



## Important new requirements and clarifications from CMS for Aetna third-party marketing organizations (TPMOs)

### Pertinent regulations from CMS CY2024 Final Rule and Aetna's commentary

Any information provided after the regulatory citation in each section is Aetna's clarification or assessment of potential impact of the regulation.

#### Marketing Materials

- **Required Submission of Multi-Plan Materials to HPMS after pre-review by MA organizations** - Materials must be submitted to the HPMS Marketing Module by the MA organization or, where materials have been developed by a Third Party Marketing Organization for multiple MA organizations or plans, by a Third Party Marketing Organization with prior review of each MA organization on whose behalf the materials were created or will be used. *42 CFR 422.2261 (a)(2)* **Note: TPMOs should continue to submit materials to HPMS after Aetna pre-review.**
- **Increased Restrictions on the Use of Superlatives** - MA organizations may not do any of the following:... (ii) Use of superlatives, unless sources of documentation or data supportive of the superlative is also referenced in the material. Such supportive documentation or data must reflect data, reports, studies, or other documentation that applies to the current or prior contract year. (A) Including data older than the prior contract year is permitted provided the current and prior contract year data are specifically identified. *42 CFR 422.2262 (a)(1)*
- **No Misleading use of Medicare name, CMS logo, etc.** - MA organizations may not do any of the following:... (xix) use the Medicare name, CMS logo, and products or information issued by the Federal Government, including the Medicare card, in a misleading way. Use of the Medicare card image is permitted only with authorization from CMS. *42 CFR 422.2262 (a)(1)* **Note: In other words, organizations may not use these terms in a way that could lead the reader to assume that communications and activities are endorsed or disseminated by Medicare or the Federal Government. There may be other applicable state laws with similar or**

**more restrictive requirements in this regard. Organizations must ensure that they are abiding by all state licensing requirements.**

- **No Advertisement of Benefits Outside the Service Area** - In marketing, MA organizations may not do any of the following: ... (8) Advertise benefits that are not available to beneficiaries in the service area(s) where the marketing appears, unless the advertisement is in local media that serves the service area(s) where the benefits are available and reaching beneficiaries who reside in other service areas is unavoidable. *42 CFR 422.2263 (b)* **Note: In other words, an exception is made if marketing on a local level to non-targeted beneficiaries is unavoidable. This exception only applies to local advertising, not national advertising.**
- **Official MA Organization or Marketing Names Must be Included Marketing Communications** - In marketing, MA organizations may not do any of the following: ... (9) Market any products or plans, benefits, or costs, unless the MA organization or marketing name(s) as listed in HPMS of the entities offering the referenced products or plans, benefits, or costs are identified in the marketing material. (i) MA organization or marketing names must be in 12-point font in print and may not be in the form of a disclaimer or fine print. (ii) For television, online, or social media, the MA organization or marketing name(s) must be either read at the same pace as the phone number or must be displayed throughout the entire advertisement in a font size equivalent to the advertised phone number, contact information, or benefits. (iii) For radio or other voice-based advertisements, MA organization or marketing names must be read at the same pace as the advertised phone numbers or other contact information. *42 CFR 422.2263 (b)*
- **Restrictions Regarding the Description of Savings Available** - In marketing, MA organizations may not do any of the following: ... (10) include information about savings available to potential enrollees that are based on a comparison of typical expenses borne by uninsured individuals, unpaid costs of dually eligible beneficiaries, or other unrealized costs of a Medicare beneficiary. *42 CFR 422.2263 (b)*

## Sales and Marketing Activities

- **Visiting a Beneficiary without an Appointment is Always Prohibited** - [Unsolicited] contact is unsolicited door-to-door contact unless an appointment, at the beneficiary's home at the applicable date and time, was previously scheduled. *42 CFR 422.2264 a (2)(i)(A)*
- **Annual Opportunity to Opt-Out of Future Calls** - If the MA organization reaches out to beneficiaries regarding plan business, as outlined in this section, the MA organization must provide notice to all beneficiaries whom the plan contacts at least once annually, in writing, of the individual's ability to opt out of future calls regarding plan business. *42 CFR 422.2264 (b) (2)* **Note: When opt-out requests are received by the plan from members, TPMOs may need to follow opt-out requests as applicable to these members. Aetna will provide clarification to TPMOs as CMS releases any further guidance.**
- **Increased Restrictions on Activities Permitted at Educational Events** - [MA organizations holding or participating in educational events may do any of the following:] (D) Make available and receive beneficiary contact information, including Business Reply Cards, but not including Scope of Appointment forms. *42 CFR 422.2264 (c) (1) (ii) (D)* **Note: TPMOs holding education events may no longer set up future personal marketing**

appointments or have beneficiaries complete Scope of Appointment forms.

- **Limitation on Timing and Location of Marketing Events are prohibited** - Marketing events are prohibited from taking place within **12 hours** of an educational event, in the same location. The same location is defined as the entire building or adjacent buildings. *42 CFR 422.2264 (c) (2)* **Note: When scheduling your marketing event, you must ensure that no Medicare Advantage educational event has been scheduled for that location within the 12 hour timeframe prior to your event.**
- **Waiting Period of 48 hours between the Completion of the SOA and the Personal Marketing Appointment** - At least 48 hours prior to the scheduled personal marketing, the MA plan (or agent or broker, as applicable) must agree upon and record the Scope of Appointment with the beneficiary(ies), except for: (A) SOAs that are completed during the last four days of a valid election period for the beneficiary. (B) Unscheduled in person meetings (walk-ins) initiated by the beneficiary. *42 CFR 422.2264 (c) (3) (i)* **Note: CMS has indicated that this 48-hour period is not required for inbound calls from enrollees. At this time, unless CMS provides further clarification, this requirement applies to outbound calls.**
- **SOA valid for 12 months** - MA organizations holding a personal marketing appointment may not do any of the following: Market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan in a Scope of Appointment, business reply card, or request to receive additional information, which is valid for 12 months following the date of beneficiary's signature date or the date of the beneficiary's initial request for information. (B) Market additional health related lines of plan business not identified prior to an individual appointment without a separate Scope of Appointment, identifying the additional lines of business to be discussed; such Scope of Appointment is valid for 12 months following the beneficiary's signature date. *42 CFR 422.2264(c) (3)(iii)(A)*
- **Required Review of the Pre-enrollment Checklist (PECL)** - The PECL is a standardized communications material that plans must provide to prospective enrollees with the enrollment form, so that the enrollees understand important plan benefits and rules. For telephonic enrollments, the contents of the PECL must be reviewed with the prospective enrollee prior to the completion of the enrollment. *42 CFR 422.2267 (e) (4)* **Note: Aetna provides the PECL in hard copy enrollment kits; for telephonic enrollments, this will be required to be a part of telephonic enrollment scripts.**
- **Addition of "effect of current coverage" to the PECL** - CMS has added "effect of current coverage" to the checklist, which also must be reviewed as part of telephonic enrollment. *42 CFR 422.2267 (e) (4) (viii)*
- **New Verbiage in TPMO Disclaimer** - If a TPMO does not sell for all MA organizations in the service area the disclaimer consists of the statement: "We do not offer every plan available in your area. Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. Please contact Medicare.gov, 1-800-MEDICARE, or your local State Health Insurance Program (SHIP) to get information on all of your options." If the TPMO sells for all MA organizations in the service area the disclaimer consists of the statement: "Currently we represent [insert number of organizations] organizations which offer [insert number of plans] products in your area. You can always contact

Medicare.gov, 1–800–MEDICARE, or your local State Health Insurance Program for help with plan choices.” 42 CFR 422.2267 (e)(41) **Note: All other requirements regarding the TPMO disclaimer, such as timing of the disclaimer during sales calls, remain the same.**

- **Review of beneficiary health plan needs prior to enrollment** - [TPMOs must] ensure that CMS's required questions and topics regarding beneficiary needs in a health plan choice are fully discussed. Topics include information regarding:
  - **Primary care providers and specialists (that is, whether or not the beneficiary's current providers are in the plan's network)**
  - **Pharmacies (that is, whether or not the beneficiary's current pharmacy is in the plan's network)**
  - **Prescription drug coverage and costs (including whether or not the beneficiary's current prescriptions are covered)**
  - **Costs of health care services, premiums, benefits, and specific health care needs. 42 CFR 422.2274 ( c ) (12)**
  - **Note: CMS has indicated that they will provide sub-regulatory guidance with more detailed questions and areas to be covered based on general topics.**
- **Clarification Regarding Call Recordings** - [TPMOs must] record all marketing, sales, and enrollment calls, including the audio portion of calls via web-based technology, in their entirety. 42 CFR 422.2274 (g) (2) (ii) **Note: TPMOs are no longer required to record all calls with beneficiaries, just those outlined in the regulation. Examples of web-based technology include Zoom, Facetime and Skype.**

## Questions? We're here to help

If you have any questions, please [contact your local Aetna Medicare Broker Manager](#) for assistance.

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