

**§ 423.2274**

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make a plan change (including a special election period, as described in § 423.38(c)(8)(i)(C)).

[73 FR 54222, Sept. 18, 2008, as amended at 73 FR 54253, Sept. 18, 2008; 76 FR 21577, Apr. 15, 2011]

**§ 423.2274 Broker and agent requirements.**

For purposes of this section “compensation” includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of a policy including, but not limited to, commissions, bonuses, gifts, prizes, awards, and finder’s fees. “Compensation” does not include the payment of fees to comply with State appointment laws, training, certification, and testing costs; reimbursement for mileage to, and from, appointments with beneficiaries; or reimbursement for actual costs associated with beneficiary sales appointments such as venue rent, snacks, and materials. If a Part D sponsor markets through independent (that is, non-employee) brokers or agents, the requirements in paragraph (a) of this section must be met. The requirements in paragraphs (b) through (e) of this section must be met if a Part D sponsor markets through any broker or agent, whether independent (that is, non-employee) or employed.

(a) Agents and brokers must be compensated as follows:

(1) A Part D sponsor (or other entity on its behalf) may provide compensation to a broker or agent for the sale of a Part D plan only if the following requirements are met:

(i) The compensation amount paid to the broker or agent for an initial enrollment of a Medicare beneficiary into a PDP in 2009 is either one of the following:

(A) The compensation paid by the Part D sponsor in the area for an initial enrollment for the plan type in question in 2006, adjusted by the average change in Part D rates as published by CMS in the Part D rate announcement; or

(B) A compensation amount commensurate with the market rate for initial enrollments paid by (or on behalf of) Part D sponsors offering plans in the geographic area for the plan type in question during 2006 and 2007, adjusted

by the average change in Part D rates as published in the Part D rate announcement by CMS.

(ii) For 2010 and subsequent years, the compensation amount paid to an agent or broker for enrollment of a Medicare beneficiary into PDP is:

(A) For an initial enrollment, the prior year’s initial compensation adjusted by the change in Part D rates that CMS announces each year.

(B) For renewals, an amount equal to 50 percent of the initial compensation in (A) above.

(iii) The broker or agent is paid a renewal compensation for each of the next 5 years the enrollee remains in the plan in an amount equal to 50 percent of the initial year compensation paid (creating a 6-year compensation cycle). For purposes of paragraph (a)(1)(i), individuals enrolling in a PDP in 2009 are initially deemed to be in the first renewal year (the second year) in the 6-year cycle. With respect to an individual identified by the PDP sponsor as in an Initial Enrollment Period (IEP) or subsequently identified by CMS as in an IEP or new to the Part D program, the individual is considered to be in the initial year of the 6-year cycle. The PDP Sponsor must adjust the compensation paid for these new enrollees from renewal compensation to the amount that would have been paid for an initial enrollment under the 6-year compensation structure initiated in the year the enrollment occurred.

(iv) If the Part D sponsor contracts with a third party entity such as a Field Management Organization or similar type entity to sell its insurance products or perform services (for example, training, customer service, or agent recruitment), the amount paid to the third party must be fair-market value and must not exceed an amount that is commensurate with the amounts paid by the PDP organization to a third party for similar services during each of the previous 2 years.

(2) [Reserved]

(3) No entity shall provide aggregate compensation to its agents or brokers and no agent or broker shall receive aggregate compensation greater than the renewal compensation payable by the replacing plan on renewal policies

if an existing policy is replaced with a like plan type during the first year and 5 renewal years (6-year compensation cycle).

(i) For purposes of this section, “like plan type” means PDP replaced with another PDP, MA or MA-PD replaced with another MA or MA-PD, or cost plan replaced with another cost plan.

(ii) Replacements between different plan types (for which a new compensation is paid) include—PDP and MA-PD, PDP and cost plans, or MA-PD and cost plans.

(iii) When a PDP is added to an MA-only plan, a new commission would be paid for the enrollment in the PDP during the first year.

(4) Compensation shall be earned for months 4 through 12 of the enrollment year.

(i) Plans may pay agents and brokers up-front or prorate compensation payments over 12 months or over months 4 through 12, but

(ii) When a beneficiary disenrolls from the plan, the plan must recover all compensation paid: for months in which the beneficiary is not enrolled; and during months 1 through 3 if the beneficiary disenrolls during the first three months.

(5) Organizations and sponsors must establish a compensation structure for new and replacement enrollments and renewals effective in a given plan year. Compensation structures must be in place by the beginning of the marketing period, October 1.

(6) Compensation structures must be available upon CMS request including for audits, investigations, and to resolve complaints.

(b) It must ensure that all agents selling Medicare products are trained annually, through a CMS endorsed or approved training program or as specified by CMS, on Medicare rules and regulations specific to the plan products they intend to sell.

(c) It must ensure agents selling Medicare products are tested annually by CMS endorsed or approved training program or as specified by CMS.

(d) Upon CMS’ request, the organization must provide to CMS, in a form consistent with current CMS guidance, the information necessary for it to conduct oversight of marketing activities.

(e) It must comply with State requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual’s conduct. CMS will establish and maintain a memorandum of understanding (MOU) to share compliance and oversight information with States that agree to the MOU.

[73 FR 54253, Sept. 18, 2008, as amended at 73 FR 67413, Nov. 14, 2008; 76 FR 21577, Apr. 15, 2011]

EFFECTIVE DATE NOTE: At 76 FR 54635, Sept. 1, 2011, § 423.2274 was amended by revising paragraphs (a)(1)(ii) introductory text, (a)(1)(ii)(B), (a)(1)(iv), and (a)(4), effective October 31, 2011. For the convenience of the user, the revised text is set forth as follows:

**§ 423.2274 Broker and agent requirements.**

\* \* \* \* \*

(a) \* \* \*

(1) \* \* \*

(ii) The compensation amount paid to an agent or broker for enrollment of a Medicare beneficiary into a PDP is as follows:

\* \* \* \* \*

(B) For renewals, an amount equal to 50 percent of the initial compensation in paragraph (a)(1)(ii)(A) of this section.

\* \* \* \* \*

(iv) If the Part D sponsor contracts with a third party entity such as a Field Marketing Organization or similar type entity to sell its insurance products or perform services (for example, training, customer service, or agent recruitment)—

(A) The total amount paid by the Part D sponsor to the third party and its agents for enrollment of a beneficiary into a plan, if any, must be made in accordance with paragraph (a)(1) of this section; and

(B) The amount paid to the third party for services other than selling insurance products, if any, must be fair-market value and must not exceed an amount that is commensurate with the amounts paid by the Part D sponsor to a third party for similar services during each of the previous 2 years.

\* \* \* \* \*

(4) Compensation may only be paid for the beneficiary’s months of enrollment during a plan year (that is, January through December).

(i) Subject to paragraph (a)(4)(ii) of this section, compensation payments may be

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made up front for the entire current plan year or in installments throughout the year.

(ii) When a beneficiary disenrolls from a plan during the—

(A) First 3 months of enrollment, the plan must recover all compensation paid to agents and brokers.

(B) Fourth through 12th month of their enrollment (within a single plan year), the plan must recover compensation paid to agents and brokers for those months of the plan year for which the beneficiary is not enrolled.

\* \* \* \* \*

**§ 423.2276 Employer group retiree marketing.**

Part D sponsors may develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the Part D sponsor, and furnish these materials only to the group members. These materials are not subject to CMS prior review and approval.

**PART 424—CONDITIONS FOR MEDICARE PAYMENT**

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- 424.86 Prohibition of assignment of claims by beneficiaries.