

CMS Finalizes the Final Rule for 2024

Compliance April 18, 2023

On April 5, The Centers for Medicare & Medicaid Services (CMS) released the Final Rule for Contract Year (CY) 2024, which included numerous updates and new regulations regarding the marketing and sale of Medicare Advantage and Part D programs. These updates will be **effective September 30, 2023**.

Here is a summary of the important updates you will need to be aware of preparing for the upcoming AEP.

Key changes for you to become familiar with:

48-Hour SOA Rule Returns

Agents will once again have to obtain a signed Scope of Appointment (SOA) form 48 hours prior to the individual appointment with their client. The only exceptions to this rule are if the beneficiary is within **four days** of the end of a valid election period or beneficiaries that walk into an agent's office, kiosk, or any other walk-in where the meeting is in-person. (Currently, SOA's are good for 14 days. Effective September 30, 2023, SOA's will be good for six months.)

TPMO Disclaimer is Updated

The Third-Party Marketing Organization disclaimer is being updated to include information about reaching out to SHIP for assistance and listing the number of organizations and plans you represent. The new disclaimer looks like this:

"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."

New CMS-Developed Criteria for MA & PDP Sales

CMS is developing a list of items that **must be discussed** during the marketing and sale of a MA plan or Part D plan, including information regarding whether or not the beneficiary's current providers, specialists, and hospitals are part of the plan's network; prescription drug coverage and costs including whether or not the beneficiary's current prescriptions are covered; costs of healthcare services, premiums, benefits, and specific

health care needs. We're waiting for upcoming clarification from the carriers to see what impact this will have on our compliant sales practices.

Prohibited Use of Medicare Name, Logo, and Card

CMS will prohibit the use of the Medicare name, CMS logo, or products or information issued by the Federal Government, including the Medicare card, in a **misleading** manner. We await further clarification on what signifies their definition of "misleading" and the impact it will have on agent business names, URLs, etc., that include the word "Medicare".

CMS Clarifies Call Recording Requirements

CMS has now clarified that the only calls that need to be recorded in their entirety are limited to marketing, sales, and enrollment. Calls to schedule appointments, verify receipt of ID card, invite to upcoming seminars, etc., do not need to be recorded.

CMS FINAL RULE 2024- SUMMARY OF ALL MARKETING CHANGES

- Notify enrollees annually, in writing, of the ability to opt out of phone calls regarding MA and Part D plan business.
- Require agents to explain the effect of an enrollee's enrollment choice on their current coverage whenever the enrollee makes an enrollment decision.
- Limit the time that a sales agent can call a potential enrollee to no more than 12 months following the date that the enrollee first asked for information.
- Limit the requirement to record calls between third-party marketing organizations (TPMOs) and beneficiaries to marketing (sales) and enrollment calls.
- Prohibit a marketing event from occurring within 12 hours of an educational event at the same location.
- Clarify that the prohibition on door-to-door contact without a prior appointment still applies after the collection of a business reply card (BRC) or scope of appointment (SOA).
- Prohibit marketing of benefits in a service area where those benefits are not available, unless unavoidable because of the use of local or regional media that covers the service area(s)
- Prohibit the marketing of information about savings available 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.

- Require TPMOs to list or mention all the MA organizations or Part D sponsors that they represent on marketing materials.
- Require MA organizations and Part D sponsors to have an oversight plan that monitors agent/broker activities and reports agent/broker non-compliance to CMS.
- Modify the TPMO disclaimer to add SHIPs as an option for beneficiaries to obtain additional help.
- Modify the TPMO disclaimer to state the number of organizations represented by the TPMO as well as the number of plans.
- Prohibit the collection of Scope of Appointment cards at educational events.
- Place discrete limits around the use of the Medicare name, logo, and Medicare card.
- Prohibit the use of superlatives (for example, words like "best" or "most") in marketing unless the material provides documentation to support the statement and the documentation is based on data from the current or prior year.
- Clarify the requirement to record calls between TPMOs and beneficiaries, such that it is clear that the requirement includes virtual connections such as video conferencing and other virtual telepresence methods.
- Require 48 hours between a Scope of Appointment and an agent meeting with a beneficiary, with exceptions for beneficiary-initiated walk-ins and the end of a valid enrollment period. ***

***The two exceptions to the 48-hour SOA rule are:

1. SOAs that are completed during the last **four days** prior to a valid election period for the beneficiary.
2. Unscheduled in-person visits (walk-ins) initiated by the beneficiary.

Update 4/25/23: Based on the recently released final rule document, CMS has extended the length of SEPs that are based on Federal, State, or Local Emergency/Disaster Declarations. Whereas previously, the guidance allowed the SEP to last the entire incident period plus two months after the end date of the incident period (per 42 CFR 406.27 and 42 CFR 407.23), **the SEP is now available until six months after the end of the incident period.** This update applies to all declarations that were made after January 1, 2023.