Summary of CMS Proposed Rule

CMS issued proposed rules at the end of December that would make more changes to the Medicare marketing rules if they are finalized. These rules are not final. They do not become final until CMS issues final rules. In the meantime, CMS solicits and reviews comments from industry and decides whether to finalize them, and if so, whether to make changes before finalizing. CMS will likely issue some form of these rules as final effective for PY 2024 marketing. Below are the highlights of some of the proposed changes to the Medicare marketing rules.

Sales/Marketing and Educational Events:

- CMS would prohibit sales presentations that immediately follow educational events (marketing event may not take place within 12 hours of educational event at same location)
- CMS would prohibit agent collection of beneficiary contact information (including SOAs and BRCs) at educational events
- CMS would prohibit agents from setting up future marketing appointments at educational events
- CMS would require obtaining SOA 48 hours prior to the personal marketing appointment

TPMOs:

- CMS would prohibit TPMOs that collect personal beneficiary data from distributing that data to multiple entities in any manner, including selling it. CMS interprets this as ***prohibiting TPMOs from selling leads they generate so we expect this to be challenged.*** Remember that TPMOs include agents/brokers, agencies/brokerages, and FMOs.
- CMS would require rather than permit TPMOs to submit their multi-plan materials through the Health Plan Management System (HPMS) designed on behalf of and with prior approval from MA and PDP organizations

TPMO Disclaimer:

- CMS would require TPMOs that do not contract with every plan available in their area to add to the TPMO Disclaimer that beneficiaries can obtain information from SHIPs and a list of all plans the TPMO sells
- CMS would require TPMOs that DO contract with every plan available in their area to now also use a different standardized TPMO Disclaimer that also includes a list of all plans the TPMO sells and that beneficiaries can obtain information from 1-800-MEDICARE, SHIPs, and Medicare.gov

TPMO Call Recordings:

- Limit calls that must be recorded to sales, marketing (as that term is defined in the regs), and enrollment activities conducted by agents, brokers and TPMOs (but must record the complete duration)
- CMS would clarify that call recordings required include virtual technology-based platforms (i.e., videoconference such as Zoom, Facetime, Skype)

Other Marketing Provisions:

- CMS would limit the validity of an SOA or BRC to no more than 6 months following the date the enrollee asked for information
- CMS would clarify that door-to-door solicitation prohibition still applies after the collection of an SOA or BRC and that may only visit beneficiary home at time and place scheduled
- CMS would prohibit marketing to benefits in service areas where not available

- CMS would prohibit marketing unless the name of the MA organization or PDP sponsor that offers the benefits being advertised are clearly identified
- CMS would prohibit plans from marketing any products or plans, benefits, or costs, unless the MA organization/PDP sponsor are identified in the marketing material
- CMS would prohibit marketing of information about savings available to potential enrollees based on a comparison of typical expenses borne by uninsured individuals, unpaid costs of dually eligible benefits, or other unrealized costs of a Medicare beneficiary
- CMS would prohibit the use of superlatives (i.e., best or most) unless materials provide documentation to support the statement and documentation is for the current or prior year
- CMS would prohibit using Medicare name, CMS logo, official products, including the Medicare card, in a misleading manner
- CMS would require plans to actively monitor and report to CMS agents who fail to adhere to CMS requirements
- CMS would require agent and broker sales calls to discuss a list of required CMS topics or questions (including PCPs, specialists, drug coverage and costs) would provide more guidance on this in sub-regulatory guidance