

MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

DATE: October 19, 2022

TO: All Medicare Advantage Organizations and Prescription Drug Plan Sponsors

FROM: Kathryn A. Coleman
Director

SUBJECT: CMS Monitoring Activities and Best Practices during the Annual Election Period

The Centers for Medicare & Medicaid Services (CMS) issues this memorandum informing Medicare Advantage (MA) organizations and Part D sponsors of CMS monitoring activities and sharing plan and sponsor best practices during the 2023 Annual Election Period (AEP), running from October 15, 2022 to December 7, 2023.

CMS is concerned about the marketing practices of all entities, including Third-Party Marketing Organizations. We have reviewed thousands of complaints and hundreds of audio calls and have identified numerous issues with information provided to beneficiaries that is confusing, misleading and/or inaccurate. CMS has conducted so-called “secret shopping” by calling numbers associated with television advertisements, mailings, newspaper advertisements, and internet searches to monitor the experience beneficiaries have engaging these entities. Our secret shopping activities have discovered that some agents were not complying with current regulation and unduly pressuring beneficiaries, as well as failing to provide accurate or enough information to assist a beneficiary in making an informed enrollment decision.

CMS reminds MA organizations and Part D sponsors that they are responsible for the marketing activities of the agents and brokers and other third-party entities with whom they contract. CMS is closely monitoring marketing activities during the 2023 open enrollment, including marketing that is misleading, confusing, or misrepresents a benefit or product, and will take compliance action against plans for activities and materials that do not comply with CMS’ requirements.

CMS Oversight Activities During the Annual Enrollment Period

As described in §§ 422.2261(b)(3) and 423.2261(b)(3), CMS may designate that certain types of marketing materials can be accepted through CMS’s File and Use framework. A material submitted under File and Use is “accepted” and may be distributed five days following its submission, provided the plan certifies the material complies with all applicable standards. Consistent with 42 CFR 422.2261(b)(3) and 423.2261(b)(3), CMS may review File and Use materials for compliance with all applicable standards before or after the date on which such materials are “accepted.” All other marketing materials that are not designated by CMS as qualifying for File and Use framework must be prospectively reviewed and approved or disapproved during the 45-date review timeframe described in §§422.2261(b)(1) and (2) and

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