

AEP STARTS TODAY!: How You Can Navigate Compliance for the Upcoming Medicare Annual Enrollment Period Season

Article By:

Puja J. Amin

Happy Sunday Folks!

It is October 15, 2023 — THE START OF AEP SEASON! And Queenie is here to remind you folks of all those new regulations impacting those who are marketing and advertising in the Medicare space.

The Medicare Annual Enrollment Period (AEP) is a crucial time for millions of Americans who rely on Medicare for their healthcare needs. AEP, which runs from October 15th to December 7th each year, is the time when beneficiaries can make changes to their Medicare coverage for the upcoming year.

As a reminder, the Centers for Medicare and Medicaid Services (CMS) issued its **final rule** on April 5, 2023, revising the regulations governing marketing by Medicare Advantage plans (MAPs) and Medicare Part D plans (PDPs). The final rule follows some of CMS' **memos** expressing concern regarding MAP and PDP marketing practices.

The new regulations implemented by CMS in the last few years represent the latest effort by CMS to strengthen Medicare marketing compliance.

See **here**.

And **here**.

Another one **here**.

Oh and **here**.

And most importantly, don't forget this fantastic piece we did with Drips breaking down CMS' NEW Final 48-Hour Scope of Appointment (SOA) Rules.

Safe to say, understanding compliance during the Medicare AEP season is crucial for those carriers, lead generators, and agents in the Medicare space.

But we have you covered — let's not forget how **R.E.A.C.H** took action to prevent CMS's TPMO ruling from advancing. And of course the **CRITICAL proposal to ban TPMOs** from sharing beneficiary information with one another was NOT included in the new 2024 final rule.

But let's not forget about the other critical requirements for this upcoming AEP season.

Here are Queenie's top 10 important reminders to help get you through this AEP season in a compliant way:

1. **Scope of Appointment (SOA) Requirements:** One of the major changes for 2024 include the requirement of a mandatory minimum **48-hour Scope of Appointment (SOA)** cooling-off window. When marketing Medicare Advantage or Prescription Drug Plans, agents must follow SOA requirements. They are not allowed to discuss products outside the scope of the appointment without the beneficiary's consent.
2. **Annual Opt-Out Requirement:** Then there's the new **annual opt-out requirement**. Medicare plans now must notify enrollees annually in writing of their ability to opt out of phone calls regarding Medicare Advantage Plus (MAP) and Prescription Drug Plan (PDP) business.
3. **Call Recording Requirement:** CMS clarified that the only calls that need to be recorded in their entirety are limited to sales, marketing

and enrollment between third-party marketing organizations (TPMOs) and beneficiaries. But calls to schedule appointments, verify receipt of ID card, invite beneficiaries to upcoming events and seminars, etc., do not need to be recorded.

4. **Contact Period Requirement:** The time that a sales agent can call a potential enrollee is now limited to no more than 12 months following the date that the enrollee first asked for information.
5. **HPMS Submission Requirements:** Previously *only* MA organizations and Part D sponsors were required to submit marketing materials to the CMS Health Plan Management System (HPMS) — CMS' system of record for marketing materials. Now, TPMOS are also required to submit materials to HPMS and obtain prior approval by each MA organization or Part D sponsor on whose behalf the materials were created or will be used.
6. **Clear Identification Requirement:** TPMOs must identify all of the MA organizations or Part D sponsors that they represent on all marketing materials.
7. **Disclaimer Requirements:** The TPMO disclaimer must now include State Health Insurance Programs (SHIPs) as an option for beneficiaries to obtain help (and determine all plan options in a region) **in addition to Medicare.gov and 1-800-MEDICARE.**
8. **Use of Medicare/CMS Name and Logo Requirement:** There are not new limits on the use of use of the Medicare name, logo, and Medicare card, noting in the preamble. The names and logos cannot be used in a misleading manner and if CMS determines that the Medicare name, CMS logo or official products like the Medicare card have been used in a misleading manner by a TPMO or FDR, "CMS would address the issue with the MA organization or Part D sponsor on whose behalf the FDR was operating and hold the sponsoring organization accountable for all misleading information."
9. **Limited Marketing Area Requirement:** CMS now prohibits marketing of benefits in a service area where those benefits are not available, unless unavoidable because of use of local or regional media that covers the service area.
10. **Oversight Plan Requirement:** CMS now requires MA organizations and Part D sponsors to have an oversight plan that monitors agent/broker activities and reports agent/broker non-compliance to

CMS.

Note these are *only* Queenie's top 10 of the new rules established by the **CMS 2024 Final Rule published on April 12, 2023** — that are all required for the 2024 contract year.

Stay compliant this AEP season.

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