



---

# Marketing Medicare Advantage and Part D Plans

Part 4

**Version 6.0**  
**September 28, 2012**

# Terms and Conditions

---

- This training program is protected under United States Copyright laws, 17 U.S.C.A. §101, et seq. and international treaties. Except as provided below, the training program may not be reproduced (in whole or in part) in hard paper copy, electronically, or posted on any web site or intranet without the prior written consent of AHIP. Any AHIP member company in good standing sponsoring a Medicare Advantage or Part D plan may reproduce the training program for the limited purpose of providing training and education to the company's own employees and contractors on the subject matter contained in the training program. Employees or contractors participating in such training may not further reproduce (in whole or in part) the training program. No changes of any kind may be made to the training program and any reproduction must include AHIP's copyright notice. This limited license is terminable at will by AHIP.
  
- The training program is intended to provide guidance only in identifying factors for consideration in the basic rules and regulations governing coverage, eligibility, marketing, and enrollment for Medicare, Medicare supplement insurance, Medicare health plans, and Part D prescription drug plans and is not intended as legal advice. While all reasonable efforts have been made to ensure the accuracy of the information contained in this document, AHIP shall not be liable for reliance by any individual upon the contents of the training program.

# Learning Objectives

---

- After reviewing “Part 4: Marketing Medicare Advantage and Part D Plans” you will be able to explain:
  - Medicare marketing rules;
  - Required marketing practices;
  - Prohibited marketing practices;
  - Permitted promotional and marketing activities;
  - Educational events;
  - Plan and CMS oversight and enforcement; and
  - Answers to frequently asked questions.

# What is Marketing?

---

- ❑ Marketing is steering, or attempting to steer, a potential enrollee toward a plan or limited number of plans, or promoting a plan or a number of plans.
- ❑ Marketing material includes any promotional material and membership communications and material, including subscriber agreements and information about benefits, providers, and plan rules.
- ❑ “Assisting in enrollment” and “education” do not constitute marketing.

# What are Marketing Activities?

---

- Examples of marketing activities include:
  - Conducting a formal event where a presentation is provided to Medicare beneficiaries;
  - Conducting an informal event where only health plan brochures and pre-enrollment materials are distributed
  - Meeting with a Medicare beneficiary, regardless of the content discussed; or
  - Accepting enrollment forms and performing enrollment at marketing/sales events.

# What are Marketing Materials?

---

- Marketing materials include any MA, MA-PD, section 1876 cost, or PDP plan or plan sponsor informational materials targeted to Medicare beneficiaries which:
  - Promote the plan sponsor or any plan offered by the plan sponsor;
  - Inform Medicare beneficiaries that they may enroll, or remain enrolled in a plan offered by the plan sponsor;
  - Explain the benefits of enrollment or rules that apply to enrollees; or
  - Explain how Medicare services are covered under the plan, including conditions that apply to such coverage.

# What are Examples of Marketing Materials?

---

- Examples of marketing materials include:
  - General audience materials such as brochures, direct mail, newspapers, magazines, television, radio, billboards, yellow pages or the Internet.
  - Marketing representative scripts or outlines for telemarketing or other presentations.
  - Presentation materials such as slides and charts.
  - Promotional materials such as brochures or leaflets, including materials for circulation by physicians, other providers, or third parties.
  - Member communications including rules; agreements; handbooks; contractual changes; changes in providers, premiums, or benefits; plan procedures; and wallet card instructions to enrollees.

# Medicare Marketing Rules

---

- Medicare marketing rules apply to all 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), and
    - 1876 Cost plans
  - Marketing on behalf of the plan is considered marketing by the plan, and plans are responsible for ensuring compliance with Medicare rules by their marketing representatives.
  - Plan marketing representatives include:
    - individuals employed by a plan and
    - individuals under contract to the plan through a direct or downstream contract (e.g. brokers, agents, third party marketing organizations (TMOs) such as a field marketing organizations (FMOs), general agents (GAs), or other marketing contractors).
-



# Medicare Marketing Rules: Materials and Practices

---

- CMS reviews marketing materials submitted by plans to ensure they:
  - Are not materially inaccurate,
  - Are not misleading, and
  - Do not otherwise make material misrepresentations.
- Generally, only CMS-approved materials and scripts can be used to market Medicare health plans and Part D plans.
  - All materials, scripts, and marketing practices that plan marketing representatives use must comply with Medicare rules.
  - Materials developed for use with employer/union group members are not subject to CMS prior review and approval.
  - No person may use the words “Medicare,” “Centers for Medicare & Medicaid Services,” “Department of Health and Human Services,” or “Health and Human Services” or their symbols in a manner that would convey the false impression that the business or product is approved, endorsed or authorized by Medicare or any other government organization.

# Medicare Marketing Rules: Marketing Representatives – State Licensure

---

- Plan sponsors must contract with or employ as marketing representatives only individuals who are licensed by the state to conduct marketing activities in that state, and whom the plan has informed the state it has appointed, consistent with the appointment process provided for under State law.
  - Plans must comply with state requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual's conduct.
  - Plans must report to States, termination of agents or brokers and the reasons for the termination.
  - Plans must terminate upon discovery and report to States incidences of submission of applications by unlicensed agents or brokers

# Medicare Marketing Rules: Marketing Representatives Training

---

- All employed and contracted representatives marketing MA and Part D plans must complete training as specified by CMS each year on Medicare rules and regulations and on details specific to the plan products they sell, except as noted below. They also must pass a written test each year that demonstrates thorough familiarity with both the Medicare program and the products they are selling.
    - Marketing representatives of MA and Part D plans must provide plan sponsors with documentation of completed training and testing.
    - CMS requires training of those marketing employer/union group plans, but does not require testing. However, plans may require testing.
  - Plans must provide training to marketing representatives on how to detect, correct, and prevent fraud, waste, and abuse.
-

# Medicare Marketing Rules: Marketing or Sales Events

---

- Marketing/sales events are events designed to steer potential enrollees toward a plan or limited set of plans.
  - Educational events are events designed to inform potential enrollees about MA, Part D, or other Medicare programs, but are not marketing events and do not steer or attempt to steer individuals toward a specific plan or limited number of plans. (See slides 72 – 77 for more information.)
- There are two main types of marketing/sales events:
  - Formal events typically structured in an audience/presenter style with an agent providing specific plan information, typically to a previously invited audience; and
  - Informal events, usually less structured for people passing by a table or kiosk manned by a sales agent who can discuss the merits of the plan sponsor's products.
- Personal/Individual marketing appointments also must follow marketing rules. (See slides titled “Medicare Marketing Rules Personal/Individual Marketing Appointments)

# Medicare Marketing Rules:

## Marketing or Sales Events, cont'd

---

- Advertisements and invitations to marketing /sales events (in any form of media) that are used to invite beneficiaries to attend a group session with the possibility of enrolling those individuals must include the following two statements on advertising and explanatory materials:
  - “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>.”
  
- Such invitations must also clearly state all of the products that will be discussed during the event (i.e. HMO, PDP).

# Medicare Marketing Rules: Marketing or Sales Events, cont'd

---

- At marketing/sales events agents may:
    - Discuss plan specific information such as premiums and benefits;
    - Discuss the merits of a plan;
    - Distribute and collect enrollment applications; and
    - Distribute plan-specific advertisements, explanatory information, and general information about Medicare.
  - If enrollment applications are distributed, all required enrollment materials must be provided. (See Slide Medicare Marketing Rules Personal/Individual Marketing Appointments for more information.)
  - 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. Plans must indicate on sign-up sheets that completion of contact information is optional.
-

# Medicare Marketing Rules: Marketing or Sales Events, cont'd

---

- ❑ All sales events are open to the general public and to all Medicare beneficiaries.
- ❑ Plans must upload to the CMS tracking system all formal and informal marketing/ sales events their marketing representatives will conduct prior to advertising the event or seven (7) calendar days prior to the event's scheduled date, whichever is earlier. Talk with your plan sponsor for any exceptions.
- ❑ CMS encourages plans to maintain an up-to-date schedule of sales events on the plan's website.
- ❑ Events exclusively for employer groups are excluded from the reporting requirement.

# Medicare Marketing Rules: Marketing or Sales Events, cont'd

---

- Plans must provide any cancellations, updates or changes to scheduled events **at least 48 hours prior** to the event. (See slide titled “Medicare Marketing Rules: Marketing or Sales Events” for an exception to this 48 hour prior notice requirement.)
  - Plans must notify beneficiaries and the CMS Regional Office Account Manager of cancelled marketing events and cancel the event in the CMS tracking system.
- Plans are subject to penalties and other enforcement action for failure to comply.
- Marketing representatives must provide complete, accurate information and updates to ensure that plans will be in compliance.



# Medicare Marketing Rules Sales Events Cancellations

---

- For events cancelled within 48 hours of the scheduled time, the plan must ensure a representative of the plan sponsor is present at the site of the cancelled sales event for at least 15 minutes beginning at the time the event was scheduled to occur, to inform attendees of the cancellation and distribute information about the plan sponsor.
  - Cancellations due to inclement weather do not require a representative to be present at the site.

# Medicare Marketing Rules Sales Events Cancellations, cont'd.

---

- For events cancelled more than 48 hours prior to the scheduled time, a representative need not be present at the site of the event, but must notify the CMS Regional Account manager and must notify beneficiaries of the cancellation using the same means used to advertise the event. For events announced via:
    - Newspaper: Announce cancellation in the same newspaper unless the plan provides evidence to CMS that the newspaper's production and/or distribution schedule prohibits timely notification.
    - Phone calls: Call beneficiaries to inform them of the cancellation.
    - Mass mailing: The plan sponsor must consult with CMS to determine the most reasonable way to quickly notify beneficiaries.
  - If beneficiaries RSVP for an event, a representative of the plan must call the beneficiaries to inform them of the cancellation.
-

# Medicare Marketing Rules

## Personal/Individual Marketing Appointments

---

- Personal/Individual marketing appointments are defined by the intimacy of the appointments' location and typically take place in the beneficiary's home or a venue such as a library or coffee shop.
- All individual appointments
  - Are considered sales/marketing events;
  - Must meet sales/marketing event requirements;
  - Must follow scope of appointment requirements (See following slides.)

# Medicare Marketing Rules

## Personal/Individual Marketing Appointments

---

- During individual appointments, marketing representatives may:
  - Distribute plan materials – either an enrollment kit or information on how to access enrollment materials
  - Discuss various plan options (as agreed to in the Scope of Appointment)
  - Provide educational content
  - Provide and collect enrollment forms
- During individual appointments, marketing representatives may not:
  - Discuss plan options that were not agreed to in the Scope of Appointment
  - Market non-health care related products
  - Ask for referrals
  - Solicit /accept an enrollment request for a January 1<sup>st</sup> effective date prior to the start of the Annual Election Period on October 15.

# Required Practices: Scope of Appointment

---

- Marketing representatives must:
  - Market only health care related products during any MA or Part D sales activity or presentation.
  - Prior to any marketing appointment (48 hours in advance if practicable), clearly identify the types of product(s) that will be discussed, obtain agreement from the beneficiary and document that agreement.
    - Documentation for appointments must be in writing using a “Scope of Appointment” form or may be a recorded oral agreement.
    - For appointments made over the phone, required documentation is a recording of the call. The call must be placed by the plan sponsor, NOT the marketing representative/agent/broker.
  - During appointments scheduled in response to a reply card, only discuss the products included in the reply card in which the beneficiary has indicated interest.
  - A plan sponsor or agent may not agree to the scope on behalf of the beneficiary.

## Required Practices: Marketing Activities

---

- In order to discuss a health care line of business not covered in the pre-appointment documentation, the marketing representative must ask the beneficiary to complete a new scope of appointment form that includes the additional product(s) and must wait at least 48 hours after the initial visit before returning for the second appointment.
  - Marketing representatives may leave plan brochures for the other lines of business but may not discuss or conduct marketing activities related to them.
  - Enrollment applications for the additional lines of business may not be included in any materials provided during the initial appointment.
- Exception: If during an individual appointment a beneficiary specifically asks to discuss another product type, he or she must sign a new scope of appointment form that includes the new product type, and the marketing representative may then discuss the additional product during the same appointment.

## Required Practices: Marketing Activities, cont'd

---

- Sales presentations open to the public do not require documentation of prior beneficiary agreement to the scope of the presentation, but event advertising materials must indicate what products will be discussed at that time.
  - A beneficiary may sign a scope of appointment form at a marketing presentation for a follow-up appointment.
- When a beneficiary initiates contact, for example, by walking into a marketing representative's office, or attending a sales appointment properly set up for another individual, the marketing representative should document their agreement to the scope of the appointment, note that the beneficiary was a "walk-in," and may then present the appropriate information.
- Records of beneficiary agreement to the scope of an appointment must be retained for ten (10) years.

## Required Practices: Marketing Activities, cont'd.

---

### □ Marketing representatives must:

- Provide to prospective enrollees only CMS-approved plan marketing materials or CMS marketing materials
  - Exception: Agents/Brokers may generate and use materials that are “generic in nature,” without prior submission (for example business cards indicating types of products he/she is selling). Such materials must not discuss content specific to plan benefits; discuss plan cost-sharing; or include the plan name.
- Use only CMS-approved plan marketing scripts and presentations.
- If gifts or prizes are offered, state clearly that there is no obligation to enroll. (Note: Gifts or prizes may not exceed \$15 in retail value or in aggregate throughout the year, \$50 or less ).
- Prior to, or at the time of enrollment, inform the beneficiary in writing of their relationship with the plan they represent, including potential for compensation based on the beneficiary’s enrollment.



## Required Practices:

### Required Materials with an Enrollment Form

---

- When a beneficiary is provided with enrollment instructions/form, he/she must also receive:
  - Plan ratings information (See slides titled “Plan Ratings”)
  - Summary of Benefits; and
  - Multi-language insert, which alerts beneficiaries that translated materials are available.
  
- 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 member prior to the completion and submission of the enrollment request.

## Required Practices:

### Required Materials at the Time of Enrollment and Thereafter

- Plans must provide the following materials to new members at the time of enrollment and to renewing members annually:
  - Annual Notice of Change/Evidence of Coverage (ANOC/EOC) or EOC as applicable
  - Comprehensive or abridged formulary (Part D sponsors only)
  - Pharmacy directory (Part D sponsors only)
  - Provider directory (Part D sponsors excluded)
  - Membership ID Card
  
- The materials must be provided within 10 days of confirmation of enrollment or by the last day of the **month prior to the effective date**, whichever is earlier.

# Required Practices: Plan Ratings

---

- CMS releases plan ratings that allow beneficiaries to compare MA plans and Part D plans. These ratings include categories, such as detecting and preventing illness, member satisfaction, and customer service.
- 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.

## Required Practices: Plan Ratings, cont'd

---

- Plan sponsors must provide the plan's overall performance ratings to beneficiaries in the standard Plan Ratings information document.
  - The document must be provided with any enrollment form and/or Summary of Benefits and must also be available on plan sponsors' websites.
  - CMS generally issues plan ratings in October of each year, and plan sponsors must update their ratings within 15 days of the release.
  - Plan sponsors with an overall 5-star rating have the option to include CMS' gold star icon on marketing materials.
  - Plan sponsors must include the following statement on all materials referencing Plan Ratings information:  
“Plan performance Star Ratings are assessed each year and may change from one year to the next.”

## Required Practices: Plan Ratings, cont'd

---

- Plan sponsors and their marketing representatives may:
  - Reference a plan's rating on an individual measure in conjunction with the plan's overall performance rating.
  - Use the plan's star ratings in a manner that does not mislead beneficiaries into enrolling in plans based on inaccurate information.
  
- Plan sponsors with an overall 5-star rating may market year-round under a special election period (SEP).
  - If a plan sponsor with an overall 5-star rating is assessed a lower rating for the upcoming year, the sponsor must stop marketing under the SEP by November 30 of the current year.

## Required Practices: Plan Ratings, cont'd

---

- 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 a "5-star plan," when its overall plan rating is actually only 2-stars.
  - Use references to the poor performance rating of a beneficiary's plan in marketing. The option for beneficiaries in poor performing plans to request a special enrollment period does not create an opportunity for marketing.

# Required Practices: PFFS Marketing Activities

---

- PFFS materials for potential members, including presentations, must include the following disclaimer:
  - “A Private Fee-for-Service plan is not a Medicare supplement plan. Providers who do not contract with our plan are not required to see you except in an emergency.”
  
- PFFS marketing representatives **should**:
  - Explain that if a beneficiary obtains a service not covered under the PFFS plan benefits because it is not medically necessary, the beneficiary is responsible for the entire cost of the service.
  - Explain that an enrollee (or his or her providers) may obtain a written advance coverage determination from the plan before obtaining a service to confirm if the service is medically necessary or will be covered by the plan.

# Prohibited Practices: Marketing 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 members as required under HIPAA Privacy Rules. This is considered cross-selling.
    - Dental coverage is considered medical/health related.
    - Plans may sell non-health related products on inbound calls only when a beneficiary requests information on other non-health products.



# Prohibited Practices: Marketing Activities

---

- Marketing representatives must NOT:
  - Return uninvited to an earlier “no show” appointment.
  - Require potential enrollees to interact with a licensed agent in order to obtain plan materials or to enroll in a plan if the enrollee is not asking for advice or counseling.
  - Require a face-to-face appointment to provide plan information or enroll the beneficiary.

# Prohibited Practices: Marketing Activities, cont'd

---

- Marketing representatives must NOT:
  - Solicit enrollment applications prior to the start of the annual election period on October 15;
  - Create their own plan specific marketing materials;
  - Charge beneficiaries marketing or administrative fees;
  - 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.”

# Prohibited Practices: Marketing Activities, cont'd

---

- 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;
  - 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
  - Door-to-door solicitation; and
  - Engaging in activities that could mislead or confuse beneficiaries, such as claiming that a Medicare health plan is endorsed by Medicare or that Medicare recommends the beneficiary should enroll in the plan.

# Prohibited Practices: Marketing Activities, cont'd

---

- Marketing representatives must NOT:
  - Send e-mail to a beneficiary, unless the beneficiary agrees to receive e-mail from the plan and has provided his/her e-mail address to the plan.
  - Rent or purchase an e-mail list to solicit or to distribute plan information.
  - Acquire e-mail addresses through any type of directory.
  - Send e-mail to prospective enrollees at an e-mail address obtained through friends or referrals
  
- Note: Plan sponsors must provide an opt-out process for beneficiaries who no longer wish to receive e-mail communications.

# Prohibited Practices: Marketing Activities, cont'd

---

- Marketing representatives must NOT:
  - Provide false or misleading information about the plan, including benefits, provider rules, and all other plan information.
  - Claim that Medicare, CMS, or any government agency endorses or recommends the plan.
  - Lead beneficiaries to believe that the broker or agent works for Medicare, CMS or any government agency.

# Prohibited Practices: PFFS Marketing Activities

---

- PFFS marketing representatives must NOT:
  - Say that a PFFS plan is the same as Original Medicare or a Medigap plan.
  - Lead beneficiaries to believe they are purchasing a stand-alone PDP rather than a PFFS plan.
  - Use any materials or make any presentations that imply PFFS plans function as Medicare supplement plans or use terms such as “Medicare Supplement replacement.”
  
- PFFS marketing representatives may:
  - Clarify that the PFFS plan does not pay after Medicare pays its share, but rather, it pays instead of Medicare and the beneficiary pays any applicable cost-share or co-pay.

# Prohibited Practices: Marketing Activities, cont'd

---

- Marketing representatives must NOT:
  - Assert that their plan is the “best” plan.
  - Make explicit comparisons between their plan benefits and those of other named plans, unless they have written concurrence from all plan sponsors being compared.
- Marketing representatives may refer to the results of studies or statistical data, for example in relation to customer satisfaction, quality, or cost, as long as specific study details and information on the relationship with the entity that conducted the study are given.

# Prohibited Practices: Inducements

---

- Marketing representatives must NOT:
  - Offer gifts or prizes to potential enrollees during the marketing presentation that exceed \$15 retail value.
  - Offer rebates or other cash inducements of any sort to entice beneficiary enrollment.
  - Offer post-enrollment promotional items that in any way compensate beneficiaries based on their utilization of services.
  - Provide any meal, or allow any other entity to provide or subsidize a meal at any event or meeting in which plan benefits are discussed or materials distributed, although light snacks are permitted. This prohibition on meals at marketing events applies to both existing enrollees and potential enrollees.



# What are “Light Snacks?”

---

- ❑ Marketing representatives should contact plan sponsor regarding the appropriateness of the food products provided and must 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.
  
- ❑ Examples of foods that may be considered “light snacks” include:
  - Fruit and raw vegetables
  - Pastries and muffins
  - Cookies or other small bite-size dessert items
  - Crackers
  - Cheese
  - Chips
  - Yogurt
  - Nuts

# Prohibited Practices: Examples

---

- Marketing representatives **cannot** say:
  - The government wants you to join our plan because it helps them.
  - I am certified by Medicare to sell this plan.
  - If your doctor accepts Medicare, she accepts this plan.
  - There are no limits on services.
  - We cover all drugs and have no formulary restrictions.
  - If you don't like this plan, you can stop paying your premium and return to original Medicare anytime.
  - It is better to choose a different company if you are sick.

# Promotional Activities: Nominal Gifts

---

- Marketing representatives may offer gifts to potential enrollees if they attend a marketing presentation 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 retail purchase price of the item);
  - When more than one gift is offered, the combined value of all items must not exceed \$15;
  - Gifts must not be in the form of cash or other monetary reward, even if their worth is less than \$15. Cash gifts include charitable contributions on behalf of an attendee, gift certificates, or gift cards that can be readily converted to cash.
  - If the gift is one large one that is enjoyed by all attending an event, the total cost must be \$15 or less when divided by the estimated attendance. Anticipated attendance may be used, but must be based on venue size, response rate, or advertisement circulation.

# Promotional Activities: Drawings, Prizes, Giveaways

---

- ❑ Plan sponsors must include a disclaimer on all marketing materials promoting a prize or drawing or any promise of a free gift that there is no obligation to enroll in the plan.
- ❑ Plan sponsors must track and document promotional activities and items during the year.
- ❑ Plan sponsors and their marketing representatives may not willfully structure pre-enrollment activities with the intent to give people more than \$50 per year.

# Promotional Activities: Drawings, Prizes, Giveaways, cont'd

---

- Promotional items may not:
  - consist of health benefits (e.g., free checkup),
  - be tied directly or indirectly to the provision of any covered item or service,
  - be structured to inappropriately influence the beneficiary's selection of a provider, practitioner or suppliers of any item or service, or
  - be used or included with the Summary of Benefits or Annual Notice of Change/Evidence of Coverage (ANOC/EOC).

# Promotional Activities: Rewards and Incentives

---

- Plan sponsors may provide rewards and incentives **only** to current members for Medicare covered preventive services that have a zero dollar cost-share.
  
- Plan sponsor rewards and incentives for current members must:
  - Be offered in connection with the whole service
  - Be offered to all eligible members without discrimination
  - Have a monetary cap not to exceed \$15 per reward item (based on the retail value of the item)
  - Be tracked and documented during the contract year
  - Comply with all relevant fraud and abuse laws, including, when applicable, the anti-kickback statute and civil monetary penalty prohibiting inducements to beneficiaries

# Promotional Activities: Rewards and Incentives, cont'd

---

- Plan sponsors rewards and incentives for current members must not:
  - Be items that are considered a health benefit, (e.g., a free checkup);
  - Be items that consist of lowering or waiving co-pays;
  - Be offered in the form of cash or other monetary rebates;
  - Be used to target potential enrollees
  - Be structured to steer enrollees to particular providers, practitioners, or suppliers
  - Be tied directly or indirectly to the provision of any other covered item or service

# Promotional Activities: Referral Programs

---

A marketing representative may request referrals **only** from **current members** of an MA or Part D plan and requests may not be made during an individual marketing appointment

- You may request names and addresses, but not phone numbers. Information can be used **only for mail solicitation.**
- A letter sent from a marketing representative to members soliciting referrals **cannot** offer a gift in return for a lead.
- Marketing representatives may **NOT** use cash promotions as part of a program through which current members of MA or Part D plans refer prospective enrollees to the marketing representative, but may offer thank you gifts valued at up to \$15 each or up to \$50 in the aggregate for the year based on retail purchase price for the item.
- Thank you gifts must be available to all members that provide a referral, and cannot be conditioned on actual enrollment of the person being referred.



# Marketing Activities: Current Members

---

- Plan sponsors may:
  - Market non-Medicare health-related products to current members as permitted by HIPAA Privacy Rules
  - Market health-related products, which may include, for example:
    - Long term care insurance
    - Dental or vision policies
  
- Plan sponsors must:
  - Allow members and non-members to opt out of communications describing non-Medicare health-related products
  
- Plan sponsors must NOT:
  - Market non-health related products to current members unless they have obtained opt in authorization from the members to as required by HIPAA Privacy Rules

# Marketing Activities:

## Marketing in a Health Care Setting

---

- 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:
    - At a hospital or nursing home – in a cafeteria, community or recreational room, or conference room;
    - At a retail pharmacy, in areas away from the pharmacy counter.
- Marketing representatives must NOT:
  - Engage in marketing activities in areas where patients receive health care services, for example:
    - In the area where a beneficiary waits for health care or pharmacy services, exam rooms, dialysis center treatment areas, or hospital patient rooms.
    - Marketing that is prohibited in health care settings is prohibited during and outside of normal business hours.

## Marketing Activities: Rules for Providers (Including those with Co-Branding Relationships with a Plan)

---

- “Providers “ include providers contracted with the plan and its subcontractors, such as pharmacists, pharmacies, physicians, hospitals, and long-term care facilities including providers with a co-branding relationship.
  
- Providers **may**:
  - Provide the names of plan sponsors with which they contract/participate;
  - Provide information and assistance in applying for the LIS;
  - Make available marketing materials for a subset of contracted plans as long as the providers offer the same option to all plans with which they participate.
  - Refer patients to other sources of information such as SHIPs, marketing representatives, the state’s Medicaid office, SSA, CMS’s website, or 1-800-MEDICARE;
  - Print out and share information from CMS’ website, including the “Medicare and You” Handbook or “Medicare Options Compare” or other documents that were written by or previously approved by CMS; or
  - Feature SNPs in a mailing announcing an ongoing affiliation with the SNP, including information on special plan features, the population served, or specific benefits. The announcement must list all other SNPs with which the provider is affiliated.

## Marketing Activities: Rules for Providers, cont'd. (Including those with Co-Branding Relationships with a Plan)

---

### □ Providers must not

- Offer sales/appointment forms;
- Accept Medicare enrollment applications;
- Make phone calls or steer beneficiaries in any way, to a limited number of plans based on financial or any other interest of the provider;
- Mail marketing materials on behalf of plans;
- Offer anything of value to induce beneficiaries to select them as their provider or to enroll in a particular plan;
- Provide a health screening as a marketing activity;
- Accept compensation directly or indirectly from the plan for beneficiary enrollment activities;
- Distribute materials/applications within an exam room setting; or
- Have a party, dance or other event not related to the medical care of their patients if the intention of the event is to steer beneficiaries to a plan.

## Marketing Activities: Rules for Providers

### 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).
  - ❑ Providers may
    - Make available/distribute plan marketing materials as long as all plans with which the provider participates are offered the same opportunity.
    - Display posters or other materials in common areas and in admission packets announcing all plan contractual relationships.
    - Provide residents that meet the I-SNP criteria an explanatory brochure, reply card, and phone number for additional information for each I-SNP with which the facility contracts to explain qualification criteria. (See Part 5 for enrollment information.)
-

# Marketing and 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; or
  - Telephonic or electronic solicitation including leaving electronic voicemail messages, text messaging, or sending unsolicited e-mail messages.
- The prohibition on marketing through unsolicited contacts does not extend to mail and other print media such as advertisements and direct mail that meets other CMS requirements.
- Leads may be generated through mailings, websites, advertising, and public sales events.

## Marketing to Establish a New Relationship vs. to Current Clients

---

- ❑ CMS distinguishes between telephonic contact with a beneficiary to establish a new relationship and contact where a business relationship already exists with the marketing representative.
- ❑ When contacting a beneficiary by telephone to establish a new relationship when the beneficiary has given permission for the contact (e.g., by filling out a business reply card), a consent for future contact must be limited in scope, short-term, and event-specific, not open-ended.
- ❑ When contacting one's clients or for plans contacting current plan members, consent for each specific contact is not required to discuss plan business.

# Marketing and Telephonic Contact

---

- Prohibited telephonic activities include:
  - Bait-and-switch strategies such as making unsolicited outbound calls to beneficiaries about other business as a means of generating leads for Medicare plans. Examples of other lines of business include discount prescription drug card, Medigap plan, needs assessment, educational event, a review of Medicare coverage options, or any other service that is not an MA plan or PDP.
  - Calls to beneficiaries based on referrals resulting in an unsolicited contact (e.g., referrals from friends, relatives, neighbors, or companies that collect, buy, or sell contact information). Marketing representatives may provide their contact information (e.g., business cards) to friends and others who wish to make referrals, so that the referred beneficiary can contact the agent directly.



## Marketing and Telephonic Contact, cont'd

---

- Prohibited telephonic activities include:
  - Calls for marketing purposes to former members who have disenrolled or are disenrolling;
  - Calls or visits to beneficiaries who attended a sales event, unless explicit permission was given by the beneficiary for the call or visit; and
  - Calls to confirm receipt of mailed information.

# Unsolicited Contacts

---

- ❑ Marketing representatives may not accept an appointment to sell an MA or Part D product that resulted from an unsolicited contact with the beneficiary, regardless of who made the contact even if the call started based on a non-MA or non-PDP product
- ❑ Marketing representatives may leave business cards with beneficiaries for distribution to friends they are referring, but in all cases, a referred beneficiary must directly initiate contact with the plan or marketing representative.
- ❑ Members who are voluntarily disenrolling may not be contacted for sales purposes or be asked to consent to sales contacts.

## Unsolicited Contacts, cont'd

---

### □ Marketing representatives may:

- Place outbound calls to existing members to conduct normal business related to enrollment in the plan, including discussions about other products offered by the same organization.
  - Call former members after disenrollment to conduct disenrollment surveys for quality improvement purposes.
  - With advance approval from CMS, call low-income subsidy eligible members that a plan is prospectively losing due to reassignment to encourage them to remain in their current plan.
  - Contact individuals enrolled in one of the plan organization's commercial products when the individual is aging into Medicare and may contact the plan organization's Medicaid plan members to discuss Medicare products, but may not make unsolicited contact with their Medigap enrollees regarding MA, PDP, or Cost plan options.
-

## Unsolicited Contacts, cont'd

---

### □ Marketing representatives may:

- Call beneficiaries who have expressly given permission for that specific contact, for example by filling out a business reply card or asking a plan customer service representative to have an agent contact them. Such permission is considered to be short-term, event-specific and not open ended.
- Call a beneficiary who the marketing representative enrolled in a plan while the beneficiary is a member of that organization.
- Call beneficiaries to confirm an appointment that has already been agreed to by a beneficiary. This may also be done by third parties.
- Market using mailings, websites, advertising and public sales events.

# Outbound Calls

---

- Outbound call scripts must
  - Be submitted for CMS review and approval;
  - Include a privacy statement clarifying that the beneficiary is not required to provide any health-related information to the plan's representative unless it will be used to determine enrollment eligibility, such as for SNPs; and
  - Clarify that failure to provide information will in no way affect the beneficiary's membership in the plan, but that Medicaid status or presence of a condition status will be needed to confirm eligibility for a dual eligible or chronic care SNP, respectively.

## Outbound Calls, cont'd

---

- If during the course of an outbound call by a Medigap issuer, a beneficiary requests additional information on a MA or PDP product, the agent may have the discussion ONLY if the call is being recorded.
- Third parties may not make unsolicited MA or PDP marketing calls to set up appointments with potential enrollees (other than to current plan members when contracted by the plan), for example:
  - Third parties may not make unsolicited calls to provide a “benefits compare” meeting and provide those contacts to plans for ultimate use as an MA or PDP appointment.
  - Sales of MA and PDP products are subject to CMS’ scope of appointment guidance, even if conducted during a sales appointment for a Medigap policy.

## Outbound Calls, cont'd

---

- Outbound calls must NOT include:
  - Requests for beneficiary identification numbers including SSN, bank account, credit card, Health Insurance Claim Number (HICN) or birth date through pre-enrollment scripts.
  - Any statement that implies the plan is endorsed by Medicare, calling on behalf of Medicare, or calling for Medicare.

# Marketing to Employer/Union Groups

---

- When marketing an employer/union group waiver plan, marketing representatives must follow all marketing rules and guidelines except the following that address interactions between the marketing representative and the employer or union:
  - 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;
  - marketing representative compensation requirements; and
  - the requirement that a marketing representative must pass an annual test, although the requirement for annual training does apply.
- All activities conducted by the employer/union, or its designees, to enroll employees in the plan are excluded from the marketing requirements.



# Educational Events

---

## □ Educational events :

- Are designed to inform Medicare beneficiaries about MA plans, PDPs, and/or other Medicare programs;
- Do not steer or attempt to steer potential enrollees toward a specific plan or limited set of plans;
- May not include any sales activities such as the distribution of marketing materials or the distribution or collection of plan applications;
- Must be advertised as “educational” otherwise they will be considered marketing events; and
- Are held in public venues and do not extend to in-home or one-on-one settings.

## Educational Events, cont'd.

---

- At educational events, marketing representatives may:
  - Distribute materials that are free of plan-specific information and any bias toward one plan type over another, or that inform the beneficiary generally about MA or other Medicare programs.
  - 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 benefit information and consistent with nominal gift rules.

## Educational Events, cont'd.

---

- At educational events, marketing representatives may:
  - Provide a business card if the beneficiary requests information on how to contact the marketing representative for additional information, as long as the business card is free of plan marketing or benefit information.
  - Provide meals that comply with the nominal gift requirements.
    - Meals for beneficiaries are prohibited at any event that does not meet the definition of an educational event, even if the setting is a State Fair, Expo, etc. where educational events are sometimes held.
  - Respond to questions provided the scope of the response does not go beyond the question asked.

## Educational Events, cont'd.

---

- When an event has been advertised as “educational,” marketing representatives may NOT:
    - Conduct sales presentations;
    - Discuss or distribute plan-specific premiums, benefits, or materials;
    - Distribute or collect enrollment applications;
    - Collect names/addresses of potential enrollees;
    - Distribute or display business reply cards, scope of appointment forms, or sign up sheets;
    - Attach business cards or plan/agent contact information to educational materials (business cards free of marketing information may be provided upon beneficiary request);
    - Ask participants if they want information about a specific plan or limited number of plans;
    - Set up personal sales appointments or get permission for an outbound call to the beneficiary; or
    - Distribute or make available marketing materials.
-

## Educational Events, cont'd.

---

- The following are examples of marketing/sales activities that are **prohibited** at any event that has been advertised as “educational.”
  - An agent attends a community-sponsored health fair, and hands out plan-specific benefits information including premium and/or copayment amounts;
  - An agent participates in a health fair and hands out enrollment forms;
  - An agent hands out only educational materials but gives a brief presentation that mentions plan-specific premiums and/or copayment amounts;

## Educational Events, cont'd.

---

- The following are additional examples of marketing/sales activities that are **prohibited** at any event that has been advertised as “educational.”
  - A plan sponsor conducts an event where beneficiaries can get educational materials and blood pressure checks and an agent distributes and collects enrollment applications.
  - An agent goes to a senior housing complex or senior citizen center to talk about Original Medicare or Medigap policies, but then discusses an MA plan or PDP.
- If an agent attends an event hosted by a State Health Insurance Counseling and Assistance Program (SHIP) that is not advertised to beneficiaries as “educational” and discusses plan-specific benefits, this also is a marketing/sales event and is not considered “educational.”

# Oversight and Enforcement: By Plans

---

- 2013 Medicare Marketing Guidelines Guiding Principles for Plan Sponsors:
  - Ensuring compliance with CMS' current marketing regulations and guidance, including monitoring and overseeing the activities of their subcontractors, downstream entities, and/or delegated entities (e.g. contracted marketing, FMOs, TMOs, and GAs)
  - Full disclosure when providing information about plan benefits, policies, and procedures
  - Documenting compliance with all applicable Medicare Marketing Guideline (MMG) requirements

# Oversight and Enforcement: By Plans

---

- 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 aggressive and misleading marketing tactics.
- Plans must take **corrective** action in the event of verified misconduct, **including disciplinary action in cases of aggressive marketing by marketing representatives.** Examples include:
  - Withholding or withdrawing commissions;
  - Retraining;
  - Suspension of marketing;
  - Termination; and
  - Reporting misconduct to State Departments of Insurance.



# Oversight and Enforcement: By Plans, cont'd

---

- 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 terminate upon discovery and report to the State incidences of submission of applications by unlicensed agents or brokers.
  - Plan sponsors must notify any beneficiary who was enrolled in his/her plan by an unqualified agent and advise the beneficiary of the agent's status. Beneficiaries may request to change plans.
- Plans must report to States the termination of any agent or broker, including the reasons for the termination if required under State law, and make the report available to CMS.
- Upon CMS' request, the plan must provide CMS with information necessary for it to conduct oversight of marketing activities.

# Oversight and Enforcement: By CMS

---

- CMS oversees plan sponsor compliance with Medicare rules.
- CMS' monitoring includes “secret shopper” visits to a sample of sales and outreach activities and contacting samples of enrollees.
- When CMS asks, plan sponsors are required to:
  - Provide a list of all licensed marketing representatives marketing their plans and
  - Authorize CMS to make this information available to State insurance departments upon request.
- At CMS' request, plans must provide any information necessary for the agency to conduct oversight of the plan's training and testing program for its brokers and agents.

## Oversight and Enforcement: By CMS, cont'd - Plan Contracts with Marketing Representatives

---

- Plans must include clear provisions in marketing representative contracts that the plan is responsible for ensuring compliance with:
  - Applicable MA and/or Part D laws;
  - Federal health care laws;
  - Applicable State laws, including State licensure and/or appointment laws;
  - CMS policies and Marketing Guidelines; and
  - Plan policies.

## Oversight and Enforcement: By CMS, cont'd - Marketing Representative Compensation

---

- Compensation structures for independent agents must comply with CMS guidance to ensure incentives promote enrollment of individuals in plans that are intended to best meet their health care needs.
  - Compensation rules do not apply to marketing representatives who are plan employees or when independent agents are marketing only to employer/union groups.
  - Compensation covered by these rules includes pecuniary and non-pecuniary remuneration of any kind, including commissions, bonuses, gifts, prizes, awards, and finders 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 FMO, TMO, or similar organization.

## Oversight and Enforcement: By CMS, cont'd - Marketing Representative Compensation, cont'd

---

- CMS rules include requirements in such areas as:
  - Setting compensation amounts and structures for initial and renewal years;
  - Determining whether to pay initial or renewal compensation for each enrollment;
  - Recovering compensation if the beneficiary disenrolls within the first three months of enrollment; and
  - Payment of referral fees.

# Oversight and Enforcement: By CMS, cont'd

---

- Plan sponsors are subject to CMS penalties for non-compliance that include:
  - Corrective action plans;
  - Suspension of marketing and enrollment;
  - Monetary penalties; and/or
  - Contract termination.

# Frequently Asked Questions

---

**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 a large number of these books, we were able to buy them at a cost of \$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.

# Frequently Asked Questions

---

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 nominal value. Is this permissible?

A: Yes, provided that all other marketing requirements are met, including the prohibition against willfully structuring pre-enrollment activities with the intent to give people more than \$50 in gifts per year.



# Frequently Asked Questions

---

**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
- Coupon book (total value of discounts is less than \$15)

**A:** Yes. All these promotional items are permissible as long as they are offered to everyone who attends the event, regardless of whether or not they enroll and as long as the gifts are valued at \$15 or less per marketing event. Cash gifts are prohibited, including charitable contributions made on behalf of people attending a marketing presentation and including gift certificates and gift cards that can be readily converted to cash, regardless of dollar amount.

# Frequently Asked Questions

---

- Q:** Can a marketing representative advertise eligibility for a raffle or door 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:** No. You cannot have a door prize of more than nominal value. Such gifts or prizes are prohibited by CMS.

# Frequently Asked Questions

---

**Q:** Can a marketing representative take people to a casino or sponsor a bingo night at which the member's earnings may exceed the \$15 nominal value limit?

**A:** No. The total value of the winnings may not exceed \$15 and the winnings cannot be in cash or an item that may be readily converted to cash.

# Frequently Asked Questions

---

**Q:** Can marketing representatives use providers to identify Medicare beneficiaries with certain illness or diseases for marketing purposes?

**A:** No, marketing must follow the HIPAA privacy requirements. HIPAA rules permit the provider to communicate with his/her patients about treatment options but they must not disclose to any entity contact information for those who have not signed the provider's HIPAA authorization. To prevent health screening, the provider can send CMS- and plan- approved marketing materials to ALL of the provider's Medicare patients explaining the MA product. The materials must not contain health screening information unless the plan is for individuals that are dually-eligible or have certain illness or diseases. The provider is responsible for ensuring that it does not violate any HIPAA rules when sending/ mailing out such information to their patients.

# For More Information

---

- ❑ Medicare Marketing Guidelines:  
<http://www.cms.gov/manuals/downloads/mc86c03.pdf>
- ❑ 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)