

TPMO DISCLAIMER SUMMARY GUIDANCE

August 1, 2022

Summary: CMS issued new guidance requiring the use of a new marketing disclaimer. National Contracting Center (NCC) is issuing this summary guidance to our agents to assist you with complying and implementing the new requirement.

Disclaimer: The following disclaimer must be used when dealing with a marketing situation.

“We do not offer every plan available in your area. Any information we provide is limited to those plans we do offer in your area. Please contact Medicare.gov or 1-800-MEDICARE to get information on all of your options.”

Effective Date: The technical effective date is **June 28, 2022**. However, we believe that CMS will give the industry an opportunity to implement the required change and will not enforce the change until **October 1, 2022** applicable to **2023 AEP**.

Applicability: The new disclaimer applies to third-party marketing organizations (TPMO) and independent agents and brokers who are compensated to perform lead generation, marketing, sales and enrollment-related functions. The disclaimer also applies to downlines of the TPMO.

The disclaimer must be used by any TPMO and independent agents and brokers who sell plans on behalf of *more than one* MA organization.

The disclaimer does not apply to *captive* agents and brokers or to agents and brokers who are *employees* of the carriers.

The disclaimer is also not required for those TPMOs or independent agents and brokers who offer (sell) *every carrier* options in a given service area.

Usage of Disclaimer: The disclaimer must be used when conducting a marketing activity under the following circumstances:

1. **Sales Call:** If you conduct any sales calls, it must be verbally conveyed within the first minute of the sales call.
2. **Website:** If you maintain a sales website that is public-facing and used for sales purposes, it must be prominently displayed on the website.
3. **Electronic Marketing Communication:** If you communicate marketing information with a beneficiary through email, online chat, television, radio or other electronic means of communication, the electronic communication must contain the disclaimer.
4. **Marketing Materials:** If you provide any marketing materials (electronic or print), the content must contain the disclaimer. The disclaimer is not needed on communication or educational materials that do not contain sales or marketing content.

Reference:

- <https://www.federalregister.gov/d/2022-09375/p-2086>

FAQ:

1. I am an agent who sells exclusively Humana Medicare products. I do not sell for any other carrier. Does the new disclaimer apply to me?

No. The disclaimer only applies to an independent agent who sells plans for *more than one* MA organization. If you sell exclusively for one carrier, either as a captive agent or as an employee, the disclaimer would not apply since you are not in the business of representing a wider (but not exhaustive) array of plan options that would necessitate the disclaimer.

2. Is the disclaimer required if I sell for every carrier and every plan options in a given service area?

No. If you represent every carrier and every options (plans) that they offer in a particular service area, you do not have to use the disclaimer in that service area.

3. Why is the disclaimer required for agents who sell for multiple MA organizations but not required for those who only sell for one MA organization?

Agents who sell for multiple MA organizations represent a wider array of plan options. Because of this, there may be a mistaken belief on the part of the beneficiary (right or wrong) that the agent sells every single plan option in the service area.

For agents who sell exclusively for a single MA organization, on the other hand, it is clear from the onset that the offering is not an expansive list.

4. How do I know that I represent every carrier and every options (plans) that they offer in a particular service area?

A good resource is Medicare.gov. The website maintains a master list of all carriers and their options (plans) in a particular geographic area. Keep in mind that CMS may suppress certain carriers and their plans from public viewing if a particular carrier is going through some compliance issues. Check with your carrier contacts to confirm if you have the complete list.

5. Can I explain to the beneficiary the reason(s) why I do not offer or represent every carrier or every plan in the beneficiary's service area? If so, what type of explanations are acceptable?

Yes, you can provide an explanation as to why you only offer a limited selection of plans in the service areas. The following examples are acceptable so long as they accurately reflect the situation:

- The carriers and plans that you offer are the most price competitive and appropriate for the majority of beneficiaries.
- The carriers and plans that you offer are the most comprehensive for the majority of beneficiaries.

- Based on your experience, the carriers and plans that you currently do not offer have had a high member dissatisfaction rate.
- There have been very little demand for the carriers and plans that you used to offer.
- The plans you offer have networks that accommodate the majority of beneficiaries you work with.

6. Is the disclaimer required if I have an existing business relationship with the beneficiary and she fully knows that I do not offer all plans in her service area?

Yes. CMS has made it explicitly clear that the disclaimer is still required even if you have an existing relationship with a beneficiary.

7. If I make multiple sales calls to the enrollee, must the disclaimer be read each time?

If multiple sales calls are part of a single sales transaction, you only need to read the disclaimer once.

Example 1:

Call 1: On Monday, agent calls beneficiary to discuss Plan A details such as benefits, cost-share, premium, provider network and plan rules. Beneficiary expresses strong interest but would like to look over the information before making a final decision. Disclaimer must be read.

Call 2: On Wednesday, beneficiary calls agent back again to express concerns that Plan A's \$50 premium is too high. Agent recommends Plan B that offers \$0 premium and the same formulary that covers all of her 5 medications. Disclaimer not necessary.

Call 3: On Thursday, beneficiary calls agent back to make a final decision to enroll. Disclaimer not necessary.

In this example, all 3 calls are part of a single sales transaction. Reading the disclaimer 3 times would not provide value since the beneficiary is already aware of the sales agent's limited offering.

If, on the other hand, multiple sales calls are part of multiple sales transactions, you may need to read the disclaimer multiple times.

Example 2:

Call 1: During 2022 AEP, agent calls beneficiary to discuss Plan A details such as benefits, cost-share, premium, provider network and plan rules. Beneficiary enrolls in Plan A. Disclaimer must be read.

Call 2: During 2023 AEP, agent calls beneficiary to discuss her current Plan A details such as benefits, cost-share, premium, provider network and plan rules. Agent also discusses Plan B options. Beneficiary decides to change plan and enroll in Plan B. Disclaimer must be read.

In this example, enough time has lapsed that it would be necessary to remind the beneficiary of the agent’s limited offering. The 2023 AEP enrollment is considered a new transaction. Lastly, having an existing business relationship with the beneficiary does not absolve the sales agent from having to read the disclaimer.

Example 3:

Call 1: During 2022 AEP, agent calls beneficiary to discuss Plan A details such as benefits, cost-share, premium, provider network and plan rules. Beneficiary enrolls in Plan A. Disclaimer must be read.

Call 2: In January 2023, beneficiary calls the sales agent to express dissatisfaction with her current Plan A and wishes to enroll in Plan B. Agent enrolls her into Plan B using the MA OEP with a February 1, 2023 effective date. Disclaimer must be read.

In this example, enough time has lapsed that it would be necessary to remind the beneficiary of the agent’s limited offering. In addition, the MA OEP enrollment is considered a new transaction.

8. Is the disclaimer required on materials and communications that are targeted towards the non-public segment, such as other agents and provider offices?

No. Only materials and communications that are public-interfacing (or has the potential to be seen by the public) require the disclaimer. Examples of situations requiring/not requiring the disclaimer:

SCENARIO	DISCLAIMER REQUIREMENT
A website that provides information and training content to other agents.	Not required
A marketing brochure that provides information to a provider office on the benefits of Medicare Advantage.	Not required
A marketing brochure that provides information to a provider office on the benefits of Medicare Advantage.	Required

The provider office prints copies of the brochure and makes them available to its patients.	
An email to a local business that promotes Medicare Advantage	Not required
An email to a local business that promotes Medicare Advantage. The business forwards the email to all its employees who are Medicare-eligible.	Required

9. Can the disclaimer be modified, either to suit individual situations or as a general allowance?

No. CMS does not allow the disclaimer to be modified. The language must be adopted in its entirety and unchanged.