

MEDICARE DRUG & HEALTH PLAN CONTRACT ADMINISTRATION GROUP

MEMORANDUM

DATE: June 21, 2023

TO: Medicare Advantage Organizations, Prescription Drug Plan Sponsors, Section 1876 Cost Plans, and Medicare-Medicaid Plans

FROM: Kathryn A. Coleman
Director

SUBJECT: Contract Year 2024 Agent and Broker Compensation Rates, Referral/Finder's Fees, Submissions, and Training and Testing Requirements

This memorandum provides Contract Year (CY) 2024 compensation and referral/finder's fee limits for agents and brokers, directions for submitting amounts into the Health Plan Management System (HPMS), as well as training and testing requirements. In addition, we have added direction for Plans in reporting agent/broker non-compliance with Marketing regulations.

Reporting of Agent/Broker Non-compliance with Marketing Regulations

Per §§422.2272(e) and 423.2272(e), CMS requires MA plans and Part D sponsors to have a mechanism for oversight of all agents, brokers, and other third-party marketing organizations (TPMOs) who engage in sales and marketing on their behalf. MA plans and Part D sponsors must ensure that this mechanism is robust enough to capture and report, at least monthly, to the organization's CMS account manager moderate to severe violations of CMS requirements by agents, brokers, and other TPMOs who engage in sales and marketing on their behalf. Examples of non-compliance that must be reported include, but are not limited to, the following:

- Credentialing issues, (e.g. licensing, appointment situations, testing requirements, termination for cause),
- Failing to comply with CMS's marketing requirements (e.g., misleading information, cherry picking, unsolicited contact),
- Fraudulent enrollment (enrolling beneficiaries without their consent),
- Repeat offenses, such as:
 - Scope of Appointment (SOA) issues (e.g., SOA missing or not completed prior to a scheduled personal marketing appointment)
 - Permission to contact documentation (e.g., agent could not produce documentation of valid permission to contact)
 - Cross-selling (e.g., marketing non-healthcare related products)

Compensation Rates and Referral/Finder's Fees for CY 2024

As provided in 42 C.F.R. §§ 422.2274(d)(2) and 423.2274(d)(2), the compensation amount an organization pays to an independent agent or broker for an initial enrollment must be at or below the fair market value (FMV). 42 C.F.R. §§ 422.2274(d)(3) and 423.2274(d)(3) limit renewal

compensation to a maximum of 50% of the FMV. 42 C.F.R. §§422.2274(f) and 423.2274(f) limit the amount an organization may pay for referrals.

Each year, CMS publishes the FMV amounts for initial and renewal compensation as well as referral fees. The amounts are as follows:

MA and Section 1876 Cost Plans

Compensation Type	National	Connecticut, Pennsylvania, District of Columbia	California New Jersey	Puerto Rico, U.S. Virgin Islands
Initial Year	\$611	\$689	\$762	\$418
Renewal Years	\$306	\$345	\$381	\$209

PDPs

Initial Year	\$100
Renewal Years	\$50

Referral Fees

MA Plans	\$100
PDP Plans	\$25

NOTE: CMS rounded the FMV amounts for CY 2024 up to the nearest dollar. The Initial Year amount is the maximum allowable amount that organizations may pay for enrollments during compensation cycle-year 1. The renewal amount is the maximum allowable amount that organizations may pay for enrollments during compensation cycle-years 2 and beyond, for a like plan type.

Compensation Rate Submission for CY 2024

As in past years, all organizations must inform CMS via HPMS whether they are using employed, captive, and/or independent agents. Organizations that use independent agents must provide the initial and renewal compensation amount or range of amounts paid to these agents. Additionally, if an organization pays referral fees, the organization must disclose the amount.

CMS has provided instructions for data entry in the HPMS Marketing Module User Guide. Organizations must submit their agent/broker information in the HPMS Marketing Module between **June 1, 2023, and July 28, 2023, 11:59 pm EST**. Please note that CMS does not consider the submission process complete until the organization’s CEO, COO, or CFO has completed the attestation in HPMS. Organizations that fail to submit and attest to their agent and broker compensation data by July 28, 2023, will be out of compliance with CMS requirements. Furthermore, organizations may not make changes to those submissions after July 28, 2023. All Medicare-Medicaid Plan (MMP) responses must comply with their state-specific marketing guidance. If the state-specific marketing guidance does not allow for the use of agents/brokers, the MMP should enter “no” for all fields in HPMS.

CMS expects organizations to keep full records documenting that they are updating compensation schedules and paying agents and brokers according to CMS requirements. Please note that CMS will make the CY 2024 organization-submitted compensation information available for the public to view on <https://www.cms.gov> prior to the annual election period for CY 2024.

Curricula for Training and Testing Agents and Brokers for CY 2024

Regulations at 42 C.F.R. §§422.2274(b)(2) and 423.2274(b)(2) require that organizations train and test all agents and brokers selling Medicare products, including employees, subcontractors, downstream entities, and/or delegated entities annually on Medicare Parts A, B, C, D, and plan specific information. CMS further requires that all agents and brokers obtain an 85% passing rate on the test.

To ensure the quality of agent and broker training and testing programs, CMS annually provides minimum training and testing requirements to organizations. Organizations should review these requirements before developing their own agent and broker training and testing programs to ensure compliance with CMS requirements. CMS permits and encourages organizations, as well as third-party training and testing vendors, to include other relevant topics in addition to the minimum required elements.

CMS has made the CY 2024 CMS training and testing requirements available at:

<https://www.cms.gov/Medicare/Health-Plans/ManagedCareMarketing/MarketngModelsStandardDocumentsandEducationalMaterial>.

We thank all organizations for their continued commitment in ensuring that all agents and brokers complete the required training and testing.

If you have any questions, please contact your CMS Account Manager. If your organization requires technical assistance, please contact the HPMS Help Desk at hpms@cms.hhs.gov, or 1-800-220-2028.