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CMS Revamps MA Agent and Broker Compensation: Implications from the Final Rule

The Centers for Medicare and Medicaid Services' (CMS') recently released final rule finalizes changes to the Medicare Advantage (MA) prescription drug program (MA-PD) for Contract Year 2025 (CY 25). CMS' stated goal for the final rule is to strengthen consumer protections and guardrails, promote fair competition, and ensure MA and Part D plans can best meet the healthcare needs of Medicare beneficiaries.

The final rule is wide-reaching and will require plans to make changes to operations and strategy across many health plan functions. In this brief, we are focusing on new rules related to agent and broker compensation. Future briefs will focus on other policies with significant impact.

What Issue is CMS Trying to Solve?

CMS acknowledges that the growth of MA and changes in marketing practices warrant updates to rule-making to ensure the appropriate guardrails are in place to protect beneficiaries and support competition. In particular, CMS wants to address any excessive compensation offered by Medicare Advantage Organizations (MAOs) to agents and brokers that might result in individuals being steered to MA-PD plans based on the agent or broker's financial interests rather than a plan that best fits a beneficiary's health care needs.

CMS also comments that the MA market has become increasingly consolidated among a few large national organizations, which may have greater capital to expend on sales, marketing, and other incentives to agents and brokers than smaller plans. This imbalance potentially creates an unlevel playing field in which the larger plans have more opportunity to use financial incentives to encourage agents and brokers to enroll individuals in their plan.

These payments are presented to the agents and brokers as bonuses or incentives but, in most cases, are implemented in such a way that allow MAOs to credibly account for these anti-competitive payments as "administrative" rather than "compensation" and these payments are therefore not limited by the existing regulatory limits on compensation.

CMS believes that these incentives have contributed to the increase in beneficiary marketing complaints in recent years.

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What Regulations did CMS Finalize?

To address these issues, CMS has finalized a set of policies with the overarching goal of eliminating incentives that might encourage agents and brokers to prioritize one plan over another and ensure the focus is on the plan that is the best fit for a beneficiary's healthcare needs.

The policies:

Prohibits contract terms between MAOs and agent, brokers or other Third Party Marketing Organizations (TPMOs) that may interfere with an agent or broker's ability to objectively assess and recommend the plan which best fits a beneficiary's healthcare needs.

Establishes a single, standardized compensation rate for all MAOs so that agents and brokers are paid at the same rate, regardless whether payment is through the plan directly or via a field marketing organization (FMO).

Revises and broadens the scope and definition of "compensation" to eliminate the framework that allows for separate payments to be made to agents and brokers that are classified separately as "administrative fees."

a. To account for this expanded definition, CMS is raising the fair market value (FMV) of initial enrollments by $100 starting in CY 2025 (up from the amount in the proposed rule of $31 based on industry feedback).
b. Payment for renewals will continue at 50% FMV.

These regulations will become effective October 1, 2024, which corresponds to the beginning of marketing activities for CY 2025, indicating that existing CMS agent and broker compensation requirements will continue to apply until October 1, 2024. Arrangements between MAOs, TPMOs or agents conducted prior to this date will not be subject to remedial action, even if those activities relate to CY 2025.

CMS has also eliminated the requirement to report on the specific rates (or range of rates) for MAOs to pay independent agents given that all agents and brokers will be using the same compensation rate each year.

Lastly, CMS clarified in the comments that the current policy does not extend these payment limitations from an MA plan to a TPMO which is not an independent agent or broker for activities that are outside the scope of enrollment by an independent agent or broker.

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What should MAOs do?

Given the fast-approaching deadline of October 1, 2024 for these agent and broker compensation requirements to take effect, we summarize three priorities for health plan action.

Revise Agent, Broker and TPMO Agreements

Plans must ensure all existing agent and broker / TPMO agreements fully comply with the new compensation requirements by the 2024 Annual Enrollment Period (AEP). This includes reviewing payment levels, scope of appointment, and any other marketing or service agreements currently in force.

Conduct Distribution Channel Analysis

To optimize their distribution strategy, MAOs should conduct a comprehensive channel analysis and scenario testing. This analysis will help MAOs understand the potential implications of the new compensation structure and changes on multi-carrier distribution partners.

Optimize Sales Channel Strategies

MAOs should re-evaluate and optimize their distribution strategies across direct and brokerage channels to maximize member acquisition and retention for long-term value.

The CMS regulations represent a significant step towards a more equitable and transparent market for beneficiaries. With this heightened scrutiny on compensation structures, MAOs will need to take immediate action to prioritize implementation of the new regulations, representing both a challenge and opportunity in an increasingly competitive environment.

HealthScape Can Help

The new regulations for agent compensation present both challenges and opportunities for MAOs. Our expertise supporting plans across the country has helped plans navigate these changes to achieve a sustainable competitive advantage over time.

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