

## **Medicare Issues New Rules to Enforce Marketing Requirements During Upcoming Health and Drug Plan Enrollment**

The Centers for Medicare & Medicaid Services (CMS) today released final marketing regulations. Plans must be in compliance with these provisions when they begin their marketing activities for the upcoming 2009 Medicare Advantage and prescription drug open enrollment period beginning on October 1st. The regulations also include other non-marketing related Medicare Advantage and prescription drug plan (PDP) provisions such as provisions for Special Needs Plans (SNPs), Private fee-for-service plans (PFFS), and certain components of the Part D program.

One regulation makes final several marketing revisions to the Medicare Advantage and Part D Prescription Drug Programs Proposed Rule that CMS issued on May 16. In July, Congress codified similar marketing restrictions in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). The provisions prohibit:

- Providing meals to beneficiaries as part of marketing activities;
- Telemarketing, door-to-door solicitation, and other sales contacts made without a beneficiary's express invitation;
- Cross-selling of non-health care related products during any sales, marketing, or presentation for an MA plan or PDP;
- Conducting sales presentations or distributing and accepting plan applications in provider offices or other places where health care is delivered; and
- Conducting sales activities, distributing, or collecting applications at education events.

In addition, the regulation requires that agents and brokers be state licensed and appointed in accordance with state laws. The marketing provisions must be in place when plans' marketing activities begin October 1.

CMS also issued an interim final rule (IFC) that would implement other provisions included in the new Medicare law. A key marketing provision in the IFC specifies restrictions on how agents and brokers are paid for signing up a beneficiary in a plan to eliminate incentives for agents or brokers to move beneficiaries from plan to plan, a practice known in the industry as churning. The IFC also includes non-marketing provisions from the proposed rule that have been addressed by statutory provisions in MIPPA.

The final rule implementing MIPPA marketing requirements may be viewed at <http://www.cms.hhs.gov/HealthPlansGenInfo/>.

The IFC dealing with agent commissions and other MIPPA provisions may be viewed at <http://www.cms.hhs.gov/HealthPlansGenInfo/>.

Comments are due at 5:00 p.m. Eastern time on November 15, 2008.

Guidance for MA plans and PDP plans may be viewed at <http://www.cms.hhs.gov/HealthPlansGenInfo/>

Fact Sheets with more information on each rule may be viewed at [http://www.cms.hhs.gov/apps/media/fact\\_sheets.asp](http://www.cms.hhs.gov/apps/media/fact_sheets.asp).