



National Medicare **TRAINING PROGRAM**

New Marketing Regulations **CMS 4131-F, CMS 4138-IFC and CMS-4138-IFC2**

Audio-conference
September 25, 2008
3:00 – 4:00pm



Marketing Provisions

- Includes new guidance and codification of existing guidance
- Current guidelines apply unless indicated otherwise in regulation or guidance

Disclosure of Plan Information

42 CFR 422.111(a)(3) and 423.111(a)(3) – CMS 4131-F

- Codifies existing guidance, effective 9/18/08
- MA and PDPs must disclose plan information
 - At time of enrollment
 - At least annually, 15 days prior to AEP
 - ANOC/EOC must be received by members no later than Oct 31st each year

Elimination of File & Use Eligibility

42 CFR 422.2262 and 423.2262 – CMS 4131-F

- New guidance, effective 9/18/08
- File & Use Eligibility eliminated
 - No documents can be submitted as of 10/1/2008
 - Materials qualified for File & Use Certification may be submitted through that process
- File & Use Certification
 - All plans qualify
 - PDPs automatically
 - MAs, MA-PDs, and Cost plans must submit one-time certification form, if haven't already

Elimination of File & Use Eligibility

42 CFR 422.2262 and 423.2262 – CMS 4131-F

■ Submission of Certification Form

- Page 102 of Marketing Guidelines
- Can be submitted immediately
 - Waiving current limitation that submission is part of application or yearly renewal process
- Submit .pdf of signed form
 - Email attachment to RO account manager
 - No longer submit paper form to CMS Central Office

Elimination of File & Use Eligibility

42 CFR 422.2262 and 423.2262 – CMS 4131-F

■ Using File & Use Certification

- List of qualified materials in HPMS:
Marketing Code Lookup
 - At least 90% of qualified materials must be submitted through this process
- If model documents are available, must be used without modification
 - If modified, must be submitted for standard review
- Materials must be submitted five calendar days prior to distribution

Nominal Gifts

42 CFR 422.2268(b) and 423.2268(b) – CMS 4138-IFC

- Codifies existing guidance, effective 9/18/08
- Organizations can offer gifts to potential enrollees if
 - Of nominal value
 - Provided if beneficiary enrolls or not
- Nominal value
 - Defined in marketing guidelines
 - Currently set at \$15, based on retail price

Unsolicited Contacts

42 CFR 422.2268(d) and 423.2268(d) – CMS 4131-F

- New guidance, effective 9/18/08
- Extends existing prohibition on door-to-door solicitation
 - To other instances of unsolicited contact
- Prohibited activities, examples include
 - Outbound marketing calls
 - Unless beneficiary requested the call

Unsolicited Contacts

42 CFR 422.2268(d) and 423.2268(d) – CMS 4131-F

- Prohibited activities, examples include
 - Calls to confirm receipt of mailed information
 - Approaching in common areas
 - Parking lots, hallways, lobbies, etc
 - Calls/visits after attendance at sales event, unless express permission given
 - Unsolicited emails

Unsolicited Contacts

42 CFR 422.2268(d) and 423.2268(d) – CMS 4131-F

- Permitted activities include calls to
 - Existing members to conduct normal business related to plan
 - Former members for disenrollment survey
 - Only after disenrollment effective date
 - May not include sales or marketing information
 - LIS-eligible members being reassigned
 - Limited circumstances, subject to advance approval
 - Members by the agent/broker who enrolled them in the plan
 - Beneficiaries who have given express permission
 - Applies only to entity from whom beneficiary requested contact, for duration of that transaction, or as indicated by the beneficiary

Cross-selling

42 CFR 422.2268(f) and 423.2268(f) – CMS 4131-F

- New guidance, effective 9/18/08
- Cross-selling prohibited during any MA or Part D sales activity or presentation
 - Cannot market non-health care related products
 - Examples: annuities, life insurance
 - Allowed on inbound calls when requested by beneficiary

Scope of Appointments

42 CFR 422.2268(g) and 423.2268(g) – CMS 4138-IFC

- Codifies existing guidance, effective 9/18/08
- Lines of business to be discussed with potential enrollee
 - Must be identified prior to marketing and/or in-home appointment
 - Must be identified on all marketing and advertising materials and announcements
 - Examples: Medigap, MA, or PDP
- Additional products can only be discussed
 - On beneficiary request and
 - New scope of appointment form must be signed to discuss other products

Scope of Appointments

42 CFR 422.2268(g) and 423.2268(g) – CMS 4138-IFC

- Agreement to scope of appointment must be documented by plan
 - In writing or recorded by phone
 - Contacts from a reply card may only discuss products included in advertisement

Marketing in Health Care Settings

42 CFR 422.2268(k) and 423.2268(k) – CMS 4131-F

- Codifies existing guidance, effective 9/18/08
- No plan marketing activities in healthcare setting
 - No sales activities or distribution/acceptance of enrollment forms
 - Examples: waiting rooms, exam rooms, hospital patient rooms, dialysis centers, pharmacy counter areas
- Marketing allowed
 - In common areas, such as: hospital or nursing home cafeterias, community or recreational rooms, conference rooms
 - By providers, per current CMS Marketing Guidelines

Marketing at Educational Events

42 CFR 422.2268(I) and 423.2268(I) – CMS 4131-F

- New guidance, effective 9/18/08
- No plan marketing activities at educational events
 - Event advertising materials must include disclaimer
 - No sales activities, or distribution/acceptance of enrollment forms and/or business reply cards
 - Examples: health information fairs, conference expositions, state- or community-sponsored events
- Plans may distribute
 - Medicare and/or health educational materials
 - Educational materials are defined in Marketing Guidelines, and are not submitted for CMS review
 - Agent/broker business cards, upon beneficiary request

Co-branding

42 CFR 422.2268(n) and 423.2268(n) – CMS 4138-IFC

- Codifies existing guidance, effective 9/18/08
- Prohibits names and/or logos of co-branded network partners on plan ID cards
 - Includes substantially similar names/logos
- Other marketing materials must include disclaimer
- Exceptions
 - Plans that have a network exclusive to that co-branded provider
 - Don't need disclaimer
 - May include exclusive co-branded provider on ID cards
 - Plans may include names/logos of member-selected provider(s) on ID card

Prohibition of Meals

42 CFR 422.2268(p) and 423.2268(p) – CMS 4131-F

- New guidance, effective 9/18/08
- Prospective enrollees may not
 - Be provided meals
 - Have meals subsidized
- Applies at any event or meeting where
 - Plan benefits are being discussed, or
 - Plan materials are being distributed

Prohibition of Meals

42 CFR 422.2268(p) and 423.2268(p) – CMS 4131-F

- Agents and/or Brokers may provide
 - Beverages
 - Light snacks
 - Similar to: fruit, raw vegetables, pastries, cookies or other small dessert items, crackers, muffins, cheese chips, yogurt, nuts
 - Cannot be “bundled” and provided like a meal

State Licensure of Agents

42 CFR 422.2272(c) and 423.2272(c) – CMS 4131-F

- Codifies existing guidance, effective 9/18/08
- If MA and PDP organizations use agents/brokers
 - Must be state-licensed, certified, or registered
 - Applies to both contracted and employed agents/brokers
 - Not all activities require state license
 - Customer Service Reps can
 - Provide factual information
 - Fulfill a request for plan materials
 - Complete an enrollment application at the initiative of the enrollee

State Appointment of Agents

42 CFR 422.2272(c) and 423.2272(c) – CMS 4131-F

- New guidance, effective 9/18/08
- If MA and PDP organizations must comply with State appointment laws
 - Require plans to give state information about which agents are marketing their plans
- Any required appointment fees must be paid

Reporting of Terminated Agents

42 CFR 422.2272(d) and 423.2272(d) – CMS 4138-IFC

- New guidance, effective 1/1/09
- MA and PDP organizations must report termination of any agents/brokers
 - In accordance with state appointment law
 - To state in which agent/broker is appointed
 - Must include reasons for termination

Agent/Broker Compensation

42 CFR 422.2274(a) and 423.2274(a) – CMS 4138-IFC and 4138-IFC2

- New guidance, effective 9/18/08
- Compensation rules for MA and PDPs that market through agents/brokers
 - Designed to eliminate inappropriate moves
 - Does not apply to employed agents

Agent/Broker Compensation

42 CFR 422.2274(a) and 423.2274(a) – CMS 4138-IFC and 4138-IFC2 and 4138-IFC2

- Six-year structure, tracked by beneficiary record
 - Beneficiary is enrolled in an MA or PDP, a renewal compensation would be paid for five years after the initial compensation year
 - Beneficiary is enrolled in a different plan of a “like plan type” during this five-year period, renewal compensation would be paid
 - Like plan type” refers to PDP, MA or MA-PD, or cost plan
- Starting in 2010
 - CMS systems will track plan changes by beneficiary
 - Will direct plans on correct compensation to pay

Agent/Broker Compensation

42 CFR 422.2274(a) and 423.2274(a) – CMS 4138-IFC

■ Compensation Structure Requirements

- 2009 all enrollments will initially be deemed to be in the first renewal year of the 5 renewal years
- CMS will provide a list, retrospectively, of the enrollments that would have qualified for an initial enrollment
- Renewal compensation must be 50% of the initial compensation
 - this exact amount must be paid for all 5 of the renewal years.

Agent/Broker Compensation

42 CFR 422.2274(a) and 423.2274(a) – CMS 4138-IFC and 4138-IFC2

■ Compensation Structure Requirements

- “Compensation” includes payment of any kind
 - Include commissions, bonuses, gifts, prizes, referrals, etc
 - Excludes some items (state appointment fees, training and testing, etc)
- Compensation structures must be available to CMS upon request for audits, investigations, ect

Agent/Broker Training and Testing

42 CFR 422.2274(b) and 423.2274(b) – CMS 4138-IFC

- Codifies existing guidance, effective 9/18/08
- All agents/brokers must be trained and tested annually
 - Medicare rules and regulations
 - Plan details specific to plan products being sold
 - Both contracted and employed agents
 - Must be completed by October 1, 2009, in order to market after that date
- New guidance, effective 9/18/08
 - Testing requires passing score of 85%

New Regulations

- www.cms.hhs.gov/HealthPlansGenInfo/
 - Final Marketing Provisions 4131-F
 - Revisions to MA & PDP – 4138-IFC
 - Revisions to MA and PDP: Clarification of Compensation plans 4138-IFC2
 - Guidance for Implementation of Regulations
 - Will be incorporated into next update of appropriate manual chapters

