

# UPDATED CMS GUIDANCE

## Regarding Compliance and Regulations of Third-Party Marketing of Medicare Advantage (MA) Plans & Prescription Drug Plans (PDP)

On October 8, 2021, the Centers for Medicare & Medicaid Services (CMS) issued a memo regarding updated third-party marketing and filing requirements, which has direct implications to your marketing practices. The memo states, in part:

CMS is particularly concerned with national advertisements promoting MA plan benefits and cost savings, which are only available in limited service areas or for limited groups of enrollees, as well as using words and imagery that may confuse beneficiaries or cause them to believe the advertisement is coming directly from the government. In addition, CMS receives complaints from beneficiaries and caregivers that highlight sales tactics designed to rush or push beneficiaries into enrolling into a plan.

“CMS expressed particular concern with national advertisements promoting plan benefits and cost savings that are only available in limited areas or for limited groups of enrollees and the use of words and imagery that may cause beneficiaries to believe the advertisement is coming directly from the government.”

### WHAT DOES THAT MEAN?

Any advertisements intended to draw a beneficiary's attention to a Medicare Advantage (MA) plan or Prescription Drug Plan (PDP) is regarded as marketing by CMS and, therefore, requires prior HPMS filing. This include any promotion with the following content:

- Plan premiums
- Cost sharing
- Benefit information

***Without exception, all promotional content used by any sales partner that includes the aforementioned points — including those uniquely created or purchased from a third-party lead source vendor — is subject to this guidance.*** Even if such promotions or communications do not mention a specific plan by name, prior HPMS filing is mandated.

### WHY IS THIS GUIDANCE BEING ISSUED NOW?

This guidance does not reflect a new regulation; marketers of MA plans and PDPs should have been maintaining compliance all along. In response to increased CMS scrutiny, however, Pinnacle Financial Services is urging affiliates and downline marketers to take steps to ensure that CMS regulations are appropriately met.

## WHAT DO I DO NOW?

PFS is committed to helping our agent and agency partners remain in compliance with any and all CMS and carrier requirements. As we wait for more guidance to become available, we recommend agents take the following actions immediately:

- Stop the use of any non-filed, non-branded marketing materials that are intended for, or may result in, the sale of an MA plan
- Stop the use of any leads received through a third-party lead vendor until the vendor can certify the leads were generated using CMS-filed marketing pieces
- Utilize carrier-specific marketing pieces available through their individual agent websites. These are filed with CMS and are ready for agent use right away.

Please carefully consider these points when reviewing and prior to submitting your content. If you have any questions, please contact Compliance at [compliance@pfsinsurance.com](mailto:compliance@pfsinsurance.com) or **(800) 772-6881**.

## OUR COLLECTIVE RESPONSIBILITY

It is the collective responsibility of all affiliates, marketers and partners to maintain the highest level of compliance with CMS regulations. Additionally, and even more importantly, Pinnacle Financial Services fully supports every effort to provide consumers with the most honest and transparent information possible on Medicare-related healthcare coverage. We appreciate your attention to this important matter.