan Ratings - Required Practices

### Plan Ratings - Required Practices

- Plan sponsors must provide the plan's overall performance ratings to beneficiaries in the standard Plan Ratings information document.
- New Plans/Part D Sponsors that do not have any Star Ratings information are not required to provide Star Ratings information until the next contract year.
- Plan sponsors and their marketing representatives may only reference or mention a plan's rating on an individual measure in conjunction with the plan's overall performance rating (MA-PD), the contract's highest rating, Part C summary rating (MA-only), or Part D summary rating (PDPs), with equal or greater prominence.
- Plan sponsors and their marketing representatives may only market the Star Ratings in the service area in which the Star Rating is applicable.



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## 1.57 Required Practices: Plan Ratings- Prohibitions

### Required Practices: Plan Ratings- Prohibitions

Plan sponsors and their marketing representatives may not:

- Use a plan's star rating in an individual category or measure to imply a higher overall plan rating than is actually the case.
  - For example, a plan which received a 5-star rating in customer service promotes itself as "rated 5-stars by our enrollees," when its overall plan rating is only 4 -stars.
- Use the plan's star ratings in a manner that misleads beneficiaries into enrolling in plans based on inaccurate information.
- Specifically, target beneficiaries in poor performing plans.
- Use updated star ratings until CMS releases star ratings on the Medicare Plan Finder.
- Continue to use an old star rating after 21 days from the release of a new star rating.

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***1.58 Required and Prohibited Marketing and Communications Practices:  
Prohibited Practices***





## ***1.59 Prohibited Practices: Marketing and Communications Materials and Activities***

### **Prohibited Practices: Marketing and Communications Materials and Activities**

Marketing representatives must NOT:

- Market any non-health care related products (such as annuities and life insurance) during any MA or Part D sales activity or any other marketing activity for existing enrollees. This is considered cross-selling.
- Use or disclose the enrollee's protected health information (PHI) for marketing purposes, including sending any non-plan or non-health related information or otherwise contacting him/her for purposes unrelated to plan benefits administration or CMS contract execution, without first obtaining HIPAA required authorization from the enrollee.



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## ***1.60 Prohibited Practices: Marketing and Communications Materials and Activities, continued (#1/6)***

### **Prohibited Practices: Marketing and Communications Materials and Activities, continued (#1/6)**

Marketing representatives must **NOT**:

- Use a Medicare beneficiary to endorse a plan unless the beneficiary was an enrollee of the plan when the endorsement was created.
- Solicit enrollment applications for the following contract year before the start of the annual election period on October 15.
- Use marketing materials that have not been submitted by the plan for review and/or approval by CMS.
- Charge beneficiaries marketing fees.



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## ***1.61 Prohibited Practices: Marketing and Communications Materials and Activities, continued (#2/6)***

### **Prohibited Practices: Marketing and Communications Materials and Activities, continued (#2/6)**

Marketing representatives must NOT:

- Engage in any discriminatory activity such as attempting to recruit Medicare beneficiaries from higher-income areas without making comparable efforts to enroll Medicare beneficiaries from lower-income areas.
- Encourage individuals to enroll based on their health status unless the plan is a special needs plan that focuses on the beneficiary's particular condition.
- Conduct health screening or other activities that could give an impression of "cherry-picking."



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## ***1.62 Prohibited Practices: Marketing and Communications Materials and Activities, continued (#3/6)***

### **Prohibited Practices: Marketing and Communications Materials and Activities, continued (#3/6)**

Marketing representatives must NOT engage in aggressive marketing, which includes prohibited marketing practices that have a high likelihood of misleading beneficiaries and causing harm, such as:

- High-pressure sales tactics and scare tactics. This would include activities such as pressuring a hesitant beneficiary to decide in a very short period or discouraging a beneficiary from consulting with a family member before enrolling.
- Bait and switch strategies such as making unsolicited outbound calls to beneficiaries about other lines of business as a means of generating leads for Medicare plans.
- Engaging in activities that could mislead or confuse beneficiaries, such as claiming that a PFFS plan is the same as Original Medicare or a Medigap plan.



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### ***1.63 Prohibited Practices: Marketing and Communications Materials and Activities, continued (#4/6)***

#### **Prohibited Practices: Marketing and Communications Materials and Activities, continued (#4/6)**

Marketing representatives must NOT:

- Assert that their plan is the “best” plan or use other unsubstantiated absolute or qualified superlatives or pejoratives. (However, unsubstantiated absolute and/or qualified superlatives may be used in logos/taglines).
- Make explicit comparisons between plans, unless they can support them, such comparisons are factually based, and the comparisons are not misleading.
- Provide false or misleading information about the plan, including benefits, provider rules, and all other plan information.



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## **1.64 Prohibited Practices: Marketing and Communications Materials and Activities, continued (#5/6)**

### **Prohibited Practices: Marketing and Communications Materials and Activities, continued (#5/6)**

Marketing representatives must NOT:

- Claim that Medicare, CMS, or any government agency endorses or recommends the plan.
- Use the term “free” to describe a zero-dollar premium.
- Use the term “free” in conjunction with any reduction in premiums, deductibles, or cost-share, including Part B premium buy-down, low-income subsidy, or dual eligibility.
- Lead beneficiaries to believe that the broker or agent works for Medicare, CMS, or any government agency.
- Imply that an MSA plan operates as a supplement to Medicare.
- Market that the Plan Sponsor will not disenroll individuals due to failure to pay premiums.



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### ***1.65 Prohibited Practices: Marketing and Communications Materials and Activities, continued (#6/6)***

#### **Prohibited Practices: Marketing and Communications Materials and Activities, continued (#6/6)**

Unless they are promoting a D-SNP, Marketing representatives must **NOT**:

- Imply that the plan is designed for dual eligible individuals (would not apply to MMPs).
- Claim that the Plan has a relationship with the state Medicaid agency, unless the MA plan (or its parent organization) has contracted with the state to coordinate Medicaid services, and the contract is specific to that MA plan (not for a separate D-SNP or MMP).
- Target their marketing efforts for the Plan exclusively to dual eligible individuals.

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## 1.66 Prohibited Practices: Examples

### Prohibited Practices: Examples

**Example 1:** Agent Cooper has a face-to-face meeting with Ms. Ford. Ms. Ford indicates that she wants to talk to her son before moving from Original Medicare to a Medicare Advantage plan, per her agreement with her son that she will not sign anything before discussing it with him first. Agent Cooper tells her that he does not have time to come back, insists that she can trust him, and encourages her to enroll during their meeting. Agent Cooper has engaged in prohibited high-pressure tactics.

**Example 2:** Marketing representatives cannot say:

- I am certified by Medicare to sell this plan.
- If your doctor accepts Medicare, she accepts this plan.
- We cover all drugs without restrictions.
- It is better to choose a different company if you are sick.
- (*Name of the plan*) is the best Medicare plan you can buy.

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## **1.67 Open Enrollment Period- Marketing Prohibitions**

### **Open Enrollment Period- Marketing Prohibitions**

The Medicare Advantage Open Enrollment Period (MA-OEP) is a period during which an individual enrolled in an MA or MA-PD plan can make a one-time change to another MA plan, elect Original Medicare, or can change Part D coverage. The MA-OEP is further described in Module 5.

During the Open Enrollment Period (OEP), marketing representatives may not:

- Send unsolicited materials advertising the ability/opportunity to make an additional enrollment change or referencing the OEP
- Specifically target beneficiaries who are in the OEP because they chose during the Annual Enrollment Period (AEP) by the purchase of mailing lists or other means of identification
- Engage in or promote activities that intend to target the OEP as an opportunity to make further sales
- Call or otherwise contact former enrollees who have selected a new plan during the AEP

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## 1.68 Promoting Health Plans During the Open Enrollment Period

### Promoting Health Plans During the Open Enrollment Period

However, during the OEP, marketing representatives may conduct marketing activities that focus on other enrollment opportunities, including but not limited to:

- Marketing to individuals turning 65 (who have not yet made an enrollment decision)
- Marketing by 5-star plans regarding their continuous enrollment SEP
- Marketing to dual-eligible and LIS beneficiaries who, in general, may make changes once per calendar quarter during the first nine months of the year

In addition, during the OEP marketing representatives may:

- Send marketing materials when a beneficiary makes a proactive request
- At the beneficiary's request, have one-on-one meetings with a sales agent
- At the beneficiary's request, provide information on the OEP through the Plan's call center



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## 1.69 Soliciting Beneficiary Referrals

### Soliciting Beneficiary Referrals

In the past, the Medicare Communications and Marketing Guidelines (MCMG) contained regulations around beneficiary referrals. Those regulations limited when a marketing representative could solicit such referrals and what types of gifts (nominal value) marketing representatives could provide in exchange for a referral. CMS has removed these provisions from the MCMG. Inducements (such as gifts) for referrals may still be regulated under fraud and abuse laws (such as the anti-kickback statute or beneficiary inducement statute). However, typically there are nominal value exceptions under those laws. Marketing representatives should consult with their plans to determine whether the plans impose requirements around beneficiary referrals.



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## ***1.70 Marketing in a Health Care Setting***



## 1.71 Marketing Activities: Marketing in a Health Care Setting

### Marketing Activities: Marketing in a Health Care Setting

Marketing representatives must NOT:

- engage in marketing activities in areas where patients receive health care services, for example:
  - Exam rooms, dialysis center treatment areas, or hospital patient rooms, pharmacy counter areas, and other treatment areas where patients interact with a provider and his/her clinical team and receive treatment.

Marketing representatives may:

- engage in marketing activities (i.e., conduct sales presentations and distribute and accept enrollment applications) in common areas of health care settings, for example:
  - In a cafeteria, community or recreational room, waiting room, common entryway, vestibule, or conference room.
  - At a retail pharmacy, in areas away from the pharmacy counter.
- provide communication materials to be distributed and displayed in the healthcare setting.

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## 1.72 Marketing Activities: Marketing in a Long-term Care Facility

### Marketing Activities: Marketing in a Long-term Care Facility

- Long-term care facilities include, for example, nursing homes, assisted living facilities, and board and care homes.
- Plan sponsors/marketing representatives may schedule an appointment with a beneficiary in a long-term care facility ONLY upon request of the beneficiary (or authorized representative).
- Plan sponsors/marketing representatives may not visit individuals in a long-term care facility without an appointment.
- Plan sponsors may use staff operating in a social worker capacity to provide information, including marketing materials, to residents. Such information must not include an enrollment form and the social worker may not accept or collect a scope of appointment or enrollment form on behalf of the plan sponsor.
- Marketing representatives may set up in common areas of a long-term care facility and allow residents to approach them.



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### ***1.73 Marketing Activities in a Health Care Setting: Example***

## **Marketing Activities in a Health Care Setting: Example**

Agent Samuels is talking to a friend when his friend suggests that Agent Samuels go visit his grandmother in a local assisted living facility because his grandmother was just complaining that her drugs are no longer on her plan's formulary and are costing her a small fortune. Agent Samuels wisely gives his friend his business card and asks him to pass it along to his grandmother who can call him if she would like to talk, rather than making an unsolicited visit to her.



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## ***1.74 Marketing to Employer/Union Groups***



## 1.75 Marketing to Employer/Union Groups

### Marketing to Employer/Union Groups

Marketing representatives and Plans must follow all marketing rules and guidelines when marketing employer group health plans except the following:

- the prohibition against unsolicited contacts
  - the prohibition against cross-selling other products
  - the requirement to obtain prior documentation of the scope of an appointment
  - the prohibition against providing meals at marketing events
  - the pre-enrollment checklist requirement
  - marketing representative compensation requirements
  - the requirement that a marketing representative must pass an annual test, although the requirement for annual training does apply
- Plans offering employer group health plans are not required to submit marketing materials specific only to those employer plans to CMS at the time of use. However, CMS may request and review copies if employee complaints occur or for any other reason to ensure the information accurately and adequately informs beneficiaries about their rights and obligations under the plan.



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## ***1.76 Oversight and Enforcement of Marketing Requirements***

### **Oversight and Enforcement of Marketing Requirements**



## 1.77 Plan Oversight and Enforcement

### Plan Oversight and Enforcement

- Plan Sponsors are responsible for ensuring compliance with CMS' current marketing regulations and guidance, including monitoring and overseeing the activities of their marketing representatives and providers.
- Plans are required to implement a strategy to prevent prohibited marketing practices from occurring, to detect prohibited marketing tactics at their early stages, and to take immediate corrective action to respond to non-compliant marketing activities.
- Plans must take corrective action in the event of verified misconduct, including disciplinary action in cases of aggressive marketing by marketing representatives. Examples of such disciplinary action include:
  - Withholding or withdrawing commissions
  - Retraining the marketing representative
  - Suspension of marketing
  - Termination of the marketing representative
  - Reporting agent terminations to State Departments of Insurance and CMS



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## 1.78 Plan Oversight and Enforcement: continued

### Plan Oversight and Enforcement: continued

- Plans must comply with requests from a State insurance or other department in connection with investigations of plan marketing representatives who are licensed by the department.
- Plans must report to States the termination of any agent or broker, including the reasons for the termination if required under State law. Plans must also report to CMS for-cause terminations.
- Upon CMS' request, the plan must provide CMS with information necessary for it to conduct oversight of marketing activities.

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## ***1.79 Marketing Representative Compensation***



## ***1.80 Marketing Representative Compensation: Compensation Defined***

### **Marketing Representative Compensation: Compensation Defined**

Compensation includes monetary or non-monetary compensation of any kind relating to the sale or renewal of a policy including, but not limited to:

- Commissions
- Bonuses
- Gifts
- Prizes or awards
- Referral or Finder fees paid to agents/brokers

Compensation does not include:

- Payment of fees to comply with State appointment laws, training, certification, and testing costs.
- Provision of a budget that must be used to pay for marketing, such as advertisements in local media.
- Reimbursement for mileage for appointments with beneficiaries or costs associated with beneficiary sales appointments such as venue rent, snacks, and materials.



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## 1.81 Compensation Example

### Compensation Example

SuperAgency pays agents \$500 per initial enrollment and \$250 per renewal enrollment. In addition, for every 20 initial enrollments, the agent is rewarded with an all-expense paid weekend at an oceanside spa. All agent commissions and the cost of any weekends earned are compensation.



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## 1.82 Marketing Representative Compensation: Applicability of Rules

### Marketing Representative Compensation: Applicability of Rules

- Compensation structures for independent agents must comply with CMS guidance.
  - Compensation rules do not generally apply to marketing representatives who are plan employees, to “captive” agents who market for only one plan, or when independent agents are marketing only to employer/ union groups.
  - Employed and captive agents/brokers who only sell for one Plan are subject to the requirements related to referral/finder fees.
  - Compensation to independent agents who market to and enroll beneficiaries is covered by the rules whether it is paid directly by a plan or paid by an agency, FMO, TMO, or similar organization.



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### ***1.83 Marketing Representative Compensation: When Compensation May Not Be Paid***

#### **Marketing Representative Compensation: When Compensation May Not Be Paid**

Plan Sponsors may not pay agents:

- when they have not been trained and tested.
- when they do not meet state licensure/ appointment requirements.
- When a Plan Sponsor and/or a contracted independent agent terminates an agent contract, any future payment for an existing business will be governed by the terms of the contract that specifies the agent's payment, subject to the limits in the CMS regulation.
- However, to continue receiving renewal fees, agents must remain trained, tested, licensed, and appointed (to the extent required under state law), regardless of whether they are actively selling.



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## 1.84 Compensation Example

### Compensation Example

Agent Hinds actively sold Medicare Advantage plans under her contract with MagnifiPlan for ten years. Agent Hinds has decided to retire, and no longer maintains her licensure or appointment with MagnifiPlan. Under the laws of the state in which she resides and has sold policies, an agent may not receive compensation for enrollments, including renewals, unless the agent is licensed and appointed. Thus, regardless of any contractual provision to the contrary, Agent Hinds may not receive renewal compensation related to individuals she enrolled before her retirement.



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## ***1.85 Marketing Representative Compensation: Applicable Amounts***

### **Marketing Representative Compensation: Applicable Amounts**

- Applicable compensation amounts depend on whether enrollment is an initial year enrollment or a renewal year enrollment.
  - CMS provides reports to the plan that specifies whether enrollment is initial or renewal.
- Renewal year enrollments include plan changes between “like plans.”
  - A “like plan type” enrollment includes:
    - A PDP to another PDP
    - An MA, MA-PD, or MMP to another MA, MA-PD, or MMP
    - A Section 1876 Cost Plan to another Section 1876 Cost Plan
  - An “unlike plan type” enrollment includes:
    - An MA or MA-PD plan to a PDP or Section 1876 Cost Plan
    - A PDP to a Section 1876 Cost Plan or an MA (or MA-PD) plan
    - A Section 1876 Cost Plan to an MA (or MA-PD) plan or PDP

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## ***1.86 Marketing Representative Compensation: Applicable Amounts, continued***

### **Marketing Representative Compensation: Applicable Amounts, continued**

- For enrollments in two plans at once (for example, enrollment in an MA-only plan like a MSA and a stand-alone PDP or a cost plan and a PDP), the compensation rules apply independently to each plan. This is known as “dual plan” enrollment.
- However, when dual plans are replaced by an enrollment in a single plan, compensation is paid based on the MA or cost plan movement (e.g., movement from an MA-only PFFS plan and PDP to an MA-PD plan would be compensated at the renewal compensation amount for the MA to MA-PD “like plan type” move).



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## ***1.87 Marketing Representative Compensation: Limits on Amount of Compensation***

### **Marketing Representative Compensation: Limits on Amount of Compensation**

- Compensation for initial year enrollments cannot exceed a fair market value (FMV) published annually by CMS. This amount is known as the FMV cut-off.
- Compensation for renewal year enrollments cannot exceed 50 percent of the FMV cut-off. However, it can be less than 50 percent or not paid at all.
- Referral or finders' fees paid to independent, captive or employed agents/brokers may not exceed \$25 for PDPs or \$100 for all other types of plans.
- Referral fees paid to independent, captive or employed agents/brokers must be part of total compensation. Thus, any compensation paid for enrollments plus any referral fee paid to an agent may not exceed the FMV cut-off.

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## ***1.88 Marketing Representative Compensation: Limits on Amount of Compensation Example***

### **Marketing Representative Compensation: Limits on Amount of Compensation Example**

Agent Starsky has a client interested in SuperDuper Plan but is not appointed with the plan as required by state law to complete the enrollment and receive enrollment compensation. Agent Starsky refers the client to Agent Columbo who is appointed with the plan and enrolls the client in SuperDuper Plan. SuperDuper Plan pays Agent Starsky a \$100 finders fee for the referral. SuperDuper plan may not pay Agent Columbo an amount great than the FMV cut-off minus \$100 for the enrollment.



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## 1.89 Marketing Representative Compensation Rules

### Marketing Representative Compensation Rules

- Note that CMS no longer includes requirements about referral fees paid to non-agents/brokers in the Medicare Communications and Marketing Guidelines. However, any such fees would still be subject to general laws, including anti-kickback prohibitions.
- Plans must annually file with CMS whether they will use independent agents/brokers and, if so, the amounts or range of amounts that they intend to pay for enrollment commissions.
- Once the deadline for filing has passed, plans may not change the amounts they pay or the types of brokers they use.



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## 1.90 Marketing Representative Compensation Rules, continued

### Marketing Representative Compensation Rules, continued

- Compensation is paid on a calendar year basis. Thus, regardless of the month of a beneficiary's initial year enrollment, the renewal year begins on January 1 of the subsequent year, NOT on the beneficiary's enrollment anniversary date.
- Plan Sponsors have the flexibility to make compensation payments annually, quarterly, monthly, or by a different schedule. However, Plans/Part D Sponsors must pay compensation payments during the year of enrollment.
- Compensation (with some limited exceptions) may only be paid for the months the beneficiary is enrolled in the plan.
  - If a plan pays compensation in advance, it must recoup amounts paid for months a beneficiary is not enrolled.
  - If a beneficiary enrolls mid-year, compensation must be prorated.



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### ***1.91 Marketing Representative Compensation: Exception to pro rata payment rule***

#### **Marketing Representative Compensation: Exception to pro rata payment rule**

- A plan may choose to pay for an entire initial enrollment year, despite less than 12 months of enrollment, for a beneficiary who has never been enrolled in a plan before or where a beneficiary moves from an employer group plan to a non-employer group plan.
- However, if the plan pays a full initial compensation and the enrollee disenrolls during the contract year, the plan must recoup a pro-rated amount for all months the enrollee is not enrolled.

**Example:** Mrs. Jefferson turns 65 in August and is eligible for Medicare for the first time. An agent helped her enroll in an MAPD with a September 1 effective date. The plan will pay the agent at the initial year compensation level. The plan may choose to pay for the entire year at the initial rate if Mrs. Jefferson remains enrolled for the rest of the calendar year or for only September through December (4 months) at the initial rate. The Plan's payment obligation will be outlined in the Plan's contract with the agent or agent's brokerage firm (as applicable).

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## **1.92 Marketing Representative Compensation: Rapid Disenrollment**

### **Marketing Representative Compensation: Rapid Disenrollment**

- If a beneficiary disenrolls within the first 3 months of enrollment (referred to as “rapid disenrollment”), the entire compensation amount paid for the enrollment must be recouped, except under certain circumstances.
  - Plans do not have to recoup the compensation when a beneficiary enrolls in a plan effective October 1, November 1, or December 1, and subsequently changes plans effective January 1 of the following year during the Annual Election Period.
  - Other examples (not all-inclusive) of instances in which plans do not have to recoup any compensation paid include when a beneficiary disenrolls in the first 3 months because the beneficiary:
    - Became dually eligible for both Medicare and Medicaid
    - Qualified for another plan based on special needs
    - Became LIS eligible
    - Loss Medicare entitlement
    - Moved out of the service area
    - Failed to pay the plan premium
    - Changed enrollment to a plan with a 5-star rating or disenrolled from a LPI plan to move into a plan with three or more stars
    - Moved into or out of an institution
    - Gained/dropped employer/union sponsored coverage

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### ***1.93 Marketing Representative Compensation: Rapid Disenrollment, continued***

#### **Marketing Representative Compensation: Rapid Disenrollment, continued**

- Rapid disenrollment applies when an enrollee moves from one parent organization to another parent organization, or when an enrollee moves from one plan to another plan within the same parent organization.

**Example of rapid disenrollment:** An Agent assisted Ms. Spalding in enrolling in a Medicare Advantage plan during the Annual Enrollment Period. Her effective date is January 1st. On February 10th, Ms. Spalding disenrolls because she did not understand that the plan did not cover services furnished by non-network providers. The plan must recoup all compensation payments paid to the Agent for Ms. Spalding's enrollment.

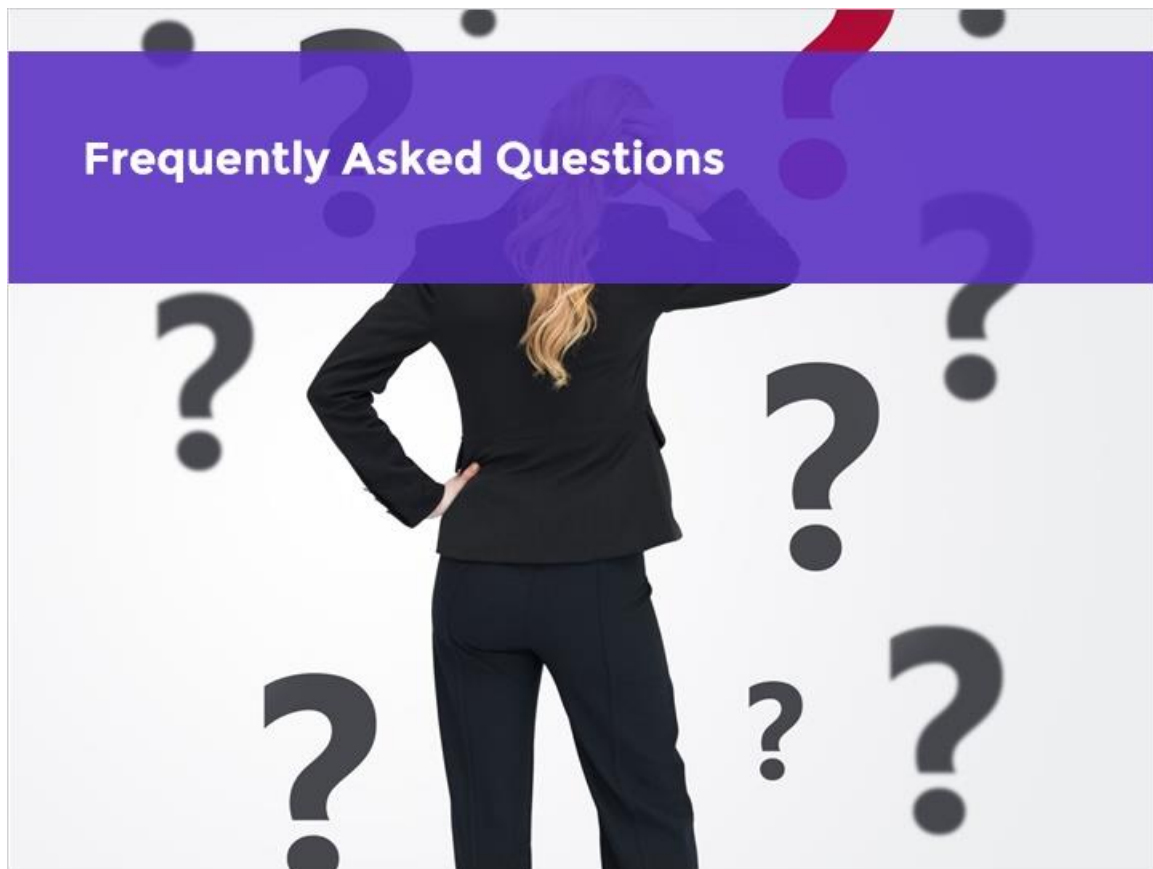


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## ***1.94 Frequently Asked Questions***



## 1.95 Frequently Asked Questions (FAQ) #1

### Frequently Asked Questions (FAQ) #1

**Q:** We purchased books on health maintenance that we plan to give away to anyone attending one of our marketing presentations, regardless of whether they enroll in our plan. Because we purchased many books, we were able to buy them for \$14.99 per book. However, on the inside jacket, the retail price is shown as \$19.99. May we give these books away at our marketing presentation?

**A:** No. The retail purchase price of the book is \$19.99, which exceeds CMS's definition of nominal value.



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## 1.96 Frequently Asked Questions (FAQ) #2

### Frequently Asked Questions (FAQ) #2

**Q:** We would like to offer gifts of nominal value to potential enrollees who call for more information about our plan. We would then like to offer additional gifts if they come to a separate marketing event. Each of the gifts meets CMS's definition of nominal value, but taken together, the gifts are more than the nominal value. Is this permissible?

**A:** Yes. A nominal value gift may be given to an enrollee on more than one occasion if the total of all nominal value gifts given to an enrollee in a year does not exceed \$75.



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## 1.97 Frequently Asked Questions (FAQ) #3

### Frequently Asked Questions (FAQ) #3

**Q:** Listed below are some possible promotional items to encourage potential enrollees to attend marketing presentations. Are these types of promotions permissible?

- Light Snacks (no meals)
- Day trips
- Magazine subscriptions
- Event tickets

**A:** Yes. All these promotional items are permissible if they are offered to everyone who attends the event, regardless of whether they enroll and if the gifts have a retail value of \$15 or less per marketing event. Cash gifts and monetary equivalents are prohibited, including gift certificates and gift cards that can be readily converted to cash, regardless of the dollar amount.



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## 1.98 Frequently Asked Questions (FAQ) #4

### Frequently Asked Questions (FAQ) #4

**Q:** Can a marketing representative hold a raffle or offer a door prize or a drawing for a prize of more than nominal value for those who attend a marketing presentation if the total value of the item is less than \$15 per person attending?

**A:** Yes. However, the total fair market value must not exceed the nominal per person value based on attendance. For example, if 10 people are expected to attend an event, the nominal gift may not be worth more than \$150 (\$15 for each of the 10 anticipated attendees). For planning purposes, anticipated attendance may be used, but must be based on actual venue size, response rate, or advertisement circulation.



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## 1.99 Frequently Asked Questions (FAQ) #5

### Frequently Asked Questions (FAQ) #5

**Q:** Can a marketing representative take people to a casino night at which the enrollee's earnings may be paid in cash?

**A:** No. Cash gifts and monetary equivalents are prohibited, including gift certificates and gift cards that can be readily converted to cash, regardless of the dollar amount.



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## **1.100 For More Information**

### **For More Information**

- Medicare Marketing Guidelines:  
<http://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/FinalPartCMarketingGuidelines.html>
- CMS Marketing Website:  
<http://www.cms.gov/ManagedCareMarketing/>
- CMS PFFS Addendum: Model Language for Sales Presentation  
<http://www.cms.gov/PrivateFeeForServicePlans/>
- Medicare Beneficiary Website:  
[www.medicare.gov](http://www.medicare.gov)

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## 1.101 THANK YOU

### THANK YOU

You have reach the end of Module 4: Communications and Marketing Rules for Medicare Advantage and Part D Plans. You may restart the module or take the final quick review to test your knowledge by clicking on the tabs below.

**RESTART  
COURSE**

**START FINAL  
QUICK REVIEW**

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