



Insight

Assessing CMS' Changes to Medicare Advantage Marketing Rules

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Executive Summary

- The Centers for Medicare and Medicaid Services (CMS) recently proposed changes to rules regarding marketing for Medicare Advantage (MA) plans that would prohibit private-sector advertisers from sharing beneficiaries' contact information with third-party independent agents and brokers; CMS states that the changes are needed to protect beneficiaries from misleading advertising and from “unwanted and ongoing contacts from marketers.”
- Private-sector agents and brokers have long been a key resource for beneficiaries in navigating the complexities of MA plans, including weighing costs and benefits, enrolling, using plan benefits, and finding providers that accept those benefits.
- While well intended, CMS' proposed changes could limit seniors' ability to accurately compare the broad range of MA plan options, potentially resulting in fewer beneficiaries enrolling in MA or Medicare Part D plans, or from switching plans when that would be most beneficial; it may even have the unintended consequence of driving seniors back to relying solely on fee-for-service Medicare.

Introduction

The Centers for Medicare and Medicaid Services [recently proposed changes](#) to rules regarding marketing for Medicare Advantage (MA) that would limit the way private-sector advertisers, called “third-party marketing organizations” (TPMOs), can distribute beneficiary contact information to independent agents and brokers, even those in related or affiliated organizations. CMS states that the changes are intended to protect beneficiaries from misleading advertising and from receiving “unwanted and ongoing contacts from marketers.” The proposed rule is slated to take effect in the coming months.

While well intended, the proposed changes would likely significantly restrict seniors' ability to get the information they need to choose from among the broad range of MA or Medicare Part D plans. Private-sector agents and brokers have long been a key resource in helping beneficiaries make informed decisions about their Medicare coverage by providing information about the different plans available, including the costs and benefits of each, enrollment assistance, and guidance on how to best use plan benefits and find providers that accept those benefits.

By prohibiting independent agents and brokers from referring interested beneficiaries to other independent agents and brokers, the proposed rule change could reduce access to a key source of information for millions of seniors who are looking for ways to maximize their Medicare benefits. The change could potentially result in fewer beneficiaries enrolling in MA or Part D, or from switching plans when that would be most beneficial, and may even have the unintended consequence of driving seniors back to only fee-for-service (FFS) Medicare.

Rather than prohibiting the sharing of contact information by TPMOs entirely, CMS should work with private-sector entities to ensure that they are providing accurate and helpful information and following CMS' marketing rules, as well as other federal and state consumer protection laws.

CMS' Proposed Rule Changes to Medicare Marketing

CMS' proposed changes to the MA marketing rules would significantly narrow the way TPMOs can interact with Medicare beneficiaries. Specifically, the changes would prohibit an initial TPMO from sharing beneficiary information with other field marketing organizations, agents, or brokers, even those in related or affiliated organizations. As an example, a TPMO may run an advertisement for an MA plan, and a beneficiary who then contacts that TPMO will provide them with contact information. CMS' new rule would prevent the TPMO agent or broker from referring a beneficiary to a colleague, however, when that agent or broker does not represent plans in the beneficiary's area, or when the first agent or broker does not represent a carrier about which the beneficiary is interested. CMS states that these changes are intended to protect beneficiaries from being misled, receiving inaccurate information, or being dogged by ongoing and unrelated marketing outreach.

MA and Lead Generation

Unlike traditional Medicare, MA plans often include a more comprehensive package of benefits, such as coverage for dental, hearing, and vision care. In return for these added benefits, seniors may pay a higher monthly premium and agree to limit the scope of providers from whom they receive care. As MA plans can vary greatly, it is important that beneficiaries have access to accurate and reliable information when choosing among plans.

The goal of a TPMO is to connect a beneficiary with a resource that can provide information about available MA plans and enroll them in the plan of their choice. TPMOs may employ other third-party agents or brokers to help explain plan benefits to beneficiaries. Typically, this process provides beneficiaries shopping for an MA plan a means of accessing information about the different plans available, including the costs and benefits of each, enrollment assistance, and guidance on how to best use plan benefits and find providers that accept those benefits.

Unintended Consequences

CMS' proposed changes would foreclose the practice of TPMOs using third-party agents and brokers altogether and could hamper the operations of agent/broker organizations. The rule change could possibly result in fewer beneficiaries enrolling in MA or Part D or prevent them from switching plans when that would be most beneficial. Finally, it may even have the unintended consequence of pushing beneficiaries to rely solely on fee-for-service Medicare.

[Evidence has shown](#) that beneficiaries who are involuntarily moved from MA to FFS Medicare are reluctant to seek care because of the increase in cost-sharing, resulting in a decrease in physician visits together, as well as an increase in the need for emergency room treatment. Indeed, the [benefits of MA over traditional FFS Medicare](#) are [well-documented](#).

Furthermore, banning the distribution of Medicare beneficiaries' contact information to other private-sector advertisers and agent/broker entities would have a significant impact on the private insurance companies that offer MA plans. Businesses, including health insurance agents and brokers, have long relied on leads generated

by TPMOs as a cost-effective means of identifying interested customers. Without the ability of insurers to employ targeted advertising and promotion of their products, or to share customers' information with other parties, even the largest MA plans will have a more difficult time attracting new customers. Insurers will have less incentive to create superior plans if they cannot effectively advertise them. Moreover, smaller plan providers that do not have the resources to even partially replace the advertising efforts handled by TPMOs and agent/brokers will likely see the greatest impact from these changes.

Conclusion

CMS' proposed prohibition on TPMOs distributing beneficiary contact information may be well-intentioned to protect seniors from unwanted advertising, but the costs of the changes could far outweigh any benefits. Instead of limiting seniors' access to information, CMS should work with TPMOs and other private-sector advertisers to ensure that they are providing accurate and helpful information and following CMS' marketing rules, as well as other federal and state consumer protection laws. This will help seniors make informed decisions about their Medicare coverage and will ensure that beneficiaries have access to the best possible care.

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