

## CMS REVISES MEDICARE ADVANTAGE MARKETING GUIDANCE FOR SCOPE OF APPOINTMENT FORMS

The Centers for Medicare & Medicaid Services' ("CMS's") guidance governing Medicare Advantage marketing practices has continued to evolve over the past several years, with regulatory requirements shifting significantly across administrations. These changes reflect both the ongoing development of health care coverage models and differing policy priorities among governing parties. As a result, organizations involved in Medicare Advantage marketing have faced a regulatory landscape marked by frequent and often substantial revisions.

### BACKGROUND AND CONTEXT

Each fall, CMS releases a proposed rule outlining policy and payment changes for the Medicare Advantage benefit year that begins January 1 of the second calendar year following the rule's release. Typically, there's a 60-day comment period, and the following spring, CMS will publish the final rule along with its commentary on the regulatory changes being finalized, often in response to the public's questions.

In early April 2026, CMS submitted the **final rule** ("2027 Final Rule"), "Contract Year 2027 and Certain Contract Year 2026 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program" to the Code of Federal Regulations for publication on April 6, 2026, followed by a May 25, 2026, **Frequently Asked Questions memo** clarifying specific aspects of the final rule.

### CHANGES TO THE SCOPE OF APPOINTMENT FORM AND REQUIREMENTS

To better align the Medicare Advantage and Prescription Drug Plan ("MAPD") regulations with the Social Security Act, Sections 1851(j)(2)(A) and 1860D-4(l)(2), that require CMS to establish limitations in writing for the scope of any marketing appointment in advance of the appointment with a prospective enrollee, CMS adopted the following changes to the Scope of Appointment ("SOA") rules in Subpart V of 42 CFR 422 (Medicare Advantage Program Communication Requirements) and 42 CFR 423 (Medicare Prescription Drug Plan Program Communication Requirements):

- **Eliminated the 48-hour rule.** CMS removed the requirement for the SOA to be agreed upon between the agent/broker and prospective enrollee at least 48 hours prior to the personal marketing appointment. (See 42 CFR 422.2264(c)(3)(i), 423.2264(c)(3)(i)).
- **Refined the definition of "Personal Marketing Appointment."** CMS revised the definition of "personal marketing appointment" in 42 CFR 422.2264(c)(3) and 423.2264(c)(3) to: "Personal marketing appointments are those appointments that are tailored to an individual or small group (for example, a married couple) for purposes of discussing marketing topics."
- **Personal Marketing Appointments Are Location Agnostic.** CMS further clarified that personal marketing appointments are not defined by location, explaining that a marketing appointment may take place in person, telephonically or virtually.
- **Clarification Regarding Small Group Appointments.** CMS indicated that a small group typically consists of related individuals residing in the same home.

A "small group" for the purpose of the SOA "is a limited number of people, generally related or living in the same household." CMS states that meetings with unrelated prospective beneficiaries in a home or public space, such as a book club at a house or at a library, would require a separate SOA for each individual.

### PERSONAL MARKETING APPOINTMENT ACTIVITIES

Activities that can take place at a personal marketing appointment include:

- Providing marketing materials;
- Distributing and accepting plan applications;
- Conducting marketing presentations; and

- Reviewing the individual needs of the prospective beneficiary, including but not limited to health care needs and history, commonly used medications and financial concerns.

## **SOA FORMS REQUIRED BEFORE PERSONAL MARKETING APPOINTMENT BEGINS**

CMS revised 42 CFR 422.2274(b)(3) and 423.2274(b)(3) to more closely align with 42 CFR 422.2264(c)(3)(i) and 423.2264(c)(3)(i) to indicate the SOA should be entered “prior to a personal marketing appointment”.

## **SOA ALWAYS REQUIRED FOR A PERSONAL MARKETING APPOINTMENT**

The SOA is required for all appointments that meet the definition of personal marketing appointments. To be clear, in the Contract Year 2027 proposed rule, CMS emphasized that this means the SOA would be required regardless of whether the personal marketing appointment was initiated by the plan, an agent/broker or the beneficiary.

## **SOA REQUIREMENTS**

SOA forms must be:

- In writing. (See 422.2264(c)(9)(ii), 423.2264(c)(9)(ii)).
- Completed by the agent/broker:
  - For virtual meetings, via:
    - Audio or audio-visual recording; or
    - Electronic record.
  - For in-person meetings, via:
    - Completed SOA form. (See 422.2264(c)(3)(i), 423.2264(c)(3)(i)).
- Collected by the agent/broker:
  - For plan activities in a health care setting. (See 422.2266(e)(1), 423.2266(e)(1)).
  - For marketing events. (See 422.2264(c)(2)(ii)(C), 423.2264(c)(2)(ii)(C)).
  - For educational events. (See 422.2264(c)(1)(ii)(D), 423.2264(c)(1)(ii)(D)).

The FAQs clarified that “in writing” does not require the signature to be a wet signature on a form. Electronic signatures are valid under the Electronic Signatures in Global and National Commerce (E-Sign) Act of 2000. CMS also reiterated that the 2027 Final Rule states: “an audio or audio-visual recording or an electronic record would suffice as an SOA record for a personal marketing appointment that does not occur in person.”

## **SOA PROHIBITIONS**

CMS prohibits the collection of an SOA by an agent/broker at the following events:

- Plan-initiated provider activities. (See 422.2266(d)(1)(i), 423.2266(d)(1)(i)).
- Activities performed by social workers of an I-SNP. (See 422.2266(f)(3)).

## **SOA DEFINITION BROADENED**

In the introduction to the 2027 Final Rule, CMS states that it considers the following communications as SOAs:

- Business Reply Cards;
- Voicemails;
- Online forms; and
- Other requests for information include the type of product(s) to be discussed.

## SOA FORM

Unlike other Medicare Advantage requirements, CMS does not provide a sample SOA form; however, CMS does provide guidance on what must be included in a valid SOA.

- The broker must fill out the SOA before the personal marketing appointment commences.
- The SOA should include:
  - Type of product(s):
    - Checkboxes may be used.
  - Date of appointment.
  - Beneficiary contact information.

## SOA VALIDITY

CMS retained the 12-month validity time period for the SOA. CMS advised, however:

- Discussion of a new product requires a new SOA.
- Discussion of the same product for the new plan year requires a new SOA.
- Discussion of the same product(s) for the same plan year does not require a new SOA, and the existing SOA may be used for multiple calls, contacts or appointments; however, the agent/broker must honor a beneficiary's request to no longer be contacted.

For more information on Medicare marketing or how Hall Render can assist you in implementing this guidance, please contact:

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