



Marketing and Communication Changes in CMS Final Rule 2024

(Revised 06/12/2023)

Summary

CMS published their 2024 Policy and Technical Changes that includes new marketing and communications regulatory requirements. These changes have an impact on all agencies and brokers selling Medicare Advantage and/or Part D plans. We are sharing this information so you can make necessary changes in preparation for AEP 2024. This is a brief summary of the marketing and communications requirements covered in the Final Rule; complete information can be found in [the 2024 CMS guidance here](#). These changes are applicable to all 2024 marketing and communications beginning September 30, 2023.

Call Recording Clarification

Calls that must be recorded in their entirety include marketing, sales, and enrollment calls. When web-based technology is used, such as Zoom, only the audio portion of the web-based call must be recorded. This is a change from last year's requirement to record ALL calls.

TPMO disclaimer

As a reminder, the Third-Party Marketing Organization (TPMO) disclaimer must be placed on ALL TPMO materials and verbally conveyed within the first 60 seconds of the SALES CALL, and electronically conveyed when communicating with a beneficiary through email, online chat, or other electronic means of communication. The disclaimer has been modified as follows:

- *If you do not sell all carriers in a service area, "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 you sell all carriers in a service area, "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 (SHIP) for help with plan choices."*

Marketing Activities

- Marketing that advertises benefits not available to beneficiaries in the service area is prohibited.
- Marketing materials must include the marketing name of the carrier being advertised.
- Materials must not include information about savings available to potential enrollees based on a comparison of typical expenses borne of uninsured individuals, unpaid costs of dually eligible beneficiaries, or other unrealized costs of a Medicare beneficiary.
- Marketing events are prohibited from taking place within 12 hours of an educational event, in the same location (the same building or adjacent buildings).



- You may not go to a beneficiary's home unless you are attending a previously scheduled in-home appointment, with a specific date and time. Door to door soliciting is prohibited.
- At least 48 hours before the start of a personal marketing appointment, you must agree upon and record the Scope of Appointment with the beneficiary.

This rule **does not apply** to **inbound** calls or to the end of a valid enrollment period.

For example: A prospect calls you inquiring about available plans. You may obtain the SOA at that time and continue the conversation. Do not forget to provide the appropriate disclaimer at the start of the call and record the call.

- CMS prohibits the use of the Medicare name, logo, or products **in a misleading way**. It must be clear that the entity being represented in the material is not Medicare or representing Medicare or the Federal Government.

The Medicare ID card can be used in materials as long as it is not misleading, and CMS has given prior authorization to use it.

Follow the process below for obtaining prior CMS approval:

- Send an email to the [marketing mailbox \(marketing@cms.hhs.gov\)](mailto:marketing@cms.hhs.gov) outlining how the Medicare ID card image will be used and in what materials.
 - After submission, you will receive either an approval or disapproval from the CMS marketing mailbox.
 - If approved, you need to upload the email approval along with the actual piece into HPMS.
- Do not use terms or statements that cannot be substantiated such as "The best," "Highest ranked," "Rated number 1" without data to support your statement(s).
 - Carriers and agents must provide opt-out information in writing, to all enrollees annually, regardless of intention to contact. We will share additional information about this topic in the future.

Pre enrollment Checklist

Remember, you are required to review specific topics with your client prior to enrollment, specifically information such as whether the beneficiary's preferred providers and pharmacies are in-network, review prescription drug costs and premiums, health care coverage and benefits based on the beneficiary's specific requirements for health care needs and current medications. You can rest assured our marketing materials for AEP 2024 will be designed to meet these regulatory requirements.

We will be providing additional information as it becomes available. Please reach out to your Regional Sales Manager if you have questions.

All guidance contained in this message is subject to Code of Federal Regulations: 42 CFR §§ 422.262 through 422.2274 and 423.2262 through 423.2274.

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