

# CMS Finalizes Proposal to Overhaul Medicare Advantage Broker Payments

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*April 9, 2024*

The U.S. Centers for Medicare and Medicaid Services (CMS) published a [final rule](#) on April 4, 2024 that overhauls the regulations governing insurance agent and broker compensation rates and agreements for Medicare Advantage Plans (MAPs) and Medicare Part D Plans (PDPs). The final rule, which adopts the majority of the changes from the proposed rule that we previously discussed [here](#), is intended to establish additional guardrails to protect beneficiaries and support competition within the industry. This final rule follows CMS' action last April to revise the regulations governing marketing by MAPs, discussed [here](#). The final rule will take effect on October 1, 2024, the start of the fiscal year 2025 plan year.

For many years, CMS has regulated and capped agent and broker commissions for enrolling Medicare beneficiaries into MAPs and PDPs. Currently, in most states, the commission caps are set at \$611 for every initial MAP enrollment and half that, \$306, for a renewal. For PDPs, the respective caps are \$100 for initial enrollment and \$50 for renewal. However, agents and brokers have been allowed to receive administrative fees covering, among other things, the costs of travel, licensing, enrollment, training, and software/back-office support. Administrative fees can be paid based on enrollments at fair market value rates and are not subject to any specific limits or caps.

The final rule eliminates administrative fees and consolidates commission-based compensation subject to a single cap. Key provisions of the rule include:

- **Elimination of separate administrative fees.** CMS eliminated the ability of MAPs and PDPs to pay administrative fees outside of the commission-based cap.
- **Caps on agent and broker non-salary compensation.** Beginning in Contract Year 2025, "compensation" will encompass all administrative fees, commissions, and fees paid to agents and brokers. CMS intends for these commissions to be a global payment for services (though salaries are exempt, discussed below). In connection with this change, CMS had proposed increasing the caps for both MAPs and PDPs by \$31 for initial enrollments (half for renewals). In response to comments received, in the final rule CMS has provided for a larger increase, \$100 for initial enrollments (half for renewals).
- **Prohibition on contract terms that prevent objective advice to beneficiaries.** These terms include direct or indirect language that creates incentives to enroll in particular plans, terms that provide for bonuses/payments for not representing a particular plan, and terms that provide for

bonuses for hitting volume-based targets for sales of a plan. CMS noted it will continue to review contracts as part of its general oversight of Medicare Advantage.

- **Termination of fee reporting.** The fixed fee structures discussed above would eliminate the need for MAPs and PDPs to report to CMS payment of fees.

CMS states that it made these changes to better align with statutory requirements to ensure that the use of compensation creates incentives for agents and brokers to enroll individuals in the plan that best fits a beneficiary's healthcare needs. Specifically, CMS notes that the following alleged developments warranted change:

- misaligned incentives affecting the ability of Third-Party Marketing Organizations (TPMOs), agents, and brokers to offer the best plans to beneficiaries
- consolidation of marketing services and plans in relatively few, large organizations that can more easily accommodate the increased marketing costs and potentially leave smaller plans behind
- certain plans offering agents and brokers bonuses and perks (e.g., free trips, cash), framed as allowable administrative payments, in exchange for enrollments
- increasing complaints from beneficiaries regarding brokers' high-pressure marketing tactics that create confusion with MAP and PDP enrollment
- the growing role of TPMOs that may "influence or obscure" the activities of agents and brokers

Multiple commenters noted that the changes do not distinguish among the different types of agents and their employment relationships and are not narrowly targeted to rein in abusive behaviors. Some TPMOs pay their agents and brokers through salaries, so they would not be affected by the caps. CMS declined to change the rule to accommodate this feature of the market but noted that it would study the issue further.

The changes go into effect on October 1, 2024. Stakeholders should revise their contracts to comply with the new rules for the 2025 plan year.

## CONTACTS

If you have any questions regarding this Sidley Update, please contact the Sidley lawyer with whom you usually work, or

<b>Jon S. Zucker</b> , Partner	+1 202 736 8571, <a href="mailto:jzucker@sidley.com">jzucker@sidley.com</a>
<b>Jaime L.M. Jones</b> , Partner	+1 312 853 0751, <a href="mailto:jaime.jones@sidley.com">jaime.jones@sidley.com</a>
<b>Francesca R. Ozinal</b> , Senior Managing Associate	+1 202 736 8283, <a href="mailto:fozinal@sidley.com">fozinal@sidley.com</a>
<b>George Maliha M.D.</b> , Associate	+1 202 736 8322, <a href="mailto:george.maliha@sidley.com">george.maliha@sidley.com</a>
<b>Taylor Andelman</b> , Associate	+1 202 736 8165, <a href="mailto:tandelman@sidley.com">tandelman@sidley.com</a>

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