

2016 Marketing Requirements and Other Regulations

Module 3

Marketing Regulations

❑ CMS definition of marketing:

- ❑ Marketing is the act of steering, or attempting to steer, a potential enrollee towards a plan or limited number of plans, or promoting a plan or a number of plans.

❑ Marketing materials and activities include any informational materials or activities targeted to Medicare beneficiaries which:

- ❑ Promote the Plan/Part D Sponsor, or any Plan/Part D Sponsor offered by the MA organization;
- ❑ Inform Medicare beneficiaries that they may enroll, or remain enrolled in, a Plan/Part D Sponsor offered by the MA organization;
- ❑ Explain the benefits of enrollment in a Plan/Part D Sponsor, or rules that apply to enrollees; or
- ❑ Explain how Medicare services are covered under a Plan/Part D Sponsor, including conditions that apply to such coverage.

Marketing Regulations

❑ Important Marketing Materials

❑ **Summary of Benefits** – This document informs prospective as well as existing members about the benefits offered by the plan. The summary of benefits can be used as a tool to aid in decision making when selecting a Medicare Advantage plan

❑ **Evidence of Coverage** – The EOC provides details about what the plan covers, how much the member pays, and much more. This document serves as the agreement between the plan and the member.

❑ **Formulary** – The formulary is a list of medications covered by the plan

❑ **Abridged Formulary** – Includes most commonly used drugs

❑ **Comprehensive Formulary** – Includes all drugs covered by the plan

❑ **Provider/Pharmacy Directory** – Includes a list of network doctors, specialists, facilities and pharmacies

Marketing Regulations

❑ Plan Star Ratings

- ❑ Agents/brokers MUST provide overall Plan rating information to the enrollee using the CMS approved “plan rating” form at the time the enrollment kit is reviewed.
 - ❑ Plans are rated on a five star quality rating scale.
 - ❑ Plan sponsors must reference their overall star rating for each plan type (e.g., HMO or PPO).
Example: If a HMO plan is 4 stars and a PPO plan is 3.5 stars, you cannot state that the plan is a 4 star plan for all plans offered.
- ❑ Plan rating information must be distributed anytime the Summary of Benefits or an enrollment application is distributed to an individual (included in the enrollment kit).
- ❑ Plan performance ratings are issued in mid-October of each year. The prior year plan ratings must be used in the interim until the new ratings are released.
 - ❑ Plans are required to use the new plan ratings within 15 days of the ratings release by CMS. UPMC Health Plan will provide the updated information in the Enrollment Kits.
 - ❑ If the prior year’s ratings were better than the current year ratings a plan may NOT continue to use the old ratings, once the new ratings are released.

Marketing Regulations

❑ Accessing Important Marketing Materials

- ❑ Inside Sales agents should use the online fulfillment center to request materials
- ❑ Independent Agents and Brokers should contact their appointed Broker Manager, who will process their request for materials
- ❑ These materials can also be viewed online at www.upmchealthplan.com/medicare

Marketing Regulations

☐ Sales Agents/Broker Medicare Advantage Criteria

- ☐ Employed or independent agents/brokers must be state-licensed and follow all state appointment regulations in order to sell Medicare Advantage plans.
- ☐ Plans must comply with State requests that require the plan to give the state information about agents who market Medicare Advantage and Prescription Drug Plans.
- ☐ Plans cannot require prospective enrollees to only talk to sales agents/brokers, there are certain activities that customer service representatives can address.
 - ☐ Example: Answering general questions about the plans or benefits.
- ☐ Plan representatives cannot use language that implies endorsement by Medicare, that he/she is calling on behalf of Medicare or Medicare asked him/her to make the call.
 - ☐ Agents/brokers are allowed to state that our plan has a contract with Medicare.
 - ☐ Agents/brokers are allowed to state that our plans are Medicare-approved Medicare Advantage plans.

Marketing Regulations

❑ Sales Agents/Broker Medicare Advantage Criteria (*continued*)

- ❑ Agents and brokers may not engage in discriminatory practices such as target marketing to only higher income individuals.
 - ❑ Agents/brokers cannot discriminate based on race, age (other than Medicare defined guidelines), ethnic background, religion, gender, sexual orientation, mental or physical disability, health status, genetic information, health history, claims history, or geographic locations within the service area.
 - ❑ Agents/brokers cannot choose to enroll only healthier individuals into specific health plans, this is viewed as discriminatory by Medicare.
 - ❑ Agents/brokers cannot imply that our plans are only available to seniors rather than all Medicare Advantage eligible individuals.
 - ❑ Agents/brokers must be able to provide materials in an alternate format or language upon request from an enrollee or member.
- ❑ Agents/brokers shall at all times, fully explain the plan or plans the prospective Medicare beneficiary is interested in and clearly identify the types of products.
- ❑ Agents/brokers will do what is best for the beneficiary without regard to compensation - the enrollee's needs shall come first.

Marketing Regulations

❑ Sales Agents/Broker Medicare Advantage Criteria (*continued*)

- ❑ Agents/brokers must provide the following disclosure in writing to a potential enrollee prior to enrollment or at the time of enrollment:
 - ❑ “I understand that if I am getting assistance from a sales agent, broker, or other individual employed by or contracted with UPMC *for Life* , he/she may be paid based on my enrollment in UPMC *for Life* .”
 - ❑ This language is listed on the enrollment application in the “rights and responsibilities” section that should be reviewed with the enrollee.
- ❑ Agents/brokers shall cooperate and comply with any and all policies, procedures and instructions UPMC Health Plan may require.
 - ❑ Agents/brokers must have a working knowledge of UPMC Health Plan’s policies and Medicare Marketing Guidelines.
- ❑ Agents/brokers have the affirmative duty to notify UPMC Health Plan immediately (within next business day) of any and all actions regarding non-compliance with UPMC policies and procedures, with Medicare Marketing Guidelines, and with regard to the sales of and enrollment in UPMC *for Life* products.

Marketing Regulations

☐ What restrictions apply to contacting beneficiaries?

☐ Face-to-Face Meetings and Telephone Calls

- ☐ Agents/brokers cannot solicit a member door-to-door without a prior documented invitation from the beneficiary to come to their residence.
 - ☐ This includes leaving a leaflet or business card on a door or car.
 - ☐ Potential enrollees cannot be approached in common areas such as hallways, parking lots and lobbies.

NOTE: Agents that have a pre-scheduled appointment which becomes a “no show” may leave information at a no-show beneficiary’s residence.

- ☐ Individuals who attended a sales event cannot be called or receive a home visit; unless the person gave expressed permission for a follow-up call or visit.
- ☐ Outbound telephonic or electronic solicitation is not allowed including leaving electronic voicemail, text messaging or e-mails; when the member has not provided permission to contact them.
- ☐ Calls to individuals to confirm receipt of mailed information are not allowed.

Marketing Regulations

❑ What restrictions apply to contacting beneficiaries? *(continued)*

❑ Face-to-Face Meetings and Telephone Calls

- ❑ Agents/brokers must honor “do not call again” requests from individuals. Agents/brokers must also comply with:
 - ❑ The National-Do-Not-Call registry
 - ❑ Abide by Federal and State calling hours
 - ❑ Follow Federal Trade Commission rules for sellers/telemarketers
- ❑ Members who are voluntarily disenrolling from the Medicare Advantage plan should not be contacted to market other plans or products.
- ❑ Agents/brokers or plan representatives are prohibited from requesting beneficiary identification numbers on calls as a condition of sending information, such as an enrollment kit (e.g., SSN, bank accounts, credit cards).

Marketing Regulations

❑ What restrictions apply to contacting beneficiaries? *(continued)*

❑ Emails

- ❑ Sales agents cannot send emails to a beneficiary, unless he/she has personally provided their email address to the Health Plan and agrees to accept emails.
 - ❑ The plan sponsor (UPMC Health Plan) must obtain the email authorization not a third party.
- ❑ Plan sponsors or agents/brokers may NOT email prospective members at email addresses obtained through friends or referrals.
- ❑ Plans must allow a potential enrollee or member to opt out of receiving email communications.
- ❑ Plan sponsors and their agents/brokers are prohibited from renting or purchasing email lists to distribute information about the Medicare Advantage plan.

Marketing Regulations

❑ What restrictions apply to contacting beneficiaries? *(continued)*

❑ Referrals

- ❑ Referrals of beneficiaries and contact information which would result in an unsolicited contact to an enrollee are prohibited (*including outbound calls to prospects*).
 - ❑ Agents/brokers are allowed to leave contact information (e.g., business cards with an individual that he/she enrolled, to give to their friends).
 - ❑ However in all cases, the referred beneficiary needs to contact the plan or agent directly.
 - ❑ Example: An outbound call from an agent to a prospective enrollee who was referred would be considered an unsolicited contact.
- ❑ Any solicitation for leads, including letters sent from plan sponsors to members **cannot** announce that a gift will be offered for a referral.
 - ❑ Plan sponsors may not use cash promotions as part of a referral program.
 - ❑ If a thank-you gift is provided it must be of nominal value and provided for all referrals (not conditional upon enrollment).

Marketing Regulations

- ❑ **Plan sponsors (not agents/brokers) can call a beneficiary as follows:**
 - ❑ The plan can contact enrollees who submit applications in order to do quality control and agent/broker oversight.
 - ❑ The plan can contact current members to talk about Medicare plans, such as individuals enrolled in commercial plans aging into Medicare.
 - ❑ A plan can conduct outbound calls to existing members to conduct normal business related to enrollment in the plan. *(Agent/brokers are allowed to contact their own clients to discuss plan business)*
 - ❑ The plan may call individuals who have expressly given permission to the plan to contact them *(Agent/brokers can make these types of calls if the plan provides them with the leads)*.
 - ❑ Example: A person fills out a business reply card or asks a plan representative to contact them.
 - ❑ Permission given by an individual cannot be considered an open ended invitation to contact him or her. It is considered a short-term option related to the advertisement or reply card.

Marketing Regulations

- ❑ **Plan sponsors (not agents/brokers) can call a beneficiary as follows: (continued)**
 - ❑ Return calls to individuals who have called and left a message with the plan to call them back (these calls are not unsolicited).
 - ❑ Calling former members after disenrollment to conduct a disenrollment survey is allowed.
 - ❑ Plans cannot market or provide sales information during these calls.
 - ❑ The plan can contact current members via an automated telephone notification system to inform them about general information (e.g., flu shot reminder).



Marketing Regulations

☐ Agents and Brokers can call a beneficiary as follows: *(continued)*

- ☐ Agents/brokers may call **members** that he or she enrolled in the Medicare Advantage plan to discuss plan business. However; unsolicited calls to other individuals or plan members are not allowed.
 - ☐ “Plan business” means the member’s current plan. Agents may not contact members, via the telephone, to discuss other plan options.”
- ☐ A call may be initiated to confirm an appointment or obtain directions when that appointment has already been agreed to by the prospective enrollee (scope of appointment form exists).
- ☐ Return calls to individuals who have called an agent and left a message to call them back (these calls are not unsolicited).



Marketing Regulations

☐ Scope of appointment with prospective enrollees

- ☐ When conducting marketing activities, a Plan/Part D Sponsor may not market any health care related product during a marketing appointment beyond the scope that the beneficiary agreed before the meeting with that individual. (Sales Events do not require a Scope of Appointment)
- ☐ The Plan/Part D Sponsor must document the scope of the agreement 48 hours prior to the appointment, when practicable.
- ☐ In some instances it may not be feasible to obtain a scope of appointment 48 hours prior to the appointment, so in these cases the beneficiary must sign the form at the start of the appointment.
 - ☐ The reason the agreement was not documented 48 hours prior to the appointment must be documented on the form
- ☐ The agreement must be documented using the approved UPMC Scope of Appointment form.
 - ☐ A new form has been created for the upcoming AEP.

Marketing Regulations

□ New Scope of Appointment Form

Scope of Sales Appointment Confirmation Form

The Centers for Medicare and Medicaid Services requires agents to document the scope of a marketing appointment prior to any face-to-face sales meeting to ensure understanding of what will be discussed between the agent and the Medicare beneficiary (or their authorized representative). All information provided on this form is confidential and should be completed by each person with Medicare or his/her authorized representative.

Please initial below beside the type of product(s) you want the agent to discuss.

| | |
|--------------------------|---|
| <input type="checkbox"/> | Stand-alone Medicare Prescription Drug Plans (Part D) |
| | Medicare Prescription Drug Plan (PDP) — A stand-alone drug plan that adds prescription drug coverage to Original Medicare, some Medicare Cost Plans, some Medicare Private Fee-for-Service Plans, and Medicare Medical Savings Account Plans. |
| <input type="checkbox"/> | Medicare Advantage Plans (Part C) and Cost Plans |
| | Medicare Health Maintenance Organization (HMO) — A Medicare Advantage Plan that provides all Original Medicare Part A and Part B health coverage and sometimes covers Part D prescription drug coverage. In most HMOs, you can only get your care from doctors or hospitals in the plan's network (except in emergencies). |
| | Medicare Preferred Provider Organization (PPO) Plan — A Medicare Advantage Plan that provides all Original Medicare Part A and Part B health coverage and sometimes covers Part D prescription drug coverage. PPOs have network doctors and hospitals but you can also use out-of-network providers, usually at a higher cost. |
| | Medicare Private Fee-for-Service (PFFS) Plan — A Medicare Advantage Plan in which you may go to any Medicare-approved doctor, hospital and provider that accepts the plan's payment, terms and conditions and agrees to treat you — not all providers will. If you join a PFFS Plan that has a network, you can see any of the network providers who have agreed to always treat plan members. You will usually pay more to see out-of-network providers. |
| | Medicare Special Needs Plan (SNP) — A Medicare Advantage Plan that has a benefit package designed for people with special health care needs. Examples of the specific groups served include people who have both Medicare and Medicaid, people who reside in nursing homes, and people who have certain chronic medical conditions. |
| | Medicare Medical Savings Account (MSA) Plan — MSA Plans combine a high deductible health plan with a bank account. The plan deposits money from Medicare into the account. You can use it to pay your medical expenses until your deductible is met. |
| | Medicare Cost Plan — In a Medicare Cost Plan, you can go to providers both in and out of network. If you get services outside of the plan's network, your Medicare-covered services will be paid for under Original Medicare but you will be responsible for Medicare coinsurance and deductibles. |

Y0069_16_1096 Accepted

By signing this form, you agree to a meeting with a sales agent to discuss the types of products you initiated above. Please note, the person who will discuss the products is either employed or contracted by a Medicare plan. They do not work directly for the Federal government. This individual may also be paid based on your enrollment in a plan. Signing this form does NOT obligate you to enroll in a plan, affect your current or future enrollment, or automatically enroll you in a Medicare plan.

Beneficiary or Authorized Representative Signature and Signature Date:

Signature: _____

Signature Date: _____

If you are the authorized representative, please sign above and print below:

Representative's Name: _____ Your Relationship to the Beneficiary: _____

UPMC for Life HMO and PPO plans and the UPMC for Life Dual HMO SNP plan have contracts with Medicare. UPMC for Life Dual also has a contract with the Pennsylvania Medical Assistance (Medicaid) program. Enrollment in UPMC for Life and UPMC for Life Dual depends on contract renewal. UPMC for Life Dual is available to anyone who has both Medical Assistance from the State and Medicare.

To be completed by Agent:

| | |
|--|--------------------|
| Agent Name: | Agent Phone: |
| Beneficiary Name: | Beneficiary Phone: |
| Beneficiary Address: | |
| Initial Method of Contact: (Indicate here if beneficiary was a walk-in.) | |
| If the form was signed by the beneficiary at time of appointment, provide explanation why SOA was not documented prior: | |
| <input type="checkbox"/> Walk In <input type="checkbox"/> Appointment less than 72 hours of date <input type="checkbox"/> SOA not returned before appointment <input type="checkbox"/> Other: | |
| Agent's Signature: | |
| Plan(s) the agent represented during this meeting: | |
| Date Appointment Completed: | |
| [Plan Use Only:] | |

Scope of Appointment documentation is subject to CMS record retention requirements.

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UPMC for Life

UPMC Health Plan Medicare Program

Marketing Regulations

☐ New Scope of Appointment Form Requirements

☐ The following items **MUST** be documented on the completed form:

- ☐ Date of appointment
- ☐ Beneficiary contact information (e.g., name, address, telephone number)
- ☐ The product type(s) (e.g., MA, PDP, MMP) the beneficiary has agreed to discuss during the scheduled appointment
- ☐ Agent information (e.g., name and contact information)
- ☐ An explanation why the SOA was not documented 48 hours prior to the appointment, if applicable
- ☐ Signature and Date of Beneficiary or Authorized Representative
 - ☐ If signed by Authorized Representative, must include their name and relationship to the beneficiary

☐ Failure to provide any one of these items will result in a Corrective Action Plan



Marketing Regulations

☐ Selling/Individual Marketing Appointment

☐ Face-to-face Appointments

- ☐ Must have completed scope of appointment form documented.
- ☐ Agents/brokers should distribute plan materials to the prospect (e.g., enrollment kit should be provided).
- ☐ Inform the individual how to get plan information (e.g., phone, website).
- ☐ Discuss the various plan options in detail with the enrollee (as agreed to in the Scope of Appointment).
- ☐ Provide, review, and collect the enrollment form (application).

☐ Agents/brokers **CANNOT** do the following during a face-to-face appointment:

- ☐ Discuss plan options that were NOT agreed upon in the scope of appointment form.
- ☐ Market non-health care related products (e.g., life insurance, annuities) – this is referred to as cross-selling and is prohibited.
- ☐ Ask a beneficiary for referrals.
- ☐ Solicit an application prior to the start of the Annual Enrollment Period.
- ☐ Encourage/force a prospective enrollee to leave his or her current plan.

Marketing Regulations

☐ **Selling/Marketing at Sales Events**

- ☐ CMS clarified that the purpose of a sales event is defined by the plan's ability to collect applications and enroll individuals during the event.
- ☐ Marketing or sales events allow a plan representative to proactively discuss the merits of the plan(s) to interested beneficiaries.

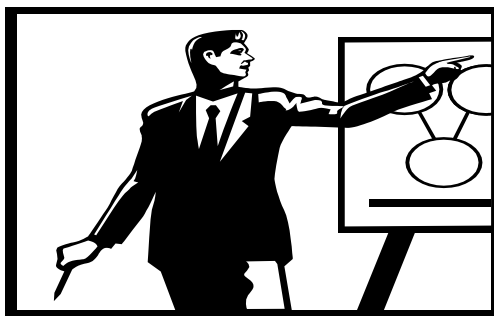
☐ **Plan sponsors are allowed to do the following at a sales event:**

- ☐ Discuss plan specific information (premiums, cost-sharing, benefits).
- ☐ Distribute health plan brochures and enrollment advertising materials.
- ☐ Formally present benefit information to the audience via a scripted presentation, that can include slides and handouts.
 - ☐ This script **MUST** be approved by CMS and must be completely reviewed at the presentation. Slides **CANNOT** be skipped or glossed over.
- ☐ Accept applications and perform enrollments into a plan.
- ☐ Provide a scope of appointment form for a subsequent meeting.
- ☐ Provide a nominal gift and/or light snack to attendees.

Marketing Regulations

❑ Selling/Marketing at Sales Events: *(continued)*

- ❑ Advertisements and invitations to Sales/Marketing events (in any form of media) for a group session must include the following two statements on advertising and explanatory materials for the event:
 - ❑ *A sales person will be present with information and applications.*
 - ❑ *For accommodation of persons with special needs at sales meetings call <insert phone and TTY number>.*
- ❑ All sales scripts/presentation must be submitted to CMS for prior approval before using at the sales event.



Marketing Regulations

☐ Selling/Marketing at Sales Events: *(continued)*

☐ Plan sponsors (or agents/brokers) may NOT do the following at Sales Events:

- ☐ Conduct health screening or other like activities that could give the impression of “cherry picking.”
- ☐ Compare one plan sponsor to another by name unless both plan sponsors have concurred. (e.g., cannot say our plan (or benefit) is better than PLAN XYZ’s plan/benefit).
- ☐ Use absolute superlatives (e.g., we are the best), unless substantiated with supporting data.
- ☐ Provide meals to attendees.
- ☐ Require beneficiaries to provide contact information as a prerequisite for attending the event. Plans should clearly indicate on any sign-in sheets that completion of any contact information is optional.
- ☐ Plans sponsors may not ask beneficiaries to provide personal contact information in order to participate in a raffle or drawing.
 - ☐ Plan sponsors should use other mechanisms (e.g., raffle tickets, random numbers) for conducting the drawings.
- ☐ Solicit enrollment applications prior to the start of the AEP

Marketing Regulations

- ❑ **Selling/Marketing at Sales Events: *(continued)***

- ❑ **Cancelled Sales Events require the following notifications:**
 - ❑ If a sales event is canceled before its originally scheduled date and time, the Plan/Part D Sponsor must cancel the event in HPMS, more than forty-eight (48) hours prior to the originally scheduled date and time of the event, whenever possible.

Marketing Regulations

❑ Two types of Sales Events

- ❑ **Formal** marketing/sales events are typically structured in an audience/presenter style with a sales person or plan representative formally providing specific Plan/Part D Sponsor information via a presentation on the products being offered.
- ❑ **Informal** marketing/sales events are conducted with a less structured presentation or in a less formal environment. They typically utilize a table, kiosk or a recreational vehicle (RV) that is manned by a Plan/Part D Sponsor representative who can discuss the merits of the plan's products.

Marketing Regulations

❑ Prospective Enrollee Educational Events

- ❑ **CMS Definition:** An educational event is designed to inform Medicare beneficiaries about Medicare Advantage, prescription drug coverage or other Medicare programs that does not steer, or attempt to steer, potential enrollees toward a specific plan or limited number of plans.
- ❑ Educational events may be hosted by the plan sponsor or an outside entity and are held in a public venue.
 - ❑ Educational events are not held in an in-home setting or one-to-one appointment.
- ❑ CMS clarified that prospective enrollee educational events may not include any sales activities such as the distribution of marketing materials or the distribution or collection of plan applications.
 - ❑ Educational events must be explicitly advertised as “educational,” otherwise they will be considered by CMS as sales/marketing events.

Marketing Regulations

☐ Prospective Enrollee Educational Events (*continued*)

☐ Educational events may NOT include the following sales activities:

- ☐ Distribution of plan specific marketing materials (including benefits/premiums, provider and pharmacy directories).
- ☐ Distribution or collection of enrollment applications, business reply cards, scope of appointment forms or sign up sheets.
- ☐ Agents/brokers cannot set up sales appointments or get permission to make an outbound call.
- ☐ Agents/brokers cannot attach business cards or plan/agent contact information to educational materials.

☐ CMS Rule to Remember About Educational Events:

Plans may provide education at a sales or marketing event, but may NOT market or sell at an educational event.

Marketing Regulations

☐ Marketing in Health Care Settings

- ☐ Plans cannot conduct sales activities in a health care setting except in common areas such as cafeterias or conference rooms.
- ☐ Presentations and distributing or accepting enrollment applications in areas where patients primarily receive health services is prohibited. Restricted areas include:
 - ☐ Waiting and exam rooms.
 - ☐ Hospital or patient rooms.
- ☐ Appointments with individuals who live in a long-term care facility are allowed only when requested by the individual.
 - ☐ You cannot meet with other individuals in the long-term care facility unless an appointment was scheduled in advance.

Marketing Regulations

☐ Promotional Activities

☐ Any promotional activities or items offered by plan sponsors (agents/brokers) to prospective or current members, including those that will be used to encourage retention of members:

- ☐ Must be of nominal value. *(see next slide)*
- ☐ Must be offered to all people eligible to enroll without discrimination.
- ☐ **Must not** be offered in the form of cash or other monetary rebates.
- ☐ **May not** be items that are considered a health benefit (e.g., a free checkup).
- ☐ **May not** consist of lowering or waiving copays for services.
- ☐ **May not** be tied directly or indirectly to the provision of any other covered item or service.
- ☐ Must be tracked and documented by the plan during the contract year.
- ☐ Are subject to grievances filed by the prospective enrollee.

Marketing Regulations

☐ Nominal gift guidance

- ☐ Plans can offer promotional gifts to potential enrollees as long as the gifts are of nominal value and are provided to everyone whether or not they enroll in the plan, and without discrimination.
 - ☐ Nominal gifts cannot be readily converted into cash.
 - ☐ Gift certificates and gift cards that can be readily converted to cash are not allowed.
 - ☐ If an agent/broker has questions regarding offering a promotional gift or the nominal value of an item, you must verify using the “gift” with your broker manager/manager.
- ☐ The gift must be provided to all individuals whether or not he/she enrolls in the plan. (A disclaimer must also be included stating that there is no obligation to enroll).
- ☐ Nominal value is an item worth \$15 or less based on the retail price (fair market value) of the item (regardless of what the actual cost was to the plan).

Marketing Regulations

❑ Exclusions on Meals

- ❑ Prospective enrollees cannot be provided meals or be subsidized for meals at any marketing event or meeting where plan benefits are discussed with plan sponsors (including agents/brokers).
- ❑ Only refreshments and light snacks can be provided to prospective enrollees at a sales/seminar presentation.
- ❑ Plans/Part D Sponsors should use their best judgment on the appropriateness of food products provided, and should ensure that items provided could not be reasonably considered a meal and/or that multiple items are not being “bundled” and provided as if a meal.
- ❑ Oversight activities conducted by CMS will verify that plan sponsors and their agents are complying with this provision.



Marketing Regulations

- ❑ **Potential consequences of engaging in inappropriate or prohibited marketing activities include:**
 - ❑ Disciplinary actions
 - ❑ Reporting the agent to the State licensing department
 - ❑ Termination from selling for the Medicare Advantage Organization
 - ❑ Forfeiture of future compensation for plan members

- ❑ Examples of inappropriate activities are: conducting selling activities at health screenings or educational events, providing cash or monetary rebates for sales or referrals, signing or backdating an application, and making unsolicited contact.

Marketing Regulations

☐ **Compensation** -42 CFR 422.2274 and 423.2274 Provisions Apply January 1, 2015

- ☐ Compensation includes monetary or non-monetary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to, commissions, bonuses, gifts, prizes, awards, and referral/finder's fees.
- ☐ Compensation **DOES NOT** include:
 - ☐ The payment of fees to comply with State appointment laws
 - ☐ Training
 - ☐ Certification
 - ☐ Testing costs
 - ☐ Reimbursement for mileage to, and from, appointments with beneficiaries
 - ☐ Reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials
- ☐ Initial Compensation may be paid at or below the fair market value (FMV) cut-off amounts published by CMS annually.
- ☐ Renewal compensation may be paid for each enrollment in Year 2 and beyond up to fifty (50) percent of the current FMV, published by CMS annually.

*Employed and captive agents/brokers who only sell for one Plan/Part D Sponsor are exempt from compensation requirements, except where noted (e.g., referral/finder fees)

Marketing Regulations

☐ Compensation Payment Requirements

- ☐ The compensation year is January 1 through December 31 of each year. Payments must be calculated based on the January through December enrollment year regardless of a beneficiary's effective date
- ☐ Initial members are paid either a pro-rated amount or the full compensation
- ☐ Payment must also be pro-rated for mid-year renewals
- ☐ Compensation for referral/finder's fees paid to all agents and brokers, which includes independent, employed, and captive agents and brokers, may not exceed \$100 for an agent or broker to recommend or enroll a beneficiary into a Plan/Part D Sponsor that meets beneficiaries' healthcare needs
 - ☐ The limit on referral fees for PDPs is \$25
- ☐ Referral/finder's fees paid to all agents and brokers must be part of total compensation not to exceed FMV for that contract year

Marketing Regulations

❑ Compensation Recovery Requirements

- ❑ Plans/Part D Sponsors must recover compensation payments from agents/brokers under two circumstances: 1) when a beneficiary disenrolls from a plan within the first three months of enrollment (rapid disenrollment), and 2) any other time a beneficiary is not enrolled in a plan.

❑ Rapid Disenrollment

- ❑ 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
- ❑ Rapid disenrollment compensation recovery does not apply 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. If, however, a beneficiary enrolls in October and disenrolls in December, the Plan/Part D Sponsor should recover compensation based on the rapid disenrollment.

Marketing Regulations

❑ Compensation Recovery Requirements (*continued*)

❑ Other Compensation Recovery

- ❑ Plans/Part D Sponsors must recover a pro-rated amount of initial compensation when an enrollee disenrolls from a plan. The amount recovered must be equal to the number of months not enrolled. For example, an enrollee ages in effective April 1. The enrollee disenrolls effective September 30 of the same year. The plan initially paid a full initial compensation. Since the enrollee disenrolled (not a rapid disenrollment), the Plan/Part D Sponsor must recover 6/12ths of the initial compensation (January through March and October through December).
- ❑ Plans/Part D Sponsors must recover a pro-rated amount of renewal compensation when an enrollee disenrolls from a plan. This amount must be equal to the number of months not enrolled. For example, a renewal enrollee disenrolls effective February 28. The Plan/Part D Sponsor must recover 10/12ths of the renewal payment. if the renewal payment had been paid for the entire 12-month period.

Marketing Regulations

☐ Compensation Recovery Requirements (*continued*)

☐ Other Compensation Recovery

- ☐ Plans/Part D Sponsors must recover a pro-rated amount of renewal compensation when an enrollee disenrolls from a plan. This amount must be equal to the number of months not enrolled. For example, a renewal enrollee disenrolls effective February 28. The Plan/Part D Sponsor must recover 10/12ths of the renewal payment. if the renewal payment had been paid for the entire 12-month period.

Marketing Regulations

☐ Privacy and Confidentiality

- ☐ The HIPAA Privacy Rule provides federal protections for individually identifiable health information held by covered entities and their business associates and gives patients an array of rights with respect to that information. At the same time, the Privacy Rule is balanced so that it permits the disclosure of health information needed for patient care and other important purposes.
- ☐ The Security Rule specifies a series of administrative, physical, and technical safeguards for covered entities and their business associates to use to assure the confidentiality, integrity, and availability of electronic protected health information.
- ☐ Additional information on the HIPAA Privacy Rule and its disclosure requirements can be found at <http://www.hhs.gov/ocr/privacy/>.