

An Overview of the Latest Medicare Marketing Rules

Presented by:

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Presenter:

Mike Smith,
The Brokerage, Inc.



Mike Smith is the president of The Brokerage, an insurance marketing organization licensed in all 50 states. The Brokerage specializes in life, health, financial, senior insurance products and marketing services.

Mike is also Chairman of NABIP's Medicare Advisory Group and NABIP's Medicare FMO Council.

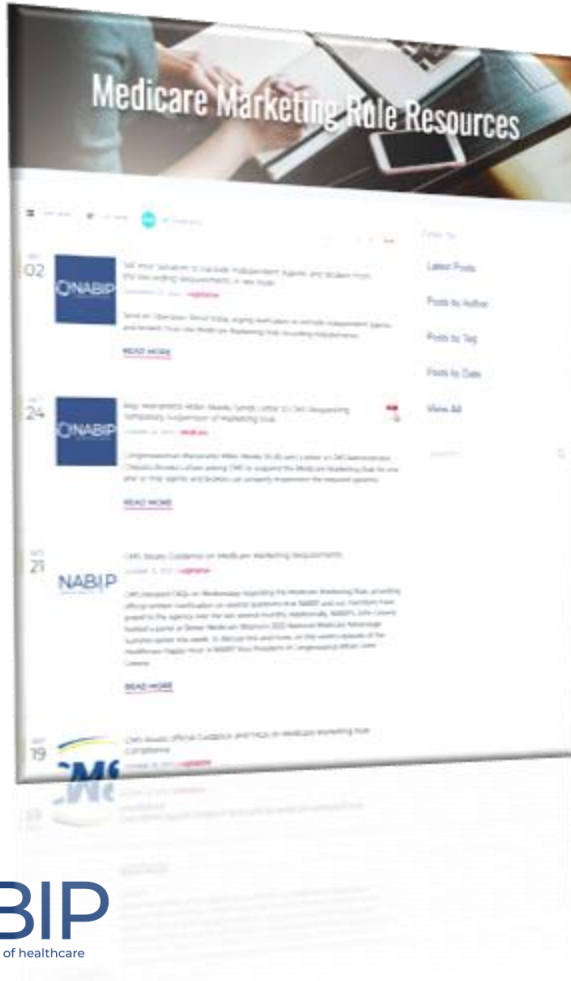
Presenter:

Justin Reinig,
Oberlin Marketing



Justin is the Executive Director at Oberlin Marketing, a long-trusted life and health IMO in Fort Wayne, Indiana. He has served two terms as NABIP-NEI chapter president and is the current legislative chair in Northeast Indiana. He is a regular speaker, collaborator, and advocate for agent distribution, often facilitating collaboration between many carriers, brokers, and clients for a better future of health insurance. Justin resides in Auburn, Indiana with his wife Kyleigh, their three daughters, three dogs, and 7 chickens.

Medicare Marketing Rule Resources



- NABIP has a page under our “Medicare Portal” with links to:
 - All NABIP’s comment letters
 - The final rules themselves
 - CMS guidance and clarification
 - Summaries of the rules from our *Washington Update* newsletter
 - Relevant podcast episodes with detailed discussion

Agenda

- General summary of marketing requirements
 - How agents are impacted
 - New Medicare marketing final rule
- Compliance FAQs
- NABIP concerns and advocacy
 - FAQs

Why Are We Here?

Increase in Medicare misleading marketing claims
from 15,500 in 2020 to more than 39,000 in 2021



Final Rules - Call Recordings

- **Medicare Marketing Rule #1:**

- <https://www.federalregister.gov/documents/2022/05/09/2022-09375/medicare-program-contract-year-2023-policy-and-technical-changes-to-the-medicare-advantage-and>

- **Medicare Marketing Rule #2:**

- <https://www.federalregister.gov/documents/2023/04/12/2023-07115/medicare-program-contract-year-2024-policy-and-technical-changes-to-the-medicare-advantage-program>

- **Medicare Managed Care Manual**

- 40.1.3 Enrollment via Telephone (p. 59)
- [CY2021 MA Enrollment and Disenrollment Guidance \(cms.gov\)](#)

Implications of Medicare Marketing Final Rules

- Last year's final rule requires agents to record telephonic marketing conversations with beneficiaries beginning October 1, 2022.
- Since the first rule was released, it has been clarified that recording requirements only apply to “sales, marketing and enrollment calls.”

Implications of Medicare Marketing Final Rules

- The recording requirement applies to all agents who enroll beneficiaries into new plans, whether they are current or new clients.
- Online applications that agents walk through with their clients are also subject to recording
- Agents must disclose to beneficiaries the plans they sell and that beneficiaries “can obtain complete Medicare options/information from 1-800-MEDICARE, SHIPs or Medicare.gov.”



Definition of TPMO

Third Party Marketing Organizations
Defined as: “organizations and individuals, including independent agents and brokers, who are compensated to perform lead generation, marketing, sales, and enrollment related functions as a part of the chain of enrollment (the steps taken by a beneficiary from becoming aware of an MA plan or plans to making an enrollment decision).”

NABIP Concerns - TPMOs

- NABIP noted that the scope and structure of the proposed definition of TPMOs would inadvertently affect independent agents who perform legitimate marketing of their services.
- Such a broad definition applies the new requirements and restrictions to virtually all professionals who assist Medicare beneficiaries with their coverage and enrollment needs.

Overview of the CMS 2024 Policy and Technical Changes for Medicare Advantage and Prescription Drug Plans

Note: Most of these changes take place October 1, 2023, for marketing plans for 2024.

Educational and Sales Events

- No sales events may take place within 12 hours of an educational event at the same location
- You may not set future marketing appointments or collect a Scope of Appointment (SOA) at educational events
- Business Reply Cards (BRC) and Permission to Contact (PTC) are permitted to be collected at educational events!

Scope of Appointment

- Agents must obtain a scope of appointment no less than 48 hours prior to presenting and enrolling a beneficiary into a plan.
- SOAs are considered valid until used in the presentation of a plan, or for 12 months from the signature date, whichever comes first.
- There are two exceptions to the 48-hour rule:
 1. The 48-hour rule is waived if a beneficiary is in the last 4 days of their enrollment period or
 2. If they are an in-person walk-in appointment

Door Knocking

- CMS upholds the prohibition on unsolicited contacts for MA & PDP products.
- CMS has finalized that a BRC or PTC form does not constitute permission to show up unscheduled at a beneficiary's home
- Agents may only show up at a beneficiary's home with a scheduled appointment.

48-Hour Rule

- A ban on agents conducting a sales and/or enrollment meeting with a beneficiary within 48 hours after a beneficiary's consent.
- Exceptions to this rule include: if the 48 hours is during the end of an election period, if the beneficiary voluntarily walks into an agent's office.
- **NABIP was able to secure these exceptions. Initially, the proposed rule did not allow for any.**

Disclaimer Statement

The new Medicare marketing rule also includes:

- A requirement that agents disclose to beneficiaries the number of plans that the agent sells as well as a requirement for agents to inform beneficiaries that they “can obtain complete Medicare options/information from 1-800-MEDICARE, SHIPs or Medicare.gov.”
- **NABIP was able to get CMS to simply require the agent state the number of plans they offer instead of the name of every plan.**

More on Disclaimers

- CMS is requiring all TPMOs (including agents and brokers) to disclose on their website and in the first 60 seconds of each phone call
- Agents were initially required to say: “We do not offer every plan available in your area. Any information we provide is limited to those plans we do offer in your area. Please contact Medicare.gov or 1-800-MEDICARE to get information on all your options”
- The newest regulations offer two disclaimer options after NABIP informed CMS some agents do offer every plan available in a beneficiary’s area

More on Disclaimers

Disclaimer options:

1. “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.”
2. “Currently we represent [insert number of organizations] organizations which 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 (SHIP) for help with plan choices.”

Pre-Enrollment Checklist (PECL)

The new Medicare marketing rule also includes:

- A requirement for agents to “ask a standardized list of questions that address a beneficiary’s healthcare needs, current providers and prescriptions” prior to enrolling a beneficiary into a plan
- A requirement that agents provide a PECL to prospective enrollees, which would include the effect on current coverage if the beneficiary changes plans
- For telephonic enrollments, agents would be required to thoroughly review the pre-enrollment checklist with prospective enrollees prior to completing enrollments

Pre-Enrollment Checklist



- Where will this “standardized” list of questions come from: Carriers? CMS?
- What specifically must be included in the checklist?
- Still waiting on official guidance



Use of Medicare Logos/Language

- The new final rule also prohibits advertisements that “do not mention a specific plan name and use Medicare logos or language in a way that could mislead and confuse enrollees into believing that the ads come from the government.”
- CMS will require prior authorization to use certain marks or assets, including the image of the Medicare Card

Marketing Materials

- TPMOs must get approval from carriers prior to submitting marketing materials in HPMS
- Marketing material cannot advertise benefits in areas they are not available
- Marketing materials cannot advertise beneficiary savings based on comparisons to an uninsured individual
- Benefits mentioned in materials must mention specific benefit amounts and identify the plan(s) offering them
- Plans represented by marketing materials must be listed on the material

FAQs for Compliance

- **Are Zoom calls and conversations through other virtual platforms required to be recorded?**
 - Yes. Zoom calls and other calls using virtual presence technology between a Medicare beneficiary and an agent must be recorded.
- **Does the requirement to record calls apply to in-person interactions?**
 - No. CMS does not require recording of in-person interactions.

FAQs for Compliance

- **Are there exceptions to the call recording requirement if a beneficiary refuses to be recorded?**
 - No. There are no exceptions to this requirement. If a beneficiary declines to be recorded, the call must end.
- **Who is responsible for retaining the recordings of calls between TPMOs and beneficiaries?**
 - CMS holds plans responsible for making sure that the recordings of calls between TPMOs and beneficiaries are recorded and that the recordings are maintained.

FAQs for Compliance

- **Many smaller agents/brokers do not have the infrastructure to record conversations, placing them at a severe disadvantage. Is there flexibility is there for smaller agents/brokers?**
 - CMS is treating all agents and brokers the same. Smaller agents and brokers are not exempt from any requirement based on size.
- **Outside of calls, where should the disclaimer be included?**
 - CMS requires the disclaimer to be included on an agent's website and "in any marketing materials, including print materials and television advertisements, developed, used, or distributed by the TPMO."

FAQs for Compliance

- **Is the disclaimer required on materials created by the plan for a broker to use and distribute to Medicare beneficiaries?**
 - No. If the document was developed by the plan (e.g., Summary of Benefits) and the agent is using exactly as provided by the plan, the disclaimer is not required. If the agent alters the document, the disclaimer will need to be included.
- **If I am a captive agent and only work for one plan do the recording and disclaimer requirements apply to me?**
 - Yes, they apply to all TPMOs, included independent agents and brokers, regardless of how many plans you work with.

NABIP Concerns

NABIP
Shaping the future of healthcare

February 13, 2023

The Honorable Chiquita Brooks-LaSure
Administrator, Centers for Medicare and Medicaid Services
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

RE: CMS-4201-P

Dear Administrator Brooks-LaSure:

I am writing on behalf of the National Association of Benefits and Insurance Professionals (NABIP), an association previously known as NAHU that represents over 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefit specialists. We are pleased to respond to the proposed regulation titled "Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, Medicare Parts A, B, C and D Overpayment Provisions of the Affordable Care Act and Programs of All-Inclusive Care for the Elderly; Health Information Technology Standards and Implementation Specifications" and published in the *Federal Register* on December 27, 2022.

The members of NABIP help millions of people purchase, administer and utilize health insurance coverage, including Medicare-eligible individuals purchasing private-market coverage options. As such, we are grateful to be able to share our thoughts on the potential changes to the marketing rules concerning the Medicare Advantage and Part D programs. To develop our response to this measure, NABIP assembled a representative group of members who are licensed and certified agents who help the Medicare population fulfill their health insurance coverage needs. Their thoughts are presented below, broken down by sections listed in the proposed rule.

General Concerns

NABIP members believe every group that touches Medicare beneficiaries needs to be held to strict standards and regulated as to the quality and accuracy of information they provide. However, each of these entities are different in terms of the populations served and their business structures and institutional resources, so they should not all be held to identical rules. Regulatory guidelines are needed on an entity basis to ensure marketing of Medicare Part C and D products is done appropriately and protects all beneficiaries. Recent regulatory changes group licensed and certified agents and brokers in with the lead-generation and marketing

“Broker Bill”

- During the previous Congress... Senators Mike Rounds (R-SD) and James Risch (R-ID) introduced a bill that would exclude independent agents and brokers from the marketing call recording requirements in the Medicare Marketing Rule (S. 5149).
- The bill would also exclude agents and brokers from any future Medicare Advantage or Part D recording requirements.
- NABIP is working on reintroducing a similar bill in the 118th Congress!

NABIP Medicare Resources

■ Medicare Web Portal

- Compliance
- Legislative news
- Newsletters
- NABIP Medicare brochures
- FMO Council
- Medicare Advisory Council
- Medicare Summits

NABIP is the only trade organization representing professional agents and brokers who work with Medicare beneficiaries and Medicare products.

A long history of working on Medicare issues on Capitol Hill has resulted in strong relationships with legislators.

In addition, growing influence with CMS makes NABIP your valued choice for advocacy and professional development!



NABIP Medicare, Medicare Advantage, Compliance Requirements Certification



Medicare, Medicare Advantage & Compliance Requirements

- NABIP's PY2024 Medicare, Medicare Advantage and Compliance Requirements Certification will be available to purchase for just \$100 on June 21.
- The cost includes free CE credits (up to 8 credits awarded), the convenience of a private online library accessible 24/7 with easy navigation and access to NABIP's Live Student Services Help Desk.
- NABIP's certification is written **by agents for agents**.

Questions?

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