

Centers for Medicare and Medicaid Services Proposed Rules:

Issue:

On 12-27-22, CMS proposed several rules related to the marketing of Medicare Advantage (MA) Plans. CMS cites consumer complaints such as being misled about coverage, costs, and access to providers or being enrolled in a plan without their consent.

Summary of Our Concerns:

These complaints are well founded; however, these rules do not address the root cause of CMS' concern and will only serve to confuse and frustrate consumers more (thus increasing complaints further). The Insurance Marketing Coalition (IMC) is particularly concerned with two proposed rules that will harm the consumer by decreasing access to healthcare options, creating confusion/frustration during the enrollment process, reducing competition, and stifling innovation in the MA marketplace. Furthermore, the proposed rules will also have dire consequences for the hundreds of thousands of small businesses that serve these consumers, including independent life and health agents and agencies that collectively employ hundreds of thousands of Americans.

Specific Rules of Concern:

1. Prohibition on personal marketing appointments within 48 hours of completion by beneficiaries of a scope of appointment form.

Biggest Harms: 1) It takes away the beneficiary's right to decide when to meet with an agent to discuss MA. 2) Puts the beneficiary at risk of missing an eligibility period for enrollment (AEP, OEP, SEP). 3) Increases the cost to acquire a customer by 50-100% for small businesses - making them unprofitable and unlikely to survive.

Less Harmful Alternative: Require agents to inform beneficiaries that they have the right to wait 48 hours but allow the beneficiaries to waive that right.

2. Prohibition on the distribution of personal beneficiary information collected by Third Party Marketing Organizations (TPMOs) thereby restricting the ability to distribute a lead to an insurance agent).

Biggest Harms: 1) Removes the beneficiary's right to decide what to do with their own data. 2) Eliminates a critical channel for beneficiary awareness of the availability of MA.

Less Harmful Alternative: Require consent from the beneficiary to be provided in a certain format before a TPMO can share beneficiary data with an agent that can service their needs.

Bottom line:

These proposed rules are bad for consumers (60+ million on Medicare) and the myriad of small businesses in this industry, and they will have material negative consequences on the economy.

The Issue Expanded:

The majority of consumer complaints to CMS are due to (i) misleading advertisements and (ii) misleading sales tactics by in-person agents.

Misleading Advertisements:

In an effort to curb misleading advertisements, CMS has proposed a ban on the distribution of leads by ad agencies, lead generation companies, and other insurance agencies. Most small businesses in service industries rely heavily on third-party marketers for lead generation and the insurance industry is no exception. It is very common for these small businesses to purchase leads generated from TV advertisements, direct mail, radio advertisements, and online advertising.

We believe eliminating the sale of insurance leads is a big mistake that will only cause harm to seniors and small business insurance agencies such as:

- Limiting the options for seniors to compare Medicare Advantage plans from multiple companies (working with independent agents instead of captive agents that can only sell products from one carrier).
- Reducing awareness among seniors of the choices they may have when it comes to their Medicare coverage and options.
- Put many small business owners out of business because it is cost prohibitive for them to run an effective advertising campaign of their own.
- Financial hardship for the thousands of small business owners and the hundreds of thousands of people employed by them.

Better Solution:

In Q4 of 2022, new CMS rules were enacted that require all MA advertisements to be approved by the insurance carriers and filed with CMS before they can be used. A better solution is to (i) enforce these guidelines and filing requirements for MA advertising and (ii) ensure consumers provide clear consent for their information to be distributed and who will receive it.

Misleading Sales Tactics:

To reduce misleading sales tactics, CMS is proposing a 48-hour waiting period before a consumer can speak with a licensed insurance agent about MA. Currently, an agent must obtain a signed scope of appointment form before speaking with a consumer about MA. Under the 48-hour waiting period, the consumer must wait for 48-hours after providing such consent.

We believe the 48-hour rule will significantly harm consumers and small businesses as follows:

- Consumers will be prevented from learning about or purchasing an MA plan at their own convenience from a small business insurance agency.
- Because of the need for inconvenience of a follow up meeting to discuss MA plans, we estimate a significant number of these meetings will not occur and will in turn leave the consumer with no coverage at all or inadequate coverage (there are limited windows of eligibility to enroll).

- It introduces a significant financial burden on the small business insurance agency because the current cost to acquire a new customer is high and margins are small. Given the fact some of the follow-up appointments will never occur (consumer gets busy, etc.), small business owners' cost to acquire a customer will likely increase by 50-100% making their ability to service new clients unprofitable.
- A large number of small businesses will go out of business or face financial ruin.
- Many of the people employed by these small businesses will face financial hardship at a point in time when the economy is likely headed into a recession.

Better Solution:

The best solution is to require the audio recording of every MA presentation (in person and telephonic) and have it submitted to the carriers with each sale. Currently, this is a carrier requirement for all sales that take place telephonically and it works. If a complaint is received, the audio recording is reviewed and punitive action can be taken against an insurance agent or agency that violated CMS rules. Many of the complaints come from in-person sales and the 48-hour rule will do little to curb the current issues. However, requiring the audio recording of all enrollments will provide evidence of compliance and significantly reduce uncompliant sales presentations.