



COMPLIANCE

NEWSLETTER

NOVEMBER 2024

COMMON QUESTIONS REGARDING COMPLIANCE

With AEP in full swing, we know your focus is servicing your clients and generating new sales. However, it's important to not lose sight of compliance regulations. To help you in those efforts, we put together some common FAQs we see. Hopefully, this helps provide some guidance for you in your efforts to stay compliant.

Frequently Asked Questions

Q: With the increasing amount of non-commissionable plans, can I charge a consulting fee for my time and services?

A: No. At no time should a sales agent charge a beneficiary/client for their time or services in relation to Medicare sales or enrollment.

Q: Can I pay or give gifts to my clients in exchange for referrals?

A: No. You are not permitted to provide anything of value (e.g., gift card, flowers) to a consumer/member in exchange for a referral (i.e. contact information including name and telephone number/email).

Q: Can I pay a referral fee to another agent for referring clients to me for Medicare plans?

A: It is not specifically prohibited, just be sure referral fees are paid in accordance with applicable Federal and State laws. You should always follow CMS referral fee guidance and as a matter of reference payments should not exceed \$100 (\$25 for prescription drug plans) – if payments are made based on enrollment, then payments must not exceed these amounts. It is advised to review applicable state laws regarding payment of referral fees. States may have restrictions related to whether the referral fee can be contingent on completion of the sale, whether both parties need to be licensed, etc. You should also consider the Federal Anti-Kickback Statute as well. We

cannot provide legal advice as to the applicability of these regulations, so we advise consulting your own legal counsel when agreements for referral fees are made.

Q: Given the new Beneficiary Data Sharing guidelines, can I still purchase leads from a Lead Vendor?

A: Yes. With that said, you will need to be sure that the lead vendor is abiding by the new regulations and includes your name in the consent language they are using on their advertisements and contact forms. Under new guidance, the consumer must give their express written consent to allow the vendor to share their personal data with a specific TPMO (i.e. specific agent name). Also, remember if a consumer consents to contact from a business/agency, only W-2 employees of that business/agency would be able to make contact. You would not be able to share that lead information with downline independent agents, unless they are specifically named in consent language.

Q: Can I create and use a verbal or electronic Scope of Appointment?

A: Yes, as a matter of speaking. You should always follow carrier-specific guidance on SOA rules as they may differ carrier to carrier, but in general, it is not prohibited to use your own SOA form so long as it meets certain requirements:

1. It is easy to produce a copy if/when requested.
2. It is "signed" – electronically, verbally, etc.
3. The SOA is completed at least 48 hours in advance, unless a valid exception applies.
4. It lists the product types to be discussed.
5. Contains the date of appointment.
6. Beneficiary and agent contact information is listed.
7. Contains the statement "no obligation to enroll, current or future Medicare enrollment status will not be impacted, and automatic enrollment will not occur".
8. A new SOA is required if the beneficiary requests information regarding a different plan type than previously agreed upon.

Q: What is the updated TPMO disclaimer language?

A: "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."

Q: When is the TPMO disclaimer language actually required?

A: The TPMO disclaimer is required on all TPMO websites, and on all materials (including television/radio ads, mailers, flyers, social media posts, etc.) that meet the definition of "marketing".

Q: I'm a pharmacist or healthcare worker and also have my insurance license. Can I conduct sales or lead generating activities in my pharmacy?

A: No. There is definite conflict of interest concerns. You would want to report that conflict of interest to all your carriers and they will provide guidance. However, at minimum you would not be able to act in both capacities at the same time (need clear separation of duties) and would not be able to self-refer while in your pharmacy. This would also apply if an agent is also a healthcare provider, social worker, LTC facility worker, etc.

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