Do's & Don'ts of Medicare Compliance

SENIOR MARKET ADVISORS

There's a "C" word even more important in the life of an agent than contracting and certifying: it's called *Compliance.*

Compliance should be a year-long goal for every agent. We'll teach you how to stay compliant through all of your client interactions - from your first contact all the way through the enrollment process and beyond!

Permission to Contact

For each client interaction, there is a starting point The Centers for Medicare and Medicaid Services (CMS) used to state agents could not make unsolicited direct contact with potential beneficiaries. However, due to a change in the Medicare Communications and Marketing Guidelines (MCMG) last year, agents ARE now permitted to make unsolicited direct contact with potential enrollees via EMAIL. However, the email MUST have an opt-out option in order to remain compliant. Also, the content of the email must remain "communicative" in nature - meaning it CANNOT be intended to steer a recipient into choosing or retaining any specific plan or set of plans. An example of a compliant email would promote our services rather than any specific plan.

Agents are still not allowed to approach potential enrollees in common areas or make unsolicited phone calls

To begin the conversation with potential enrollees, you'll want to obtain Permission to Contact, or PTC. You can use lead providers to send out business reply cards (BRCs) or flyers including an optional form to collect this permission. Changes to the 2020 MCMG allow agents to use the same permission to contact across different elections periods. For instance, PTC obtained during lock-in can also be used during the Annual Enrollment Period (AEP).

A strong online presence is also important but be forewarned, likes or shares on social media do not constitute PTC for sales purposes. Additionally, PTCs are not the same as a Scope of Appointment, or SOA. The PTC comes first, hopefully, followed by an appointment. At that time, you'll need to fill out the appropriate SOA form.

Scope of Appointment

Scope of Appointment means just what it says. It's a form outlining exactly what you'll be presenting to a client during a meeting. The SOA ensures that potential enrollees will not be

pitched plans other than those they originally requested. In 2018, CMS removed the requirement for SOAs to be recorded 48 hours in advance which means “same-day scopes” are compliant in any and all cases.

Every face-to-face meeting requires a Scope of Appointment. Additionally, SOAs must be filled out for one-on-one phone conversations. Per CMS, agents must keep SOA forms on file for at least 10 years, even if the appointment didn’t end in a sale.

What happens if your client requests Medicare information outside of the Scope during your meeting? You must fill out a second Scope covering the new information before continuing the meeting. If they’re interested in non-health-related products, you must schedule a future appointment to discuss them.

Marketing Rules

CMS also regulates the marketing and plan presentations including when you’re allowed to market, and how you market.

In 2019 CMS began differentiating between materials that are considered “communications” and “marketing.” The difference between the two is based on the content and the intent of the piece. Communication pieces tend to be more general, providing non-specific information to prospective and current enrollees. Marketing pieces, however, are aimed to influence beneficiaries in either enrolling into a plan or retaining their existing plan. Marketing materials contain some plan-specific information, such as benefits, premiums, and comparisons to other plans.
Marketing materials are subject to CMS review, whereas communication materials are not.

During presentations, you should never attempt to mislead your clients, willingly or unwillingly. Stay away from using absolutes and superlatives to describe plans and benefits. Your job is to present information, not show favoritism between carriers or plans. Similarly, if a potential enrollee expresses interest in just one plan, you must inform them that other plans are also available to them.

CMS puts a large focus on agent transparency. Similar to their rules on absolutes and superlatives, agents should not use the word “free” to describe $0 premiums. CMS also states that the term free should not be used “in conjunction with any reduction in

premiums, deductibles or cost share, including Part B premium buy-down, low-income subsidy or dual eligibility."

While one component of your client's health care may come at low or no cost, costs could be incurred in other areas. For example, $0-premium plans typically have higher copays, while plans with higher premiums offer lower out-of-pocket costs. By calling a plan "free" you're generalizing just one part of the plan's full package.

When mentioning star ratings, you must include that the rating is out of five stars. Agents must also let potential enrollees know when a plan has been assigned an LPI or Low Performing Icon by CMS. You may not showcase the overall star rating and fail to disclose that the plan has previously suffered from performance issues.

Star ratings may not be published until CMS releases them on the Medicare Plan Finder. Agents must also now clearly identify which contract year they reference. You may not "reference the star rating that was achieved based on prior contract year data when the marketing materials are for the upcoming year."

Events & Appointments

The types of presentations you host throughout the year typically fall under one of three categories; educational events, sales events, and individual appointments.

Educational events are meant to inform Medicare beneficiaries about the parts of Medi care in general. When holding an educational event:

DO:

- Distribute educational materials free of plan-specific information
- Distribute educational healthcare materials
- Give out your business card and contact info for beneficiaries to use to initiate contact
- Hold the event in a public venue (optional, but under no circumstance should events be help in-home or in one-on-one settings)
- Schedule future marketing appointments

DON'T:

- Distribute plan-specific materials or enrollment packets

- Discuss any carrier-specific plan or benefits or distribute marketing plan materials
- Require attendees to sign in (sign-in sheets MUST be optional)

Sales events, on the other hand, are designed to steer, or attempt to steer potential enrollees towards a limited set of plans. During a sales event:

DO:

- Follow the specific carrier's filing and reporting procedures prior to the event • Follow the specific carrier's cancellation procedures
- Make sure to use only carrier-approved materials
- Collect applications
- Call attendees from a sales event if they gave permission for a follow-up call (you must have documented permission to contact)

DON'T:

- Offer meals
- Make absolute statements
- Use pressure to sign someone up
- Cross-sell or promote non-health-related products
- Require attendees to sign in (sign-in sheets MUST be optional)

Due to a change in the 2020 Medicare Communications and Marketing Guidelines, agents are now permitted to schedule and hold a sales event immediately following an educational event. Additionally, agents are allowed to improvise their delivery of the presentation and content they'd like to cover before accepting an application at a sales appointment. Now only "talking points" need to be submitted to CMS by the carriers, allowing agents the freedom to conduct a more interactive sales presentation.

Individual appointments fall under the same category as sales events and the same CMS regulations apply. Don't forget, whether you're meeting face-to-face, or discussing plans one-on-one over the phone, you must have a Scope of Appointment.

Secret Shoppers

Staying compliant should be a year-long objective for every agent. Annual Enrollment is the culmination of revised CMS Medicare Communications and Marketing Guidelines,

new 2020 plans, and all kinds of potential enrollees, some of which could be secret shoppers.

CMS secret shoppers measure the quality of service and compliance with Medicare regulations as a way to gather specific information about products and services. These secret shoppers will be looking to make sure you're compliant, from what you say to how you present it.

Websites

CMS requires any agent marketing MAPD or PDP plans to consumers to submit all website content to HPMS for approval. This is typically accomplished through the carriers. You may refer to the specific carrier's policy regarding website review. CMS has increasingly cracked down on websites in recent years, so it's important to be sure your website is properly evaluated.

As a licensed & certified agent, you're responsible for following CMS guidelines. Compliance doesn't have to be difficult, but it does require research and due diligence on your part. When in doubt, refer to Senior Market Advisors for guidance!

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