

LEGAL UPDATE



McGohan
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APPLICABILITY

The provisions of the final rule are applicable beginning with the **upcoming Annual Enrollment Period**.

The \$100 increase to the fixed agent and broker compensation amount for initial enrollments into a Medicare Advantage or Part D plan will be added to agent and broker compensation payments for the Annual Election Period in Fall 2024. It will be applied to **all enrollments effective in calendar year 2025 and in future contract years**.

CMS Redefines Broker Compensation to Stop Anti-Competitive Steering

On April 4, 2024, the Centers for Medicare and Medicaid Services (CMS) issued a [final rule](#) that makes enhancements to the Medicare Advantage Program and Medicare Part D. Among other things, the final rule establishes new guardrails for plan compensation to agents and brokers to stop anti-competitive steering. According to CMS, excessive compensation—as well as other bonus arrangements offered by plans to agents and brokers—can result in individuals being steered to some Medicare Advantage and Part D plans over others based on the agent or broker’s financial interests, rather than the prospective enrollee’s health care needs.

Background

Many individuals with Medicare rely on agents and brokers to help navigate complex Medicare choices as they comparison shop for coverage options. The Medicare statute requires CMS to establish guidelines to ensure that the use of compensation creates incentives for agents and brokers to enroll individuals in the Medicare Advantage or Part D plan intended to best meet the prospective enrollee’s health care needs. However, according to CMS, commissions and excessive compensation have created anti-competitive and anti-consumer steering incentives.

Final Rule

The final rule broadens the scope of the regulatory definition of “compensation” to ensure that agent and broker compensation reflects only the legitimate activities associated with the sales to, and enrollment of, an individual into a Medicare Advantage or Part D plan.

Specifically, the final rule:

- Redefines “compensation” to **set a clear, fixed amount that agents and brokers can be paid regardless of the plan the individual enrolls in**.
- Increases the final national agent and broker fixed compensation amount for initial enrollments into a Medicare Advantage or Part D plan by **\$100**—an amount higher than what was initially proposed (\$31). CMS believes this increase will eliminate variability in payments and improve the predictability of compensation for agents and brokers.
- Generally prohibits contract terms between Medicare Advantage organizations and Part D sponsors and third-party marketing organizations (e.g., field marketing organizations), which may directly or indirectly create an incentive to inhibit an agent or broker’s ability to objectively assess and recommend the plan that is best suited to a potential enrollee’s needs.

Other Enhancements

The final rule addresses other enhancements to Medicare Advantage and Medicare Part D, which are outlined in a [CMS fact sheet](#).