Sanford Health Plan

CMS Announces Regulatory Changes for Marketing & Communications

Summary

The Centers for Medicare & Medicaid Services (CMS) recently published its 2024 Policy and Technical Changes, which include new regulatory requirements for marketing and communications. These changes affect all agencies and brokers selling Medicare Advantage and/or Part D plans.

To help you prepare for the upcoming annual enrollment period, Sanford Health Plan (SHP) has prepared this summary document to highlight some of the key changes you need to know. These changes are applicable to all 2024 marketing and communications, effective Sept. 30, 2023.

Please understand that this list is not exhaustive. More information, including links to the final rule, is available on the agent portal.

Call Recording

- All calls related to marketing, sales and enrollment must be recorded in their entirety. If a call takes place on a web-based platform such as Zoom or Webex, only the audio segment of the call needs to be recorded. This is a change from last year's requirement to record **ALL** calls.
    - Recordings must be stored for ten years.
- Sales agents may call a potential enrollee no later than 12 months following the date the enrollee first asked for information.

Sales Appointments

- Agents may not go to a beneficiary's home unless they are attending a previously scheduled in-home appointment, with a specific date and time. Door-to-door soliciting is prohibited.
- During the scheduled marketing appointment agents cannot market any health care-related product outside the scope agreed upon by the beneficiary, and documented in a Scope of Appointment, business reply card or request to receive additional information.
    - These documents are valid for 12 months following the beneficiary's signature date or the date of the beneficiary's initial request for information.

Scope of Appointment (SOA)

- At least 48 hours must elapse between the completion of a Scope of Appointment (SOA) and a meeting between the agent and beneficiary, except (1) in the case of a beneficiary-initiated walk-in or (2) 4 days or less from the end of a valid enrollment period.
- SOAs cannot be collected, nor can future marketing appointments be scheduled, during educational events.

    - However, beneficiary contact information, including Business Reply Cards, can be received at educational events.
- **Please note**: **This rule does not apply to inbound calls or to the end of a valid enrollment period (within 4 days)**. For example, if a prospect calls inquiring about available plans, agents may obtain the SOA at that time and continue the conversation. Remember to provide the appropriate disclaimer at the start of the call and to record the call.

Pre-enrollment Checklist

- Discussing certain topics with a beneficiary before enrollment is mandatory. A few key topics are highlighted below, but please refer to the pre-enrollment checklist for a full accounting.
    - Confirming if the beneficiary's preferred providers and pharmacies are covered
    - Examining prescription drug expenses and premiums
    - Evaluating health care coverage and benefits based on the beneficiary's specific health care needs and current medications
- Whenever beneficiaries make an enrollment decision, agents must explain the effect that choice will have on their current coverage.

Educational Events

- Marketing events cannot take place within 12 hours of an educational event or in the same location (the same building or adjacent buildings).

Third-Party Marketing Organization (TPMO) Disclaimer

- **The disclaimer from the Third-Party Marketing Organization (TPMO) must be present on all TPMO materials.**
- During a sales call, the disclaimer should be conveyed verbally within the **first 60 seconds**, and when communicating with beneficiaries via email, online chat or other electronic means, it must be shared electronically.
- Additionally, the TPMO disclaimer needs to be prominently displayed on TPMO websites and incorporated into any marketing materials produced, employed or distributed by the TPMO. This includes print materials and television advertisements.
    - **If a TPMO does not sell for all Medicare Advantage organizations in the service area, the disclaimer is as follows**: We do not offer every plan available in your area. Currently we represent [insert number of organizations] organizations that offer [insert number of plans] products in your area. Please contact Medicare.gov, 1–800–MEDICARE or your local state health insurance program to get information on all of your options.
    - **If the TPMO does sell for all Medicare Advantage organizations in the service area, the disclaimer is as follows:** Currently we represent [insert number of organizations] organizations that 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.
    - **Please note: SHP-created co-op materials will include space for this disclaimer and agent customization of it.**

Marketing Definition Updates

- On May 10, 2023, CMS released a memo defining marketing; this definition applies to Medicare Advantage (MA), Medicare Advantage prescription drug plans (MAPD) and Cost plans as well as TPMOs.
    - Any mention of benefits may qualify a material as marketing **if CMS perceives its intent to do any of the following:**
        - Draw a beneficiary's attention to a MA plan or plans
        - Influence a beneficiary's decision-making process when making a MA plan selection
        - Influence a beneficiary's decision to stay enrolled in a plan (retention-based marketing)
        - The CMS memo is available in its entirety here. Examples follow below.
            - **Example 1:** A postcard sent to prospects during the Medicare Annual Election Period (AEP) names a Medicare Product/Plan and includes the bullet "Dental, Vision, and Hearing benefits." It does not specify costs, copays or other plan-specific details.
                - **This is marketing.** The postcard is intended to draw a beneficiary's attention to a MA plan or plans and includes content about the plan's benefits, albeit at a high level.
            - **Example 2:** A broker/sales letter to members thanks them for their business, highlights their current plan benefits and encourages them to reach out in the fall to discuss their plan.
                - **This is marketing.** While this letter is to members, it is retention-based marketing that requires filing in the Health Plan Management System (HPMS).
            - **Example 3**: A letter to members informs them of a vendor change that will affect their current benefits. This letter includes details about the benefit, such as copays.
                - **This is communication.** While benefits are mentioned, the intent is to inform members of changes to their current benefits.

Note: If you plan to create your own materials, please coordinate with your account executive on a review process. With these new CMS regulations, health plans must assist their agents and brokers with the new guidelines.

Additional Guidance Regarding Marketing Material Updates

- CMS prohibits the use of the Medicare name, logo or products in any marketing materials. It must be clear that the entity being represented in the material is not Medicare or representing Medicare or the federal government.
- Marketing materials must include the marketing name of the carrier being advertised in **12-point font**.
- Materials must **not** include information about savings available to potential enrollees based on a comparison to the typical expenses borne by uninsured individuals, the unpaid costs of dually eligible beneficiaries or other unrealized costs of a Medicare beneficiary.
- Do not use terms or statements like "best" or "most" unless substantiating evidence is also included.

- Do not 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.
- Do not market any products or plans, benefits or costs unless the Part D sponsor or marketing name(s) of the entities are identified in the marketing material as listed in the Health Plan Management System (HPMS).
- **For television, online advertisements or social media**, the Part D sponsor 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.
- **For radio or other voice-based advertisements**, Part D sponsor or marketing names must be read at the same pace as phone numbers or contact information.
- Part D sponsors may not include information about the savings available to potential enrollees if the information is 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.

Please note the following changes are effective July 24, 2023:

- The review period for **radio scripts** is changing from File and Use to a 45-day prospective review.
- The review period for **enrollment scripts and telephonic sales scripts** is changing from a 45-day prospective review to File and Use.

We will provide additional information as it becomes available. In the meantime, please visit the agent portal for more resources or reach out to your account executive with questions. Our goal is to support you in adapting to these changes.

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